



Nature Repair Act 2023

No. 121, 2023

**An Act to establish a national voluntary framework
for projects to enhance or protect biodiversity, and
for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Nature Repair Act 2023

No. 121, 2023

**An Act to establish a national voluntary framework
for projects to enhance or protect biodiversity, and
for other purposes**

[Assented to 14 December 2023]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Nature Repair Act 2023*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	15 December 2023

Note: This table relates only to the provisions of this Act as originally enacted.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

The objects of this Act are:

- (a) to promote the enhancement and protection of biodiversity in native species in Australia; and
- (b) to contribute to meeting Australia's international obligations in relation to biodiversity, including the Biodiversity Convention; and
- (ba) to contribute to meeting Australia's domestic goal of no new extinctions; and
- (c) to promote engagement and co-operation of market participants (including Aboriginal persons and Torres Strait Islanders, governments, the community, landholders and private enterprise) in the enhancement or protection of biodiversity in native species in Australia; and
- (d) to:
 - (i) support and promote the unique role of Aboriginal persons and Torres Strait Islanders in enhancing and

- protecting biodiversity in native species in Australia;
and
- (ii) enable the use of the knowledge of Aboriginal persons and Torres Strait Islanders related to biodiversity in native species in Australia, guided by the owners of that knowledge; and
 - (e) to contribute to building a knowledge base, and capacity, related to the enhancement or protection of biodiversity in native species in Australia.

4 Simplified outline of this Act

A biodiversity project is a project to enhance or protect biodiversity in native species.

An eligible person may apply for a biodiversity project to be registered on the Biodiversity Market Register. To be registered, a biodiversity project must meet various requirements, including requirements:

- (a) to be carried out by one or more project proponents (including the applicant) who are fit and proper persons; and
- (b) to be covered by a methodology determination.

Methodology determinations are legislative instruments that cover particular kinds of biodiversity projects, and set out how a project is to be carried out and the circumstances in which a biodiversity certificate will be issued for a project.

The Minister may make a biodiversity assessment instrument that prescribes requirements to be complied with by methodology determinations.

A biodiversity certificate represents the biodiversity outcome that a registered biodiversity project is designed to achieve. Biodiversity certificates are the property of their registered holders, and may be transferred.

Section 5

This Act imposes certain obligations on project proponents. These obligations include:

- (a) obligations to comply with requirements in the methodology determination that covers a project; and
- (b) reporting and notification obligations; and
- (c) record-keeping and monitoring obligations.

The Biodiversity Market Register holds entries for each registered biodiversity project and each biodiversity certificate.

This Act is administered by the Minister and the Clean Energy Regulator. The Regulator has a range of powers available to enforce the obligations of a project proponent, including the following:

- (a) civil penalties (some of which apply only after a biodiversity certificate has been issued for a project);
- (b) other powers under the Regulatory Powers Act;
- (c) powers to require projects to be audited;
- (d) powers to require project proponents to relinquish biodiversity certificates;
- (e) the power to make a biodiversity maintenance declaration that prohibits certain activities in a project area.

This Act also contains provisions for:

- (a) the establishment of the Nature Repair Committee to advise the Minister in relation to the Minister's functions under this Act; and
- (b) biodiversity integrity standards which a methodology determination must meet; and
- (c) internal review of decisions under the Act, and review by the Administrative Appeals Tribunal.

5 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 in relation to:
 - (a) subsection 150(5); or
 - (b) section 155.

6 Extension to external Territories

This Act extends to every external Territory.

7 Definitions

In this Act:

Aboriginal land council, for an area of land, means a body corporate that:

- (a) is established under an Act of the Commonwealth, a State or a Territory for the purpose of holding, for the benefit of Aboriginal persons or Torres Strait Islanders:
 - (i) title to land vested in it by or under that Act; or
 - (ii) an estate or interest in land granted under that Act; and
- (b) has functions relating to land that under a law of the Commonwealth, a State or a Territory is land rights land; and
- (c) consists of Aboriginal persons or Torres Strait Islanders who:
 - (i) live in an area to which one or more of the body's functions relate; or
 - (ii) are registered as traditional owners of land in an area to which one or more of the body's functions relate; or
 - (iii) have an association with an area to which one or more of the body's functions relate if the Aboriginal persons or Torres Strait Islanders are accepted as members of the land council on the basis of that association.

Aboriginal person has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

Section 7

activity period of a registered biodiversity project means the activity period identified in the notice of approval of registration under paragraph 15(7)(d), subject to any variation under rules made for the purposes of paragraph 20(1)(c).

alternative assurance agreement: see subsection 104A(2).

area means:

- (a) an area of land; or
- (b) an area of Australian waters; or
- (c) an area that is a combination of land and Australian waters.

audit information has the meaning given by section 124.

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

- (a) paragraph 12(3)(a);
- (b) paragraph 68(1)(e);
- (c) paragraph 103(1)(d);
- (d) paragraph 103(1)(e);
- (e) paragraph 104(3)(d);
- (f) paragraph 104(3)(e);
- (g) paragraph 121(2)(a);
- (h) subsection 122(1).

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

Australian waters means:

- (a) the territorial sea of Australia; or
- (b) the waters of the sea on the landward side of the territorial sea of Australia; or
- (c) the territorial sea of each external Territory; or
- (d) the waters of the sea on the landward side of the territorial sea of each external Territory; or
- (e) inland waters.

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

biodiversity assessment instrument means an instrument under section 58.

biodiversity audit means:

- (a) an audit under section 121 or 122; or
- (b) an audit carried out for the purposes of preparing an audit report prescribed by the rules or a methodology determination for the purposes of any of the following provisions:
 - (i) paragraph 12(3)(a);
 - (ii) paragraph 68(1)(e);
 - (iii) paragraph 103(1)(d);
 - (iv) paragraph 103(1)(e);
 - (v) paragraph 104(3)(d);
 - (vi) paragraph 104(3)(e).

biodiversity audit report means:

- (a) an audit report under section 121 or 122; or
- (b) an audit report prescribed by the rules or a methodology determination for the purposes of any of the following provisions:
 - (i) paragraph 12(3)(a);
 - (ii) paragraph 68(1)(e);
 - (iii) paragraph 103(1)(d);
 - (iv) paragraph 103(1)(e);
 - (v) paragraph 104(3)(d);
 - (vi) paragraph 104(3)(e).

biodiversity certificate means a certificate issued under section 70.

biodiversity conservation contract: see section 79.

Section 7

biodiversity conservation contractor: see section 79.

biodiversity conservation purchasing process: see section 83.

Biodiversity Convention means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, as in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1993 No. 32 ([1993] ATS 32) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

biodiversity integrity standards: see section 57.

biodiversity maintenance area, in relation to a biodiversity maintenance declaration: see subsection 154(1).

biodiversity maintenance declaration means a declaration made by the Regulator under subsection 154(1).

biodiversity outcome, in relation to a biodiversity project, means the enhancement or protection of biodiversity that the project is designed to achieve.

biodiversity project means a project, carried out in a particular area, that is designed to enhance or protect biodiversity in native species (whether the effect on biodiversity occurs within or outside the area).

biodiversity project report means:

- (a) a category A biodiversity project report; or
- (b) a category B biodiversity project report.

body corporate under external administration means:

- (a) a Chapter 5 body corporate; or
- (b) a body corporate that has a corresponding status under a law of a foreign country.

category A biodiversity project report: see sections 101 and 102.

category B biodiversity project report: see section 104.

Chapter 5 body corporate has the same meaning as in the *Corporations Act 2001*.

civil penalty order has the same meaning as in the Regulatory Powers Act.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

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

corporation means:

- (a) a body corporate; or
- (b) a corporation sole.

covers: a methodology determination **covers** a registered biodiversity project if the entry for the project in the Register states that the methodology determination covers the project.

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:

Section 7

- (a) in relation to a State—means the Minister of the State who, under the rules, 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 rules, 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 rules, 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 rules, is taken to be the Crown lands Minister of the Territory.

declared prohibited activity, in relation to a biodiversity maintenance area, means an activity specified under subsection 154(4) in relation to the biodiversity maintenance area.

deposited with the Regulator, when used in relation to a biodiversity certificate, has the meaning given by section 142.

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.

electronic notice transmitted to the Regulator has the meaning given by section 9.

eligible interest, in relation to an area of land, has the meaning given by section 89, 90 or 92.

eligible 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.

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 Regulator, 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.

engage in conduct means:

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

environmental offsetting measure includes, but is not limited to, a measure to offset or compensate for the impacts of an action or project (however described) on the environment that is:

- (a) required as a condition of an approval, licence or permit (however described) under a law of the Commonwealth, a State or a Territory; or
- (b) directly financed from a fund into which money is paid as a condition of an environmental approval, licence or permit (however described) under a law of the Commonwealth, a State or a Territory; or
- (c) undertaken as required or agreed to under a penalty or enforceable undertaking imposed or accepted under a law of the Commonwealth, a State or a Territory.

environmental offsetting purpose means the purpose of meeting an environmental offsetting requirement (however described) under a law of the Commonwealth, a State or a Territory including through an environmental offsetting measure.

excluded biodiversity project: see section 33.

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

executive officer of a corporation means:

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

Federal Court means the Federal Court of Australia.

fit and proper person has a meaning affected by sections 97, 98, 99 and 99A.

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 persons 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 persons 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 persons or Torres Strait Islanders.

holder of a biodiversity certificate means the person recorded in the Register as the holder of the certificate.

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

inland waters means waters within Australia other than waters of the sea.

inspector means a person appointed as an inspector under section 184.

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 persons 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 persons 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 persons or Torres Strait Islanders; or
- (d) the land is reserved expressly for the benefit of Aboriginal persons or Torres Strait Islanders; or
- (e) the land is specified in the rules.

This definition does not apply to the definition of ***Aboriginal land council*** or to section 92.

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

maintained project, in relation to a biodiversity maintenance declaration: see paragraph 154(1)(a).

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methodology determination means a determination under subsection 45(1).

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

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

native title area: an area is a **native title area** 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 a registered biodiversity 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 rules.

Nature Repair Committee means the committee established by section 194.

Nature Repair Committee member means a member of the Nature Repair Committee, and includes the Chair of the Nature Repair Committee.

non-corporate government body means:

- (a) a body politic; or
- (b) a local governing body that is not a corporation.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

permanence period of a registered biodiversity project means the permanence period that:

- (a) is identified in the notice of approval of registration under paragraph 15(7)(d), subject to any variation under rules made for the purposes of paragraph 20(1)(d); and

(b) complies with section 34.

prescribed law, when used in a provision of this Act, means a law prescribed by the rules for the purposes of that provision.

project includes a set of activities.

project area, in relation to:

- (a) a biodiversity project; or
- (b) a registered project under a related scheme;

means the area, or areas, on or in which the project has been, is being, or is to be carried out.

project plan, in relation to a biodiversity project, means a plan that:

- (a) sets out how the project is intended to be carried out; and
- (b) sets out how the project is intended to achieve the biodiversity outcome for the project; and
- (c) is consistent with the methodology determination that covers, or is proposed to cover, the project; and
- (d) includes such information (if any) as is specified in the rules or the methodology determination that covers, or is proposed to cover, the project; and
- (e) complies with such requirements (if any) as are specified in the rules or the methodology determination that covers, or is proposed to cover, the project.

project proponent, in relation to a registered biodiversity project, means:

- (a) the eligible person who is recorded in the Register as the project proponent for the project; or
- (b) each of the eligible persons who are recorded in the Register as a project proponent for the project.

Note: For projects with multiple project proponents, see Part 3.

protected audit information has the meaning given by section 125.

Register means the Biodiversity Market Register kept by the Regulator under subsection 161(1).

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registered biodiversity project means a biodiversity project that is registered on the Register (other than a former registered biodiversity project in relation to which information is set out in the Register under rules made for the purposes of subsection 162(5)).

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

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*.

registered project under a related scheme means a project that is:

- (a) declared as an eligible offsets project under the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (b) registered (however described) under a prescribed law of the Commonwealth, a State or a Territory.

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

Regulator means the Clean Energy Regulator.

Note: The Clean Energy Regulator is established by the *Clean Energy Regulator Act 2011*.

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

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

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant land registration official:

- (a) in relation to a biodiversity project that:
 - (i) is or was a registered biodiversity project; and
 - (ii) is wholly or partly situated in a State or Territory;
means the Registrar of Titles or other proper officer of the State or Territory in which the project area is wholly or partly situated; or
- (b) in relation to an area that is or was a biodiversity maintenance area—means the Registrar of Titles or other proper officer of the State or Territory in which the area is wholly or partly situated.

relinquishment equivalence requirements: see subsection 151(2).

relinquishment notice means a notice given by the Regulator under any of the following provisions:

- (a) subsection 144(2) (false or misleading information);
- (b) subsection 146(2) (reversal of biodiversity outcome other than due to natural disturbance or conduct etc.);
- (c) subsection 147(2) (reversal of biodiversity outcome due to natural disturbance or conduct and no mitigation happens);
- (d) subsection 147A(2) (circumstances prescribed by the rules).

reviewable decision has the meaning given by section 212.

rules means rules made under section 237.

Secretary means the Secretary of the Department.

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

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- (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 rules.

this Act (except in sections 1, 2, 45 and 237) includes the following provisions:

- (a) the provisions of a legislative instrument made under this Act;
- (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) a legislative instrument made under this Act.

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 *Aboriginal and Torres Strait Islander Act 2005*.

type A permanence period: see section 34.

type B permanence period: see section 34.

type C permanence period: see section 34.

vacancy, in relation to the office of a Nature Repair Committee member, has a meaning affected by section 8.

8 Vacancy in the office of a Nature Repair Committee member

For the purposes of a reference in:

- (a) this Act to a **vacancy** in the office of a Nature Repair 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 Nature Repair Committee member in addition to the Chair of the Committee.

9 Electronic notice transmitted to the Regulator

- (1) For the purposes of this Act, a notice is an *electronic notice transmitted to the Regulator* if, and only if:
 - (a) the notice is transmitted to the Regulator by means of an electronic communication; and
 - (b) if the Regulator requires that the notice be transmitted, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the Regulator’s requirement has been met; and
 - (c) the notice complies with rules made for the purposes of subsection (2).
- (2) The rules may make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of an electronic communication.
- (3) Rules 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) This section does not, by implication, limit the regulations that may be made under the *Electronic Transactions Act 1999*.

Part 2—Registered biodiversity projects

Division 1—Introduction

10 Simplified outline of this Part

The Regulator may, if certain criteria are satisfied, register a biodiversity project on application by an eligible person who is to be the project proponent, or one of the project proponents, of the project.

Division 3 provides for the registration of a registered biodiversity project to be varied.

Division 4 provides for the registration of a registered biodiversity project to be cancelled, either:

- (a) voluntarily, with different procedures applying depending on whether a biodiversity certificate has been issued; or
- (b) unilaterally by the Regulator, if the project or the project proponent does not satisfy certain conditions and requirements.

Division 5 provides for the rules to prescribe certain kinds of biodiversity projects as excluded biodiversity projects, which may not be registered.

Division 6 provides for the duration of a permanence period for a registered biodiversity project.

Division 2—Registration of biodiversity project

11 Application for approval of registration of biodiversity project

- (1) An eligible person may apply to the Regulator for the Regulator to approve the registration of a biodiversity project on the Register.

Note 1: The applicant will be registered as the project proponent, or one of the project proponents, for the project.

Note 2: The Regulator has a function of providing advice and assistance in relation to the making of applications: see section 219.

- (2) However, applications under subsection (1) may be made only on or after a day determined by the Minister by legislative instrument.

12 Form of application

- (1) An application must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.
- (2) An application must:
- (a) specify the proposed project area; and
 - (b) if the project is to have more than one project proponent—specify the eligible persons who are proposed to be the project proponents along with the applicant; and
 - (c) specify the methodology determination (the ***applicable methodology determination***) that is proposed to cover the project; and
 - (d) specify the proposed activity period (if any), which must be worked out in accordance with the applicable methodology determination; and
 - (e) specify the proposed permanence period, which, subject to subsection 34(2), must be:
 - (i) a type A permanence period; or
 - (ii) a type B permanence period; or
 - (iii) a type C permanence period; and

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- (f) include such other information as is specified in the rules;
and
 - (g) include such other information as is specified in the
applicable methodology determination.
- (3) An application must be accompanied by:
- (a) if the rules or the applicable methodology determination
provides that this paragraph applies to the proposed project—
an audit report that is:
 - (i) prescribed by the rules or the applicable methodology
determination (as the case requires); and
 - (ii) prepared by a registered greenhouse and energy auditor
who has been appointed as an audit team leader for the
purpose; and
 - (b) if there are to be project proponents other than the
applicant—evidence that each other project proponent
consents to being a project proponent for the project; and
 - (c) if a registered indigenous land use agreement is relevant to
the Regulator’s decision on the application—a copy of
relevant parts of the agreement; and
 - (d) if the applicable methodology determination provides that
there must be a project plan for a project covered by the
methodology determination—a project plan for the project;
and
 - (e) such other documents (if any) as are specified in the rules;
and
 - (f) such other documents (if any) as are specified in the
applicable methodology determination; and
 - (g) the fee (if any) specified in the rules.
- (4) The approved form of application may provide for verification by
statutory declaration of statements in applications.
- (5) A fee specified under paragraph (3)(g) must not be such as to
amount to taxation.

Registered native title body corporate

- (6) If:
-

- (a) the applicant is a native title holder for an exclusive possession native title area; and
 - (b) the proposed project area consists of, or includes, the exclusive possession native title area; and
 - (c) there is a registered native title body corporate for the exclusive possession native title area; and
 - (d) the applicant is not the registered native title body corporate; the application must specify the registered native title body corporate as an eligible person who is proposed to be a project proponent along with the applicant.
- (7) However, subsection (6) does not apply if the registered native title body corporate declares, by written notice given to the applicant, that the registered native title body corporate does not consent to being specified as a project proponent along with the applicant.
- (8) Subsection (6) does not prevent a person (other than the registered native title body corporate) from being specified as an eligible person who is proposed to be a project proponent along with the applicant.

13 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator 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.

14 Withdrawal of application

- (1) An applicant may withdraw the application at any time before the Regulator makes a decision on the application.
- (2) If the applicant does so, this Act does not prevent the applicant from making a fresh application.

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

15 Approval of registration of biodiversity project

Scope

- (1) This section applies if an application under section 11 has been made for the Regulator to approve the registration of a biodiversity project.

Approval

- (2) After considering the application, the Regulator may decide to:
- (a) approve the registration of the biodiversity project, and register the project on the Register; or
 - (b) refuse to approve the registration of the biodiversity project.

Note: For review of decisions, see Part 20.

- (3) The Regulator must give written notice of a decision under subsection (2) to:
- (a) the applicant; and
 - (b) if:
 - (i) the decision is a decision to approve the registration of the biodiversity project; and
 - (ii) there is a relevant land registration official in relation to the biodiversity project;the relevant land registration official.

Criteria for approval

- (4) The Regulator must not approve the registration of the biodiversity project unless the Regulator is satisfied that:
- (a) the project is being, or is to be, carried on in Australia; and

- (b) the project is of a kind specified, for the purposes of paragraph 45(1)(a), in the methodology determination (the ***applicable methodology determination***) that is specified in the application under paragraph 12(2)(c); and
- (c) the activity period (if any) for the project has been worked out in accordance with the applicable methodology determination; and
- (d) the permanence period for the project complies with section 34; and
- (e) the project meets any conditions set out in the applicable methodology determination under paragraph 45(1)(b); and
- (f) if the applicable methodology determination requires that there must be a project plan for the project:
 - (i) there is a project plan for the project; and
 - (ii) implementation of the project plan is likely to result in a biodiversity certificate being issued in respect of the project; and
- (g) if the applicable methodology determination does not require that there must be a project plan for the project—carrying out the project is likely to result in a biodiversity certificate being issued in respect of the project; and
- (h) the applicant is to be registered as the project proponent, or one of the project proponents, for the project; and
- (i) the proposed project proponent, or each of the proposed project proponents, is an eligible person; and
- (j) the proposed project proponent, or each of the proposed project proponents, is a fit and proper person; and
- (k) the project area meets the requirements set out in subsection (5); and
- (l) the project area does not consist of, or include, a biodiversity maintenance area or part of a biodiversity maintenance area; and
- (m) the requirements set out in subsection (6) have been met in relation to the project; and
- (n) the project meets the eligibility requirements (if any) specified in the rules; and
- (o) the project is not an excluded biodiversity project.

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Note 1: Methodology determinations are made under section 45.

Note 2: For *excluded biodiversity project*, see section 33.

Note 3: For *fit and proper person*, see sections 97, 98, 99 and 99A.

- (5) The requirements mentioned in paragraph (4)(k) are:
- (a) the project area is, or is a combination of:
 - (i) Torrens system land; or
 - (ii) Crown land; or
 - (iii) Australian waters; and
 - (b) the project area is not specified in the rules.
- (6) The requirements mentioned in paragraph (4)(m) are:
- (a) if the project area consists of, or includes, Torrens system land:
 - (i) the proposed project proponent, or a proposed project proponent, holds an estate in fee simple in the Torrens system land that is covered by subsection 89(2); or
 - (ii) the proposed project proponent, or a proposed project proponent, holds a legal estate or interest (other than an estate in fee simple) in the Torrens system land that is covered by subsection 89(2) and that is prescribed by the rules; or
 - (iii) the proposed project proponent, or a proposed project proponent, holds a lease of the Torrens system land and the terms of the lease are consistent with the project being carried out on the land; or
 - (iv) a person who holds an estate in fee simple in the Torrens system land that is covered by subsection 89(2) has consented to the carrying out of the project on the land as a registered biodiversity project by the proposed project proponent or proposed project proponents; or
 - (v) a person who holds a legal estate or interest (other than an estate in fee simple) in the Torrens system land that is covered by subsection 89(2) and that is prescribed by the rules has consented to the carrying out of the project on the land as a registered biodiversity project by the proposed project proponent or proposed project proponents; and

- (b) if:
 - (i) the project area is, or includes, a native title area; and
 - (ii) there is a registered native title body corporate for the native title area;then:
 - (iii) the proposed project proponent, or a proposed project proponent, is the registered native title body corporate; or
 - (iv) the registered native title body corporate has consented to the carrying out of the project on or in the native title area as a registered biodiversity project by the proposed project proponent or proposed project proponents; or
 - (v) the registered native title body corporate has consented to the registration of the project.

Matters to be included in notice

- (7) If the Regulator approves the registration of the biodiversity project, the notice must:
 - (a) set out, in accordance with the rules, the project area; and
 - (b) set out the project proponent or project proponents for the project; and
 - (c) set out the applicable methodology determination; and
 - (d) set out the activity period (if any) and the permanence period for the project; and
 - (e) if the registration is subject to a condition under section 17, 18 or 18A—set out the condition; and
 - (f) set out such attributes of the project as are specified in the rules; and
 - (g) set out such other matters (if any) as are specified in the rules.

Timing

- (8) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 13(1) in relation to the

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- application—within 90 days after the applicant gave the Regulator the information; or
- (b) otherwise—within 90 days after the application was made.

When approval takes effect

- (9) If the Regulator approves the registration of the biodiversity project, the approval takes effect on the day after the notice of approval is given to the applicant.

16 Suspension of processing of applications for registrations of biodiversity projects

Order

- (1) The Minister may, by legislative instrument, order that, if:
- (a) an application is made under section 11 during a specified period; and
 - (b) the application relates to a biodiversity project that is proposed to be covered by a methodology determination specified in the order;
- the Regulator must not:
- (c) consider the application during that period; or
 - (d) make a decision on the application during that period.
- (2) A period specified in an order under subsection (1):
- (a) must start at the commencement of the order; and
 - (b) must not be longer than 12 months.
- (3) The Minister may make an order under subsection (1) that relates to a particular methodology determination only if the Nature Repair Committee has advised the Minister that the Committee is satisfied that there is reasonable evidence that the methodology determination does not comply with one or more of the biodiversity integrity standards.
- (4) The Nature Repair Committee may give the Minister advice for the purposes of subsection (3):
- (a) on the Committee's own initiative; or

- (b) on request by the Minister.
- (5) If the Nature Repair Committee gives the Minister advice for the purposes of subsection (3), the Department must publish the advice on the Department's website (whether or not the Minister follows the advice).
- (6) To avoid doubt, Subdivisions D (advice about making, varying or revoking methodology determinations) and E (consultation by the Nature Repair Committee) of Division 2 of Part 4 do not apply to advice given by the Committee under subsection (4) of this section.

Compliance with order

- (7) The Regulator must comply with an order under subsection (1).

Timing of decision on application

- (8) If an application made under section 11 is or was covered by an order under subsection (1) of this section, subsection 15(8) (timing of decision on application) does not apply to the application.

17 Registration may be subject to condition about obtaining regulatory approvals

Scope

- (1) This section applies if:
- (a) an application under section 11 has been made for the Regulator to approve the registration of a biodiversity project; and
 - (b) the Regulator decides to approve the registration of the biodiversity project under section 15; and
 - (c) the Regulator is not satisfied that all regulatory approvals have been obtained for the project.

Condition

- (2) The Regulator must set out in the notice under subsection 15(3) that the registration is subject to the condition that a biodiversity

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certificate is not to be issued in respect of the project until all regulatory approvals are obtained for the project.

18 Registration may be subject to condition about obtaining consents from eligible interest holders

Scope

- (1) This section applies if:
 - (a) an application under section 11 has been made for the Regulator to approve the registration of a biodiversity project; and
 - (b) the Regulator decides under section 15 to approve the registration of the biodiversity project; and
 - (c) the Regulator is satisfied that there are one or more persons (the *relevant interest-holders*) who:
 - (i) hold an eligible interest in the project area, or any part of the project area, for the project; and
 - (ii) have not consented, in writing, to the making of the application.

Condition

- (2) The Regulator must set out in the notice under subsection 15(3) that the registration is subject to the condition that a biodiversity certificate is not to be issued in respect of the project until the written consent of each relevant interest-holder to the registration is obtained.

Consents

- (3) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) must be in a form approved, in writing, by the Regulator.
- (4) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) may be set out in a registered indigenous land use agreement.
- (5) Subsection (3) does not apply to a consent mentioned in subparagraph (1)(c)(ii) or subsection (2) if the consent is set out in a registered indigenous land use agreement.

18A Registration may be subject to condition about obtaining consent from registered native title body corporate

Scope

- (1) This section applies if:
 - (a) an application under section 11 has been made for the Regulator to approve the registration of a biodiversity project; and
 - (b) the Regulator decides under section 15 to approve the registration of the biodiversity project; and
 - (c) the Regulator is satisfied that:
 - (i) the project area for the biodiversity project is or includes a native title area; and
 - (ii) there is a registered native title body corporate for the native title area; and
 - (iii) the registered native title body corporate has consented to the registration of the biodiversity project; and
 - (iv) the registered native title body corporate has not consented, in writing, to the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent.

Condition

- (2) The Regulator must set out in the notice under subsection 15(3) that the registration is subject to the condition that a biodiversity certificate is not to be issued in respect of the project until the written consent of the registered native title body corporate is obtained to the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent.

Consents

- (3) A consent mentioned in subparagraph (1)(c)(iv) or subsection (2) must be in a form approved, in writing, by the Regulator.
- (4) A consent mentioned in subparagraph (1)(c)(iv) or subsection (2) may be set out in a registered indigenous land use agreement.

Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

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- (5) Subsection (3) does not apply to a consent mentioned in subparagraph (1)(c)(iv) or subsection (2) if the consent is set out in a registered indigenous land use agreement.

Division 3—Variation of registration

19 Voluntary variation of registration of biodiversity project— change in identity of project proponent

- (1) The rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project to:
 - (a) add an eligible person as a project proponent of the project;
or
 - (b) remove a project proponent from the project (so long as this would not result in there not being any project proponents for the project).

Note 1: See also section 22 (procedures for voluntary variation of registration of biodiversity project).

Note 2: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to vary a registration unless:
 - (a) the project proponent for the project applies to the Regulator for the variation; and
 - (b) any eligible person that is to be added as a project proponent for the project consents, in writing, to the variation; and
 - (c) the Regulator is satisfied that any eligible person that is to be added as a project proponent for the project is a fit and proper person; and
 - (d) if a biodiversity certificate is in effect in relation to the project, and the project proponent for the project is not the holder of the certificate—the holder of the certificate has been notified of the proposed variation, and has been given the opportunity to make submissions in relation to the proposed variation.

Note: For *fit and proper person*, see sections 97, 98, 99 and 99A.

- (3) Rules made for the purposes of subsection (1) may empower the Regulator to require the Commonwealth to be given security in relation to the fulfilment of any requirements to relinquish

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biodiversity certificates that may be imposed under Part 13 in relation to the project (whether or not the circumstances that may result in a relinquishment notice being given exist at the time the variation is made).

- (4) Rules made for the purposes of subsection (1) may empower the Regulator to refuse an application to remove a project proponent from a registered biodiversity project unless the Regulator is satisfied that the remaining project proponents would have the capability and resources to carry out the project.

20 Voluntary variation of registration of biodiversity project—changes in project area etc.

- (1) The rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project in respect of any of the following:
- (a) the project area;
 - (b) the methodology determination that covers the project;
 - (c) the project’s activity period (if any);
 - (d) the project’s permanence period.

Note 1: See also section 22 (procedures for voluntary variation of registration of biodiversity project).

Note 2: See also section 34 (permanence period).

Note 3: For review of decisions, see Part 20.

- (2) The methodology determination that is to cover a registered biodiversity project as a result of a variation under rules made for the purposes of paragraph (1)(b) of this section:
- (a) must be in force at the time the variation of the project’s registration takes effect; and
 - (b) applies to the project subject to any variations under section 48 that take effect before the variation of the project’s registration takes effect.

This subsection has effect despite rules made for the purposes of subsection 49(2), (3) or (4) (when variation of a methodology determination takes effect) and rules made for the purposes of

section 52 (consequences of methodology determination ceasing to have effect).

- (3) Rules made for the purposes of subsection (1) must not empower the Regulator to vary a registration unless:
- (a) the project proponent for the project applies to the Regulator for the variation; and
 - (b) if a biodiversity certificate is in effect for the project, and the project proponent is not the holder of the certificate—either:
 - (i) the holder of the certificate has consented, in writing, to the variation; or
 - (ii) the Regulator is satisfied that the variation would not result in a material change to the certificate.

21 Voluntary variation of conditional registration of biodiversity project—condition of registration has been met

- (1) The rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project to remove any of the following conditions to which the registration is subject:
- (a) a condition mentioned in subsection 17(2) (conditions about obtaining regulatory approvals);
 - (b) a condition mentioned in subsection 18(2) (conditions about obtaining consents from eligible interest holders);
 - (c) a condition mentioned in subsection 18A(2) (condition about obtaining consent from registered native title body corporate).

Note 1: See also section 22 (procedures for voluntary variation of registration of biodiversity project).

Note 2: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to vary a registration unless:
- (a) the project proponent for the project applies to the Regulator for the variation; and
 - (b) the Regulator is satisfied that the condition has been met.

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22 Procedures for voluntary variation of registration of biodiversity project

- (1) Rules made for the purposes of subsection 19(1), 20(1) or 21(1) may make provision for or in relation to any or all of the following matters:
 - (a) applications for variations under those rules;
 - (b) the approval by the Regulator 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 to certify a matter in relation to such an application;
 - (h) the fee (if any) that must accompany such an application;
 - (i) the withdrawal of such an application;
 - (j) empowering the Regulator:
 - (i) to require an applicant to give the Regulator 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;
 - (k) varying a biodiversity certificate issued in respect of a registered biodiversity project (including such a certificate that is held by a person other than the project proponent for the project).
- (2) Subsection (1) does not limit subsection 19(1), 20(1) or 21(1).
- (3) A fee mentioned in paragraph (1)(h) must not be such as to amount to taxation.
- (4) Rules made for the purposes of subsection 19(1), 20(1) or 21(1) must provide that, if the registration of a registered biodiversity

project is varied in accordance with those rules, the Regulator must give a copy of the variation to:

- (a) the applicant for the variation; and
 - (b) if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - (c) if:
 - (i) a biodiversity certificate has been issued in respect of the registered biodiversity project; and
 - (ii) the biodiversity certificate is held by a person other than the project proponent;
the holder of the biodiversity certificate.
- (5) Rules made for the purposes of subsection 19(1), 20(1) or 21(1) must provide that, if the Regulator decides to refuse to vary the registration of a registered biodiversity project in accordance with an application for variation under those rules, the Regulator must give written notice of the decision to the applicant for the variation.

Division 4—Cancellation of registration of biodiversity project

Subdivision A—Voluntary cancellation of registration of biodiversity project

23 Voluntary cancellation of registration of biodiversity project—certificate in effect

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
 - (a) a biodiversity certificate (the *original certificate*) has been issued in respect of the registered biodiversity project (whether or not the original certificate remains in effect); and
 - (b) the project proponent for the project applies to the Regulator for the cancellation of the registration; and
 - (c) the original certificate is relinquished in accordance with section 152 in relation to the project, as mentioned in paragraph 152(2)(c).
- (3) Rules made for the purposes of subsection (1) may make provision for or in relation to any of the following matters:
 - (a) applications for cancellation under those rules;
 - (b) the approval by the Regulator of a form for such an application;
 - (c) other conditions that must be satisfied for the Regulator to cancel the registration in accordance with those rules.
- (4) Subsection (3) does not limit subsection (1).

24 Voluntary cancellation of registration of biodiversity project—no certificate in effect

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) no biodiversity certificate has been issued in relation to the registered biodiversity project; and
 - (b) the project proponent for the project applies to the Regulator for the cancellation of the registration.
- (3) Rules 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 cancellation under those rules;
 - (b) the approval by the Regulator of a form for such an application.
- (4) Subsection (3) does not limit subsection (1).

25 Procedures for voluntary cancellation of registration of biodiversity project

- (1) Rules made for the purposes of subsection 23(1) or 24(1) may make provision for or in relation to any or all of the following matters:
- (a) applications for cancellation under those rules;
 - (b) the approval by the Regulator 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;

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- (g) authorising a person to issue a certificate to certify a matter in relation to such an application;
 - (h) the fee (if any) that must accompany such an application;
 - (i) the withdrawal of such an application;
 - (j) empowering the Regulator:
 - (i) to require an applicant to give the Regulator 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.
- (2) Subsection (1) does not limit subsection 23(1) or 24(1).
- (3) A fee mentioned in paragraph (1)(h) must not be such as to amount to taxation.
- (4) Rules made for the purposes of subsection 23(1) or 24(1):
- (a) must provide that, if the registration of a registered biodiversity project is cancelled in accordance with those rules, the Regulator must give notice of the cancellation to:
 - (i) the applicant for the cancellation; and
 - (ii) if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - (iii) in a case where the registration was cancelled under rules made for the purposes of subsection 23(1), and the biodiversity certificate mentioned in paragraph 23(2)(a) is held by a person other than the applicant—the holder of the certificate; and
 - (b) may require the Regulator to give notice of the cancellation to other people.
- (5) Rules made for the purposes of subsection 23(1) or 24(1) must provide that, if the Regulator decides to refuse to cancel the registration of a registered biodiversity project in accordance with an application for cancellation under those rules, the Regulator must give written notice of the decision to the applicant for the cancellation.

Subdivision B—Unilateral cancellation of registration of biodiversity project

26 Unilateral cancellation of registration of biodiversity project—condition of registration has not been met

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) the registration is subject to a condition mentioned in subsection 17(2), 18(2) or 18A(2); and
 - (b) the Regulator is satisfied that the condition has not been met; and
 - (c) at least 5 years have passed since the project was first registered.
- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration.

27 Unilateral cancellation of registration of biodiversity project—project not commenced, or unlikely to result in issuing of biodiversity certificate

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) a certificate has not yet been issued in respect of the registered biodiversity project; and
 - (b) any of the following subparagraphs applies:

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- (i) 5 years have passed since the project was first registered, and the Regulator is not satisfied that the project has begun to be carried out;
 - (ii) the Regulator is satisfied that the project is not being carried out;
 - (iii) the Regulator is satisfied that the project is unlikely to be carried out in a way that would result in a biodiversity certificate being issued in respect of the project.
- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration.

28 Unilateral cancellation of registration of biodiversity project—eligibility requirements not met etc.

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless the Regulator is satisfied that the project does not meet a requirement that is:
- (a) set out in subsection 15(4); and
 - (b) specified in rules made for the purposes of this paragraph.
- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration.

29 Unilateral cancellation of registration of biodiversity project—project proponent ceases to be a fit and proper person

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) the Regulator is satisfied that either:
 - (i) if there is one project proponent for the project—the project proponent for the project is not a fit and proper person; or
 - (ii) if there are multiple project proponents for the project—any of those project proponents is not a fit and proper person; and
 - (b) 90 days pass after the Regulator becomes so satisfied, and, at the end of that 90-day period, the Regulator is not satisfied that each project proponent for the project is a fit and proper person.

Note: For *fit and proper person*, see sections 97, 98, 99 and 99A.

- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration.

30 Unilateral cancellation of registration of biodiversity project—project proponent ceases to exist etc.

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) the Regulator is satisfied that any of the following circumstances exist:
 - (i) the project proponent has died or ceased to exist, and there are no other project proponents for the project;
 - (ii) the project is not being carried out (except to the extent that this is in accordance with the methodology determination that covers the project); and

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- (b) 90 days pass after the circumstances began to exist, and the Regulator is not satisfied, at the end of that 90-day period, that the circumstances have ceased to exist.
- (3) Rules made for the purposes of subsection (1) must require the Regulator, in a case where there is a project proponent for the project, to make reasonable efforts to consult the project proponent for the project before deciding to cancel the registration.

**31 Unilateral cancellation of registration of biodiversity project—
false or misleading information**

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
 - (a) information was given by a person to the Regulator in connection with the project; and
 - (b) the information was:
 - (i) contained in an application under this Act; or
 - (ii) given in connection with an application under this Act; or
 - (iii) contained in a biodiversity project report; or
 - (iv) contained in a notification under Division 3 of Part 9; and
 - (c) the Regulator is satisfied that the information was false or misleading in a material particular.
- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration.

32 Notice of unilateral cancellation of registration of biodiversity project

Rules made for the purposes of subsection 26(1), 27(1), 28(1), 29(1), 30(1) or 31(1):

- (a) must provide that, if the registration of a registered biodiversity project is cancelled in accordance with those rules, the Regulator must give notice of the cancellation to:
 - (i) if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - (ii) if a biodiversity certificate is in effect in relation to the project, and is held by a person other than the project proponent—the holder of the certificate; and
- (b) may require the Regulator to give notice of the cancellation to other people.

Subdivision C—Cancellation of registration of biodiversity project at the end of the permanence period for the project

32A Cancellation of registration of biodiversity project at the end of the permanence period for the project

The registration of a registered biodiversity project is cancelled at the end of the permanence period for the project.

Note: See also section 34 (permanence period).

Division 5—Excluded biodiversity projects

33 Excluded biodiversity projects

- (1) For the purposes of this Act, a biodiversity project is an *excluded biodiversity project* if it is a project of a kind specified in the rules.
- (2) In deciding whether to make rules 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) biodiversity (other than the kinds of biodiversity to be addressed by the project);
 - (c) employment;
 - (d) the local community;
 - (e) if there is a local community of Aboriginal persons, or Torres Strait Islanders, who have a connection to the project area—that community;
 - (f) land access for agricultural production;
 - (g) the environment.

Division 6—Permanence period

34 Permanence period

- (1) Subject to subsection (2), the permanence period of a registered biodiversity project must be:
 - (a) a type A permanence period; or
 - (b) a type B permanence period; or
 - (c) a type C permanence period.

Note: The permanence period of a registered biodiversity project may be varied under rules made for the purposes of subsection 20(1).

- (2) A methodology determination that covers a particular kind of registered biodiversity project may provide that the permanence period for biodiversity projects of that kind must be a type C permanence period.

Type A permanence period

- (3) The type A permanence period for a registered biodiversity project:
 - (a) begins when the approval of the registration of the project takes effect; and
 - (b) ends at the end of the 25-year period that began when the approval of the registration of the project takes effect.

Type B permanence period

- (4) The type B permanence period for a registered biodiversity project:
 - (a) begins when the approval of the registration of the project takes effect; and
 - (b) ends at the end of the 100-year period that began when the approval of the registration of the project takes effect.

Type C permanence period

- (5) The type C permanence period for the registered biodiversity project:

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- (a) begins when the approval of the registration of the project takes effect; and
- (b) ends at the end of the period ascertained in accordance with the methodology determination that covers the project.

Extension of permanence period

- (6) The Regulator may extend the permanence period for a registered biodiversity project if the Regulator is satisfied that:
 - (a) there has been a significant reversal of the biodiversity outcome to which the project relates; and
 - (b) the extension is necessary to:
 - (i) restore the biodiversity outcome; or
 - (ii) mitigate the reversal.

Note: For review of decisions, see Part 20.

- (7) The Regulator may extend the permanence period for a registered biodiversity project if:
 - (a) the project proponent for the project requests the extension; and
 - (b) the Regulator is satisfied that:
 - (i) the biodiversity outcome to which the project relates has not been achieved; and
 - (ii) the extension is necessary for the biodiversity outcome to be achieved.

Note: For review of decisions, see Part 20.

Request for extension of permanence period

- (8) A request under paragraph (7)(a) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.
- (9) The Regulator must take all reasonable steps to ensure that a decision is made on the request within 30 days after the request was made.

Notification of extension of permanence period

- (10) If the Regulator extends the permanence period for a registered biodiversity project, the Regulator must take all reasonable steps to ensure that notice of the extension is given to:
- (a) the project proponent for the project; and
 - (b) if a biodiversity certificate relating to the project is held by a person other than the project proponent for the project—the holder of the certificate; and
 - (c) if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - (d) if:
 - (i) the project area is or includes a native title area; and
 - (ii) there is a registered native title body corporate for the native title area; and
 - (iii) the registered native title body corporate is not the project proponent for the project;
the registered native title body corporate; and
 - (e) any other person specified in the rules.

Notification of end of permanence period

- (11) If:
- (a) there is a relevant land registration official in relation to a registered biodiversity project; and
 - (b) the permanence period for the project ends;
- the Regulator must notify the relevant land registration official of the end of the permanence period.

Variation of biodiversity certificate

- (12) If:
- (a) the Regulator extends the permanence period for a registered biodiversity project; and
 - (b) a biodiversity certificate has been issued in respect of the project; and
 - (c) the permanence period is set out in the biodiversity certificate;

Part 2 Registered biodiversity projects

Division 6 Permanence period

Section 34

the Regulator must vary the biodiversity certificate to set out the permanence period as extended.

Part 3—Multiple project proponents

Division 1—Introduction

35 Simplified outline of this Part

If there are multiple project proponents for a registered biodiversity 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 a registered biodiversity 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 they do not do so, the Regulator may cancel the project's registration.

If there are multiple project proponents for a registered biodiversity project, obligations are imposed on each of the proponents, but may be discharged by any of the proponents.

Division 2—References to project proponents

36 References to project proponents

If there are 2 or more eligible persons (the *multiple project proponents*) who are registered as the project proponents for a registered biodiversity project, then:

(a) for the purposes of this Act, each of the multiple project proponents is a project proponent for the registered biodiversity project; and

(b) a reference in:

(i) this Act; or

(ii) an instrument under this Act;

to the project proponent for the registered biodiversity project is to be read as a reference to each of the multiple project proponents.

Division 3—Nominee of multiple project proponents

37 Nomination of nominee by multiple project proponents— nomination accompanying application

Scope

- (1) This section applies to:
 - (a) an application under section 11 for the Regulator to approve the registration of a biodiversity project if the application specifies 2 or more eligible persons who are to be project proponents for the biodiversity project; or
 - (b) an application under rules made for the purposes of section 19 (change in identity of project proponent) that would, if granted, result in there being multiple project proponents for a registered biodiversity project (whether or not there would otherwise be multiple project proponents).

Nomination

- (2) The application must be accompanied by a notice, made jointly in writing by all of the eligible persons who would, if the application were granted, be project proponents for the biodiversity project, nominating one of those eligible persons as the **nominee** in relation to the biodiversity project.
- (3) The joint written notice must be in a form approved, in writing, by the Regulator.
- (4) If the Regulator grants the application, the nomination takes effect:
 - (a) if paragraph (1)(a) applies—at the time the biodiversity project is registered as a registered biodiversity project; or
 - (b) if paragraph (1)(b) applies—at the time the variation under rules made for the purposes of section 19 takes effect.
- (5) If the application is not granted, the nomination does not take effect.

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38 Nomination of nominee by multiple project proponents—other nominations

Scope

- (1) This section applies to a registered biodiversity project that has multiple project proponents.

Nomination

- (2) The project proponents may give the Regulator a notice, made jointly in writing by all of the project proponents, nominating one of the project proponents as the **nominee** in relation to the registered biodiversity project.

Note: If a registered biodiversity project that has multiple project proponents ceases to have a nominee, and no new nominee is nominated, the Regulator may cancel the project's registration from 90 days after the cessation (see rules made for the purposes of section 42).

- (3) The joint written notice must be in a form approved, in writing, by the Regulator.
- (4) The nomination takes effect at the time it is given to the Regulator.
- (5) If a nomination under subsection (2) takes effect in relation to a particular registered biodiversity project, any other nomination under this Part that was in force in relation to that registered biodiversity project ceases to be in force.

39 Revocation and cessation of nomination

- (1) If:
- (a) a nomination under subsection 37(2) or 38(2) is in force in relation to a registered biodiversity project; and
 - (b) one of the project proponents for the registered biodiversity project, by written notice given to the Regulator, revokes the nomination;
- the nomination ceases to be in force.
- (2) If:

- (a) a nomination under subsection 37(2) or 38(2) is in force in relation to a registered biodiversity project; and
 - (b) the nominee ceases to be one of the project proponents for the registered biodiversity project;
- the nomination ceases to be in force.

Note: If a registered biodiversity project that has multiple project proponents ceases to have a nominee, and no new nominee is nominated, the Regulator may cancel the project's registration from 90 days after the cessation (see rules made for the purposes of section 42).

40 Service of documents on nominee

Scope

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

Service of documents

- (2) For the purposes of this Act, if:
 - (a) the multiple project proponents have nominated a nominee under subsection 37(2) or 38(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) a document relating to the registered biodiversity 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.

41 Eligible voluntary action taken by nominee

Scope

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

Eligible voluntary action to be taken by nominee

- (2) If:
-

Part 3 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 42

- (a) the multiple project proponents have nominated a nominee under subsection 37(2) or 38(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 has 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—a reference in this Act 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).

**42 Unilateral cancellation of registration of biodiversity project—
failure of multiple project proponents to nominate a
nominee**

- (1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

Note: For review of decisions, see Part 20.

- (2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:
- (a) there are 2 or more project proponents (the ***multiple project proponents***) for the registered biodiversity project; and
 - (b) the multiple project proponents have nominated an eligible person under subsection 37(2) or 38(2); and
 - (c) the nomination ceases to be in force; and
 - (d) 90 days pass, and no new nomination under subsection 37(2) or 38(2) is made by the multiple project proponents.

- (3) Rules made for the purposes of subsection (1) must require the Regulator to consult the multiple project proponents before deciding to cancel the registration.
- (4) Rules made for the purposes of subsection (1):
 - (a) must provide that, if the registration of a registered biodiversity project is cancelled in accordance with those rules, the Regulator must give notice of the cancellation to:
 - (i) if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - (ii) if a biodiversity certificate is in effect in relation to the project, and is held by a person other than the project proponent—the holder of the certificate; and
 - (b) may require the Regulator to give notice of the cancellation to other people.

Division 4—Obligations of multiple project proponents

43 Obligations of multiple project proponents

Scope

- (1) This section applies if:
 - (a) there are 2 or more project proponents (the ***multiple project proponents***) for a registered biodiversity project; and
 - (b) any of the following:
 - (i) this Act;
 - (ii) an 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 rules may exempt a specified obligation from the scope of subsection (2).

Part 4—Methodology determinations

Division 1—Introduction

44 Simplified outline of this Part

Methodology determinations are legislative instruments, made by the Minister, that set out how a registered biodiversity project is to be carried out, and other matters. Each registered biodiversity project must be covered by a methodology determination.

Methodology determinations may include requirements that a project proponent must comply with. If a biodiversity certificate has been issued in respect of a project, there is a civil penalty for failing to comply with a requirement in the methodology determination that covers the project.

In making or varying a methodology determination, the Minister must have regard to:

- (a) the biodiversity integrity standards; and
- (b) advice given by the Nature Repair Committee.

The Minister may also have regard to adverse environmental and other impacts, and any other matters the Minister considers relevant.

The Minister may make a biodiversity assessment instrument that prescribes requirements to be complied with by methodology determinations.

Division 2—Methodology determinations

Subdivision A—Making of methodology determinations

45 Methodology determinations

- (1) The Minister may, by legislative instrument, make a determination that:
 - (a) is expressed to cover a specified kind of biodiversity project; and
 - (b) sets out conditions that must be met for such a project to be registered as a registered biodiversity project; and
 - (c) provides, for the purposes of paragraph 162(1)(k), for information that is to be included in the entry in the Register for such a project; and
 - (d) sets out:
 - (i) for the purposes of paragraph 67(2)(b), conditions that must be met for an application to be made for a biodiversity certificate to be issued in respect of such a project; and
 - (ii) for the purposes of paragraph 67(2)(c), a method of working out the time after which such applications may be made; and
 - (e) sets out, for the purposes of paragraph 70(2)(h), conditions that must be met for a biodiversity certificate to be issued in respect of such a project; and
 - (f) requires, for the purposes of paragraph 108(1)(b), the project proponent for such a project to notify the Regulator of specified matters relating to the project; and
 - (g) provides, for the purposes of paragraphs 164(1)(d) and (2)(d), for information that is to be included in the entry in the Register for a biodiversity certificate issued in relation to such a project; and
 - (h) sets out the activities that are to be carried out for the purposes of such a project; and
 - (i) provides for the activity period (if any) of such a project to be worked out.

- (2) A determination made under subsection (1) is a ***methodology determination***.

Note: For the duration of a methodology determination, see section 50.

- (3) A methodology determination may impose any of the following on the project proponent of a registered biodiversity project that is covered by the methodology determination:

- (a) specified requirements to carry out activities in the project area for the purposes of the project;
- (b) specified requirements to ensure that specified activities are not carried out, by the project proponent or any other person, in the project area;
- (c) specified requirements to include information relating to the project in each biodiversity project report about the project;
- (d) specified requirements to notify one or more matters relating to the project to the Regulator;
- (e) specified record-keeping requirements relating to the project;
- (f) specified requirements to monitor the project.

Note: See section 46 (civil penalties—requirements in methodology determination).

- (4) A methodology determination may exempt traditional Indigenous activities from a requirement imposed under paragraph (3)(b).
- (5) Conditions set out under paragraph (1)(b), (d) or (e) must include:
- (a) in a case where the methodology determination covers a kind of biodiversity project that involves enhancement of biodiversity—conditions relating to the measurement or assessment of the enhancement of biodiversity; and
 - (b) in a case where the methodology determination covers a kind of biodiversity project that involves protection of biodiversity—conditions relating to the measurement or assessment of the protection of biodiversity.
- (6) Requirements imposed under paragraph (1)(f) or (3)(c), (d) or (f) must include:
- (a) in a case where the methodology determination covers a kind of biodiversity project that involves enhancement of

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biodiversity—requirements relating to the measurement or assessment of the enhancement of biodiversity; and

- (b) in a case where the methodology determination covers a kind of biodiversity project that involves protection of biodiversity—requirements relating to the measurement or assessment of the protection of biodiversity.
- (7) A methodology determination may require that:
- (a) there must be a project plan for a registered biodiversity project that is covered by the methodology determination; and
 - (b) the project plan must remain in force until the time ascertained in accordance with the methodology determination.
- (8) A methodology determination may prescribe matters required or permitted by this Act to be prescribed by a methodology determination.
- (9) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a methodology determination may make different provision in relation to different kinds of biodiversity projects covered by the determination.

Note: For example, a methodology determination may set out requirements under paragraph (1)(b) that differ depending on which region the project area of a biodiversity project is in.

- (10) Despite subsection 14(2) of the *Legislation Act 2003*, a methodology determination may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (11) A methodology determination may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

Note: For review of decisions, see Part 20.

Biodiversity assessment instruments

- (12) The Minister must not make a methodology determination unless there is a biodiversity assessment instrument that applies to the determination.
- (13) A methodology determination must comply with any requirements prescribed by a biodiversity assessment instrument that applies to the determination.

46 Civil penalties—requirements in methodology determination

- (1) An eligible person is liable to a civil penalty if:
 - (a) the eligible person is a project proponent of a registered biodiversity project; and
 - (b) a biodiversity certificate has been issued in respect of the project (whether or not the certificate remains in force); and
 - (c) the methodology determination that covers the project imposes a requirement on the project proponent of the project for the purposes of paragraphs 45(3)(a) and (b); and
 - (d) the eligible person, or any other project proponent for the project, fails to comply with the requirement.

Civil penalty: 2,000 penalty units.

- (2) An eligible person is liable to a civil penalty if:
 - (a) the eligible person is a project proponent of a registered biodiversity project; and
 - (b) a biodiversity certificate has been issued in respect of the project (whether or not the certificate remains in force); and
 - (c) the methodology determination that covers the project requires, for the purposes of paragraph 45(3)(b), the project proponent for the project to ensure that an activity is not carried out in the project area; and
 - (d) the activity is carried out in the project area (by the project proponent or any other person).

Civil penalty: 2,000 penalty units.

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- (3) Subsection (2) does not apply if the eligible person takes all reasonable steps to ensure that the activity is not carried out in the project area.

Note: A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection: see section 96 of the Regulatory Powers Act.

47 Procedure for making a methodology determination

- (1) In deciding whether to make a methodology determination, the Minister:
- (a) must have regard to the following:
 - (i) whether the determination complies with the biodiversity integrity standards;
 - (ii) any advice that the Nature Repair Committee has given to the Minister under subsection 54(2) in relation to the making of the determination; and
 - (b) may have regard to the following:
 - (i) whether significant adverse environmental, agricultural, economic, cultural or social impacts are likely to arise from the carrying out of the kind of project that the determination covers;
 - (ii) such other matters (if any) as the Minister considers relevant.

Advice given by the Nature Repair Committee

- (2) Before making a methodology determination, the Minister must request the Nature Repair Committee to advise the Minister about whether the Minister should make the determination.

Note: The Nature Repair Committee must have regard to certain matters in giving advice to the Minister (see section 54).

- (3) The Minister must not make a methodology determination unless:
- (a) the Nature Repair Committee has given the Minister advice under subsection 54(2) in relation to the making of the determination; and

- (b) that advice includes a statement to the effect that the Committee is satisfied that the determination complies with the biodiversity integrity standards.
- (4) If the Minister decides:
- (a) to make a methodology determination; or
 - (b) not to make a methodology determination;
- the Minister must:
- (c) cause a copy of any advice given by the Nature Repair Committee under subsection 54(2) in relation to the determination to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.

Biodiversity integrity standards

- (5) The Minister must not make a methodology determination unless the Minister is satisfied that the methodology determination complies with the biodiversity integrity standards.

Statement of reasons

- (6) If the Minister decides to make a methodology determination, the Minister must:
- (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (7) If the Minister prepares a statement of reasons under subsection (6), the Minister must:
- (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

Variation and amendment etc. of methodology determination

- (8) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply to a methodology determination.

Note: For variation and revocation of a methodology determination, see Subdivisions B and C of this Division.

Subdivision B—Variation of methodology determinations

48 Variation of methodology determinations

- (1) The Minister may, by legislative instrument, vary a methodology determination.
- (2) In deciding whether to vary a methodology determination, the Minister:
 - (a) must have regard to the following:
 - (i) whether the varied determination complies with the biodiversity integrity standards;
 - (ii) any advice that the Nature Repair Committee has given to the Minister under subsection 54(2) in relation to the varying of the determination; and
 - (b) may have regard to the following:
 - (i) whether significant adverse environmental, agricultural, economic, cultural or social impacts are likely to arise from the carrying out of the kind of project that the varied determination covers;
 - (ii) such other matters (if any) as the Minister considers relevant.

Advice given by the Nature Repair Committee

- (3) Before varying a methodology determination, the Minister must request the Nature Repair Committee to advise the Minister about whether the Minister should vary the determination.

Note 1: The Nature Repair Committee must have regard to certain matters in giving advice to the Minister (see section 54).

Note 2: For variations of a minor nature, see subsection (9) of this section.

- (4) The Minister must not vary a methodology determination unless:
 - (a) the Nature Repair Committee has given the Minister advice under subsection 54(2) in relation to the variation of the determination; and
 - (b) that advice includes a statement to the effect that the Committee is satisfied that the varied determination complies with the biodiversity integrity standards.

- (5) If the Minister decides:
- (a) to vary a methodology determination; or
 - (b) not to vary a methodology determination;
- the Minister must:
- (c) cause a copy of any advice given by the Nature Repair Committee under subsection 54(2) in relation to the variation of the determination to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.

Biodiversity integrity standards

- (6) The Minister must not vary a methodology determination unless the Minister is satisfied that the varied methodology determination complies with the biodiversity integrity standards.

Statement of reasons

- (7) If the Minister decides to vary a methodology determination, the Minister must:
- (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (8) If the Minister prepares a statement of reasons under subsection (7), the Minister must:
- (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

Variations of a minor nature

- (9) Subsections (3), (4), (5) and (7) do not apply in relation to a variation if the variation is of a minor nature.

49 When variation takes effect

- (1) A variation of a methodology determination takes effect:

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- (a) on the day after the instrument varying the methodology determination is registered on the Federal Register of Legislation; or
- (b) if a later day is specified in the instrument—on that later day.

Consequences of variation on existing registered biodiversity projects

- (2) The rules may provide that if:
 - (a) a methodology determination covers a registered biodiversity project; and
 - (b) the methodology determination is varied; and
 - (c) the project's registration is in effect at the time the variation takes effect; and
 - (d) the conditions specified in the rules are satisfied;the variation of the methodology determination applies to the registered biodiversity project.
 - (3) The rules may provide that if:
 - (a) a methodology determination covers a registered biodiversity project; and
 - (b) the methodology determination is varied; and
 - (c) the project's registration is in effect at the time the variation takes effect; and
 - (d) the conditions specified in the rules are satisfied;the variation of the methodology determination does not apply to the registered biodiversity project.
- Note: However, a variation of a methodology determination will apply to an existing registered biodiversity project if the project's registration is varied under rules made for the purposes of section 20 to change the methodology determination that covers the project.
- (4) The rules may empower the Regulator to determine, on application by the project proponent for a registered biodiversity project, that if:
 - (a) a methodology determination covers the registered biodiversity project; and
 - (b) the methodology determination is varied; and

- (c) the project's registration is in effect at the time the variation takes effect; and
 - (d) the conditions specified in the rules are satisfied;
- the variation of the methodology determination does not apply to the registered biodiversity project.

Note: However, a variation of a methodology determination will apply to an existing registered biodiversity project if the project's registration is varied under rules made for the purposes of section 20 to change the methodology determination that covers the project.

- (5) The rules may make provision for and in relation to any of the following matters in relation to an application under rules made for the purposes of subsection (4):
 - (a) the approval by the Regulator of a form for such an application;
 - (b) information that must accompany such an application;
 - (c) documents that must accompany such an application;
 - (d) verification by statutory declaration of statements in such an application;
 - (e) the fee (if any) that must accompany such an application;
 - (f) the withdrawal of such an application;
 - (g) empowering the Regulator:
 - (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirements—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (6) A fee mentioned in paragraph (5)(e) must not be such as to amount to taxation.

Effect of variation on application for approval of registration

- (7) If:
 - (a) a variation of a methodology determination takes effect; and
 - (b) at the time the variation takes effect, an application under section 11 for the Regulator to approve the registration of a biodiversity project has been made, and the Regulator has not decided to:

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- (i) approve the registration; or
 - (ii) refuse to approve the registration; and
 - (c) the application proposes that the project is to be covered by the methodology determination;
- then:
- (d) the methodology determination as varied applies to the application; and
 - (e) if the biodiversity project is registered, the project is covered by the methodology determination as varied.
- (8) The rules may provide for any of the following:
- (a) the Regulator to notify an eligible person that an application made by the eligible person under this Act is affected by a variation of a methodology determination, as mentioned in subsection (7);
 - (b) the Regulator to give the eligible person an opportunity to withdraw or vary the application before the Regulator considers the application.

Refund of fee

- (9) If:
- (a) an application is withdrawn under rules made for the purposes of subsection (5) or (8); and
 - (b) the applicant has paid a fee in relation to the application;
- the Regulator must, on behalf of the Commonwealth, refund the application fee.

Subdivision C—Duration, expiry and revocation of methodology determinations

50 Duration of methodology determinations

- (1) A methodology determination:
- (a) comes into force:
 - (i) the day after it is registered on the Federal Register of Legislation; or

- (ii) if a later time is specified in the determination—at that later time; and
- (b) unless sooner:
 - (i) revoked; or
 - (ii) repealed by section 42 (disallowance) of the *Legislation Act 2003*; or
 - (iii) repealed by Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*;
remains in force until:
 - (iv) if a period is specified in relation to the determination in a legislative instrument made by the Minister for the purposes of this subparagraph—the end of that period; or
 - (v) if subparagraph (iv) does not apply, but a period is specified in the determination—the end of that period.
- (2) If a methodology determination ceases to be in force, this Act does not prevent the Minister from making a fresh methodology determination in the same terms as the determination that has ceased to be in force.

Note: A fresh methodology determination must comply with the relevant provisions of this Division.

51 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 Nature Repair Committee to advise the Minister about whether the Minister should revoke the determination.

Note: The Nature Repair Committee must have regard to certain matters in giving advice to the Minister (see section 54).

- (3) In deciding whether to revoke a methodology determination, the Minister:
 - (a) must have regard to the following:
 - (i) whether the determination complies with the biodiversity integrity standards;

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- (ii) the advice given by the Nature Repair Committee under subsection 54(2); and
 - (b) may have regard to such other matters (if any) as the Minister considers relevant.
- (4) 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 the advice given by the Nature Repair Committee under subsection 54(2) in relation to the determination to be published on the Department's website.
- (5) If the Minister decides to revoke a methodology determination, the Minister must:
 - (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (6) If the Minister prepares a statement of reasons under subsection (5), the Minister must:
 - (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

52 Consequences of methodology determination ceasing to have effect

Continued application of methodology determination

- (1) The rules may provide that if:
 - (a) the methodology determination that covers a registered biodiversity project ceases to have effect (whether under this Subdivision or otherwise); and
 - (b) the conditions specified in the rules are satisfied;that methodology determination continues to cover the project as if the methodology determination had not ceased.

- (2) The rules may empower the Regulator to determine, on application by the project proponent for a registered biodiversity project, that if:
- (a) the methodology determination that covers the project ceases to have effect (whether under this Subdivision or otherwise); and
 - (b) the conditions specified in the rules are satisfied;
- then, despite the cessation, the methodology determination continues to cover the project as if the methodology determination had not ceased.
- (3) The rules may make provision for and in relation to any of the following matters in relation to an application under rules made for the purposes of subsection (2):
- (a) the approval by the Regulator of a form for such an application;
 - (b) information that must accompany such an application;
 - (c) documents that must accompany such an application;
 - (d) verification by statutory declaration of statements in such an application;
 - (e) the fee (if any) that must accompany such an application;
 - (f) the withdrawal of such an application;
 - (g) empowering the Regulator:
 - (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirements—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (4) A fee mentioned in paragraph (3)(e) must not be such as to amount to taxation.
- (5) If:
- (a) an application is withdrawn under rules made for the purposes of subsection (3); and
 - (b) the applicant has paid a fee in relation to the application;
- the Regulator must, on behalf of the Commonwealth, refund the application fee.
-

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Variation of registration of biodiversity project

- (6) The rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project in respect of the methodology determination that covers the project if:
 - (a) the methodology determination that covers the project ceases to have effect (whether under this Subdivision or otherwise); and
 - (b) the conditions specified in the rules are satisfied.

**53 Effect of methodology determination ceasing to have effect—
applications for registration**

- (1) This section applies to an application under section 11 for the Regulator to approve the registration of a biodiversity project if the methodology determination specified in the application under paragraph 12(2)(c) ceases to have effect (whether under this Subdivision or otherwise).
- (2) The Regulator must refuse the application.
- (3) The rules may provide for any of the following:
 - (a) the Regulator to notify the applicant that the Regulator proposes to refuse the application under subsection (2);
 - (b) the Regulator to give the applicant an opportunity to withdraw or vary the application before the Regulator refuses the application.
- (4) If:
 - (a) an application is withdrawn under rules made for the purposes of subsection (3); and
 - (b) the applicant has paid a fee in relation to the application; the Regulator must, on behalf of the Commonwealth, refund the application fee.

Subdivision D—Advice about making, varying or revoking methodology determinations

54 Advice by the Nature Repair Committee

Scope

- (1) This section applies if the Minister requests the Nature Repair Committee:
 - (a) under subsection 47(2), to give advice about whether the Minister should make a methodology determination; or
 - (b) under subsection 48(3), to give advice about whether the Minister should vary a methodology determination; or
 - (c) under subsection 51(2), to give advice about whether the Minister should revoke a methodology determination.

Committee to give advice

- (2) The Nature Repair Committee must give the requested advice to the Minister.

Note: The Committee must undertake public consultation before giving advice about making or varying a methodology determination (see section 56).

- (3) If the requested advice relates to whether the Minister should make a methodology determination, the Nature Repair Committee must include the following in the advice:
 - (a) if the Committee is satisfied that the proposed determination complies with the biodiversity integrity standards:
 - (i) a statement to that effect; and
 - (ii) the Committee's reasons why it is satisfied that the proposed determination complies with the biodiversity integrity standards; and
 - (iii) in a case where a Committee member is not satisfied that the proposed determination complies with the biodiversity integrity standards—the Committee member's reasons why the Committee member is not so satisfied;

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- (b) if the Committee is not satisfied that the proposed determination complies with the biodiversity integrity standards:
 - (i) a statement to that effect; and
 - (ii) the Committee’s reasons why it is not satisfied that the proposed determination complies with the biodiversity integrity standards;
 - (c) such other information (if any) as is specified in the rules.
- (4) If the requested advice relates to whether the Minister should vary a methodology determination, the Nature Repair Committee must include the following in the advice:
- (a) if the Committee is satisfied that the determination as proposed to be varied complies with the biodiversity integrity standards:
 - (i) a statement to that effect; and
 - (ii) the Committee’s reasons why it is satisfied that the determination as proposed to be varied complies with the biodiversity integrity standards; and
 - (iii) in a case where a Committee member is not satisfied that the determination as proposed to be varied complies with the biodiversity integrity standards—the Committee member’s reasons why the Committee member is not so satisfied;
 - (b) if the Committee is not satisfied that the determination as proposed to be varied complies with the biodiversity integrity standards:
 - (i) a statement to that effect; and
 - (ii) the Committee’s reasons why it is not satisfied that the determination as proposed to be varied complies with the biodiversity integrity standards;
 - (c) such other information (if any) as is specified in the rules.
- (5) If the requested advice relates to whether the Minister should revoke a methodology determination, the Nature Repair Committee must include in the advice:
- (a) a statement setting out the Committee’s opinion about whether the determination should be revoked; and

- (b) the Committee's reasons for the opinion; and
- (c) such other information (if any) as is specified in the rules.

Committee must have regard to certain matters

- (6) In giving the requested advice to the Minister, the Nature Repair Committee must have regard to the following:
 - (a) the biodiversity integrity standards;
 - (b) any relevant matters specified in a direction in force under section 55;
 - (c) any relevant advice given by the Regulator to the Committee;
 - (d) such other matters (if any) as are specified in the rules.
- (7) Subsection (6) does not, by implication, limit the matters to which the Nature Repair Committee may have regard.

55 Additional matters for the Nature Repair Committee to take into account

The Minister may, by legislative instrument, direct the Nature Repair Committee to do any or all of the following:

- (a) have regard to one or more specified matters in giving advice about the making of a methodology determination;
- (b) have regard to one or more specified matters in giving advice about the variation of a methodology determination;
- (c) have regard to one or more specified matters in giving advice about the revocation of a methodology determination.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

Subdivision E—Consultation by the Nature Repair Committee

56 Consultation by the Nature Repair Committee

- (1) The Nature Repair Committee must not advise the Minister whether the Minister should make or vary a methodology determination unless the Committee has first:

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- (a) published on the Department’s website:
 - (i) a detailed outline of the proposed determination or variation, as the case may be; and
 - (ii) a notice inviting the public to make a submission to the Committee on the detailed outline by a specified time limit; and
 - (b) considered any relevant submissions that were received within that time limit.
- (2) The time limit must be at least 28 days after the notice is published.
- (3) However, the time limit may be shorter than 28 days after the notice is published, so long as:
- (a) the Nature Repair Committee considers that the time limit is appropriate in the circumstances; and
 - (b) the time limit is not shorter than 14 days after the notice is published.

Publication of submissions

- (4) The Nature Repair Committee must publish on the Department’s website any relevant submissions under subsection (1) received within the time limit referred to in subparagraph (1)(a)(ii).
- (5) However, the Nature Repair Committee must not publish a particular submission made by a person if publication of the submission could reasonably be expected to substantially prejudice:
- (a) Indigenous cultural heritage; or
 - (b) biodiversity.
- (6) The Nature Repair Committee may decide under subsection (5) not to publish a submission:
- (a) on its own initiative; or
 - (b) at the request of the person who made the submission.
- (7) A request under subsection (6) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.

Division 3—Biodiversity integrity standards

57 Biodiversity integrity standards

- (1) For the purposes of this Act, a methodology determination complies with the *biodiversity integrity standards* if:
- (a) a biodiversity project carried out in accordance with the methodology determination must be designed to result in enhancement or protection of biodiversity in native species (whether the effect on biodiversity occurs within or outside the project area) that would be unlikely to occur if the project was not carried out; and
 - (b) a biodiversity project carried out in accordance with the methodology determination must be designed to prevent the project from having a significant adverse impact on biodiversity in a native species that is protected under:
 - (i) a law of the Commonwealth; or
 - (ii) a law of a State or a Territory in which the project area is wholly or partly situated; and
 - (c) a biodiversity project carried out in accordance with the methodology determination must be designed to achieve enhancement or protection of biodiversity in native species that is appropriate to the project area; and
 - (d) a biodiversity project carried out in accordance with the methodology determination must be designed to achieve enhancement or protection:
 - (i) that is of biodiversity in native species; and
 - (ii) that can be measured, assessed and verified; and
 - (e) any condition set out in, or requirement imposed by, the methodology determination in accordance with subsection 45(5) or (6):
 - (i) is supported by clear and convincing evidence; and
 - (ii) is, so far as is reasonably practicable, consistent with relevant Indigenous knowledge and values relating to biodiversity and cultural heritage; and

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- (iii) is consistent with enhancement or protection of biodiversity in native species that is appropriate to the project area; and
- (iv) enables, where appropriate, adaptive management to achieve the enhancement or protection of biodiversity in native species; and
- (v) in the case of a condition or requirement that relates to the measurement or assessment of the enhancement of biodiversity of native species—requires a clear indication of the level of certainty and confidence of achievement of the enhancement; and
- (vi) in the case of a condition or requirement that relates to the measurement of the protection of biodiversity of native species—requires a clear indication of the level of certainty and confidence of achievement of the protection; and
- (f) if any condition set out in, or requirement imposed by, the methodology determination in accordance with subsection 45(5) or (6) involves an estimate or projection—the condition or requirement must require disclosure of:
 - (i) the assumptions and methods used to make the estimate or projection; and
 - (ii) the level of certainty of the estimate or projection; and
- (g) if any condition set out in, or requirement imposed by, the methodology determination in accordance with subsection 45(5) or (6) involves an estimate or projection—the condition or requirement must require that the estimate or projection must be conservative; and
- (h) any statements or information that could be included in:
 - (i) an entry in the Register for a biodiversity project covered by the methodology determination; or
 - (ii) a biodiversity certificate issued in relation to a biodiversity project covered by the methodology determination;would be supported by clear and convincing evidence; and
- (i) to the extent to which any statements or information referred to in paragraph (h) would involve an estimate, projection or

assumption—the estimate, projection or assumption would be reasonably certain; and

- (j) the methodology determination meets such other standards (if any) as are prescribed by the rules.
- (2) Paragraph (1)(j) is not limited by the other paragraphs in subsection (1).

Division 4—Biodiversity assessment instruments

Subdivision A—Making of biodiversity assessment instruments

58 Biodiversity assessment instruments

- (1) The Minister may, by legislative instrument, prescribe requirements to be complied with by methodology determinations.
- (2) An instrument under subsection (1) is to be known as a *biodiversity assessment instrument*.
- (3) The following are examples of requirements that may be prescribed by a biodiversity assessment instrument:
 - (a) requirements relating to the measurement or assessment of biodiversity;
 - (b) requirements relating to the measurement or assessment of the enhancement of biodiversity;
 - (c) requirements relating to the measurement or assessment of the protection of biodiversity.
- (4) A biodiversity assessment instrument may be of general application or may be limited as provided in the instrument.
- (5) Subsection (4) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

59 Procedure for making a biodiversity assessment instrument

- (1) In deciding whether to make a biodiversity assessment instrument, the Minister:
 - (a) must have regard to any advice that the Nature Repair Committee has given to the Minister under subsection 64(2) in relation to the making of the instrument; and
 - (b) may have regard to such other matters (if any) as the Minister considers relevant.

Advice given by the Nature Repair Committee

- (2) Before making a biodiversity assessment instrument, the Minister must request the Nature Repair Committee to advise the Minister about whether the Minister should make the instrument.

Note: The Nature Repair Committee must have regard to certain matters in giving advice to the Minister (see section 64).

- (3) The Minister must not make a biodiversity assessment instrument unless:
- (a) the Nature Repair Committee has given the Minister advice in relation to the making of the instrument; and
 - (b) if the instrument applies generally—that advice includes a statement to the effect that the Nature Repair Committee is satisfied that the instrument:
 - (i) is an appropriate means of achieving consistency of methodology determinations; and
 - (ii) would assist in ensuring that methodology determinations comply with the biodiversity integrity standards; and
 - (c) if the instrument applies to a class of methodology determinations—that advice includes a statement to the effect that the Nature Repair Committee is satisfied that the instrument:
 - (i) is an appropriate means of achieving consistency of methodology determinations in that class; and
 - (ii) would assist in ensuring that methodology determinations in that class comply with the biodiversity integrity standards.
- (4) If the Minister decides:
- (a) to make a biodiversity assessment instrument; or
 - (b) not to make a biodiversity assessment instrument;
- the Minister must:
- (c) cause a copy of any advice given by the Nature Repair Committee under subsection 64(2) in relation to the making of the instrument to be published on the Department's website; and

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- (d) do so as soon as practicable after making the decision.

Statement of reasons

- (5) If the Minister decides to make a biodiversity assessment instrument, the Minister must:
- (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (6) If the Minister prepares a statement of reasons under subsection (5), the Minister must:
- (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

Variation and amendment etc. of biodiversity assessment instrument

- (7) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply to a biodiversity assessment instrument.

Note: For variation and revocation of a biodiversity assessment instrument, see Subdivisions B and C of this Division.

Subdivision B—Variation of biodiversity assessment instruments

60 Variation of biodiversity assessment instruments

The Minister may, by legislative instrument, vary a biodiversity assessment instrument.

61 Procedure for varying a biodiversity assessment instrument

- (1) In deciding whether to vary a biodiversity assessment instrument, the Minister:
- (a) must have regard to any advice that the Nature Repair Committee has given to the Minister under subsection 64(2) in relation to the varying of the instrument; and

- (b) may have regard to such other matters (if any) as the Minister considers relevant.

Advice given by the Nature Repair Committee

- (2) Before varying a biodiversity assessment instrument, the Minister must request the Nature Repair Committee to advise the Minister about whether the Minister should vary the instrument.

Note 1: The Nature Repair Committee must have regard to certain matters in giving advice to the Minister (see section 64).

Note 2: For variations of a minor nature, see subsection (7) of this section.

- (3) The Minister must not vary a biodiversity assessment instrument unless:
 - (a) the Nature Repair Committee has given the Minister advice in relation to the varying of the instrument; and
 - (b) if the biodiversity assessment instrument applies generally—that advice includes a statement to the effect that the Nature Repair Committee is satisfied that the varied instrument:
 - (i) is an appropriate means of achieving consistency of methodology determinations; and
 - (ii) would assist in ensuring that methodology determinations comply with the biodiversity integrity standards; and
 - (c) if the instrument applies to a specified class of methodology determinations—that advice includes a statement to the effect that the Nature Repair Committee is satisfied that the varied instrument:
 - (i) is an appropriate means of achieving consistency of methodology determinations in that class; and
 - (ii) would assist in ensuring that methodology determinations in that class comply with the biodiversity integrity standards.
 - (4) If the Minister decides:
 - (a) to vary a biodiversity assessment instrument; or
 - (b) not to vary a biodiversity assessment instrument;the Minister must:
-

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- (c) cause a copy of any advice given by the Biodiversity Market Committee under subsection 64(2) in relation to varying the instrument to be published on the Department's website; and
- (d) do so as soon as practicable after making the decision.

Statement of reasons

- (5) If the Minister decides to vary a biodiversity assessment instrument, the Minister must:
 - (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (6) If the Minister prepares a statement of reasons under subsection (5), the Minister must:
 - (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

Variations of a minor nature

- (7) Subsections (2), (3), (4) and (5) do not apply in relation to a variation if the variation is of a minor nature.

Subdivision C—Revocation of biodiversity assessment instruments

62 Revocation of biodiversity assessment instruments

The Minister may, by legislative instrument, revoke a biodiversity assessment instrument.

63 Procedure for revoking a biodiversity assessment instrument

- (1) In deciding whether to revoke a biodiversity assessment instrument, the Minister:
 - (a) must have regard to any advice that the Nature Repair Committee has given to the Minister under subsection 64(2) in relation to the revocation of the instrument; and

- (b) may have regard to such other matters (if any) as the Minister considers relevant.

Advice given by the Nature Repair Committee

- (2) Before revoking a biodiversity assessment instrument, the Minister must request the Nature Repair Committee to advise the Minister about whether the Minister should revoke the instrument.
- (3) The Minister must not revoke a biodiversity assessment instrument unless the Nature Repair Committee has given the Minister advice in relation to the revocation of the instrument.
- (4) If the Minister decides:
 - (a) to revoke a biodiversity assessment instrument; or
 - (b) not to revoke a biodiversity assessment instrument;the Minister must:
 - (c) cause a copy of any advice given by the Biodiversity Market Committee under subsection 64(2) in relation to the revocation of the instrument to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.

Statement of reasons

- (5) If the Minister decides to revoke a biodiversity assessment instrument, the Minister must:
 - (a) prepare a written statement of reasons for the decision; and
 - (b) do so as soon as practicable after making the decision.
- (6) If the Minister prepares a statement of reasons under subsection (5), the Minister must:
 - (a) cause a copy of the statement of reasons to be published on the Department's website; and
 - (b) do so as soon as practicable after the statement of reasons is prepared.

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**Subdivision D—Advice about making, varying or revoking
biodiversity assessment instruments**

64 Advice by the Nature Repair Committee

Scope

- (1) This section applies if the Minister requests the Nature Repair Committee:
 - (a) under subsection 59(2), to give advice about whether the Minister should make a biodiversity assessment instrument; or
 - (b) under subsection 61(2), to give advice about whether the Minister should vary a biodiversity assessment instrument; or
 - (c) under subsection 63(2), to give advice about whether the Minister should revoke a biodiversity assessment instrument.

Committee to give advice

- (2) The Nature Repair Committee must give the requested advice to the Minister.

Note: The Committee must undertake public consultation before giving advice about making or varying a biodiversity assessment instrument (see section 65).

- (3) If the requested advice relates to whether the Minister should make a biodiversity assessment instrument, the Nature Repair Committee must include in the advice:
 - (a) if the instrument applies generally—a statement that the Nature Repair Committee is satisfied that the instrument:
 - (i) is an appropriate means of achieving consistency of methodology determinations; and
 - (ii) would assist in ensuring that methodology determinations comply with the biodiversity integrity standards; and
 - (b) if the instrument applies to a class of methodology determinations—a statement to the effect that the Nature Repair Committee is satisfied that the instrument:

- (i) is an appropriate means of achieving consistency of methodology determinations in that class; and
 - (ii) would assist in ensuring that methodology determinations in that class comply with the biodiversity integrity standards; and
 - (c) such other information (if any) as is specified in the rules.
- (4) If the requested advice relates to whether the Minister should vary a biodiversity assessment instrument, the Nature Repair Committee must include in the advice:
- (a) a statement to the effect that the Nature Repair Committee is satisfied that the instrument as proposed to be varied:
 - (i) is an appropriate means of achieving consistency of methodology determinations; and
 - (ii) would assist in ensuring that methodology determinations comply with the biodiversity integrity standards; and
 - (b) if the instrument as proposed to be varied applies to a class of methodology determinations—a statement to the effect that the Nature Repair Committee is satisfied that the instrument as proposed to be varied:
 - (i) is an appropriate means of achieving consistency of methodology determinations in that class; and
 - (ii) would assist in ensuring that methodology determinations in that class comply with the biodiversity integrity standards; and
 - (c) such other information (if any) as is specified in the rules.
- (5) If the requested advice relates to whether the Minister should revoke a biodiversity assessment instrument, the Nature Repair Committee must include in the advice:
- (a) a statement setting out the Committee’s opinion about whether the instrument should be revoked; and
 - (b) the Committee’s reasons for the opinion; and
 - (c) such other information (if any) as is specified in the rules.

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Committee must have regard to certain matters

- (6) In giving the requested advice to the Minister, the Nature Repair Committee must have regard to the following:
 - (a) the biodiversity integrity standards;
 - (b) any relevant matters specified in a direction in force under section 65A;
 - (c) any relevant advice given by the Regulator to the Committee;
 - (d) such other matters (if any) as are specified in the rules.
- (7) Subsection (6) does not, by implication, limit the matters to which the Nature Repair Committee may have regard.

65 Consultation by the Nature Repair Committee

- (1) The Nature Repair Committee must not advise the Minister whether the Minister should make or vary a biodiversity assessment instrument unless the Committee has first:
 - (a) published on the Department's website:
 - (i) a detailed outline of the proposed instrument or variation, as the case may be; and
 - (ii) a notice inviting the public to make a submission to the Committee on the detailed outline by a specified time limit; and
 - (b) considered any relevant submissions that were received within that time limit.
- (2) The time limit must be at least 28 days after the notice is published.
- (3) However, the time limit may be shorter than 28 days after the notice is published, so long as:
 - (a) the Nature Repair Committee considers that the time limit is appropriate in the circumstances; and
 - (b) the time limit is not shorter than 14 days after the notice is published.

Publication of submissions

- (4) The Nature Repair Committee must publish on the Department's website any relevant submissions under subsection (1) received within the time limit referred to in subparagraph (1)(a)(ii).
- (5) However, the Nature Repair Committee must not publish a particular submission made by a person if publication of the submission could reasonably be expected to substantially prejudice:
 - (a) Indigenous cultural heritage; or
 - (b) biodiversity.
- (6) The Nature Repair Committee may decide under subsection (5) not to publish a submission:
 - (a) on its own initiative; or
 - (b) at the request of the person who made the submission.
- (7) A request under subsection (6) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.

65A Additional matters for the Nature Repair Committee to take into account

The Minister may, by legislative instrument, direct the Nature Repair Committee to do any or all of the following:

- (a) have regard to one or more specified matters in giving advice about the making of a biodiversity assessment instrument;
- (b) have regard to one or more specified matters in giving advice about the variation of a biodiversity assessment instrument;
- (c) have regard to one or more specified matters in giving advice about the revocation of a biodiversity assessment instrument.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

Part 5 Biodiversity certificates

Division 1 Introduction

Section 66

Part 5—Biodiversity certificates

Division 1—Introduction

66 Simplified outline of this Part

A biodiversity certificate may be issued for a registered biodiversity project, in accordance with the methodology determination that covers the project. After being issued, a biodiversity certificate is recorded on the Register.

A biodiversity certificate is personal property, and may be transferred.

Division 2—Issue of biodiversity certificates

67 Application for biodiversity certificate

- (1) The project proponent of a registered biodiversity project may apply to the Regulator for the Regulator to issue to the project proponent a biodiversity certificate in respect of the registered biodiversity project.
- (2) The application may only be made:
 - (a) if:
 - (i) a biodiversity certificate has not previously been issued in respect of the registered biodiversity project; or
 - (ii) a biodiversity certificate has previously been issued in respect of the registered biodiversity project and the Regulator has agreed that the application may be made; and
 - (b) if the conditions (if any) set out under subparagraph 45(1)(d)(i) in the methodology determination that covers the registered biodiversity project are met; and
 - (c) after the time worked out in accordance with provisions of that methodology determination made for the purposes of subparagraph 45(1)(d)(ii); and
 - (d) if the conditions (if any) set out in the rules for the purposes of this paragraph are met.

68 Form of application

- (1) An application under section 67 in relation to a registered biodiversity project must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the rules; and
 - (d) be accompanied by such information as is specified in the methodology determination that covers the biodiversity project; and

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- (e) if, under the rules or the methodology determination that covers the project, the application is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the rules or the methodology determination that covers the project (as the case requires); and
 - (ii) 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 category A biodiversity project report mentioned in section 101; and
 - (g) be accompanied by such other documents (if any) as are specified in the rules; and
 - (h) be accompanied by such other documents (if any) as are specified in the methodology determination that covers the biodiversity project; and
 - (i) be accompanied by the fee (if any) specified in the rules.
- (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.

69 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator 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.

70 Issue of biodiversity certificate

Scope

- (1) This section applies if an application under section 67 has been made for the issue of a biodiversity certificate in respect of a registered biodiversity project.

Issue of certificate

- (2) If the Regulator is satisfied that:
- (a) the applicant is a fit and proper person; and
 - (b) the applicant is the project proponent for the project; and
 - (c) if the registration of the registered biodiversity project is subject to a condition under section 17 (obtaining regulatory approvals)—that condition has been met; and
 - (d) if the registration of the registered biodiversity project is subject to a condition under section 18 (obtaining consents from eligible interest holders)—that condition has been met; and
 - (e) if the registration of the registered biodiversity project is subject to a condition under section 18A (obtaining consent from registered native title body corporate)—that condition has been met; and
 - (f) the project is sufficiently progressed to have resulted in, or be likely to result in, the biodiversity outcome for the project; and
 - (g) if the rules specify one or more other eligibility requirements for the purposes of this paragraph—those requirements are met; and
 - (h) if the methodology determination that covers the project specifies conditions for the purposes of paragraph 45(1)(e)—those conditions are met;

the Regulator must issue a biodiversity certificate to the applicant in respect of the project by making an entry in a Register account held by the applicant.

Note 1: For *fit and proper person*, see sections 97, 98, 99 and 99A.

Note 2: For projects with multiple project proponents, see Part 3.

Part 5 Biodiversity certificates

Division 2 Issue of biodiversity certificates

Section 70A

Note 3: For review of decisions, see Part 20.

- (3) A biodiversity certificate must set out such matters (if any) as are specified in the rules.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requires the applicant to give further information under subsection 69(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 90 days after the application was made.

Notice

- (5) The Regulator must give the applicant notice in writing if the Regulator:
- (a) decides to issue a biodiversity certificate to the applicant; or
 - (b) decides not to issue a biodiversity certificate to the applicant.

70A Correction of biodiversity certificate

The Regulator may vary a biodiversity certificate in order to correct a minor or technical error in the certificate.

71 Basis on which biodiversity certificates are issued

A biodiversity certificate is issued on the basis that:

- (a) the certificate may be varied:
 - (i) in accordance with rules made for the purposes of paragraph 22(1)(k); or
 - (ii) under subsection 34(12); or
 - (iii) under section 70A; and
- (b) the certificate may be required to be relinquished under Part 13; and
- (c) the certificate may be cancelled under section 77 or 77A; and

- (d) the certificate may be cancelled, revoked, terminated or varied, or required to be relinquished, by or under later legislation; and
- (e) no compensation is payable if the certificate is so cancelled, revoked, terminated or varied, or required to be relinquished.

Division 3—Property in biodiversity certificates

72 A biodiversity certificate is personal property

A biodiversity certificate is personal property and, subject to section 74, is transmissible by assignment, by will and by devolution by operation of law.

73 Ownership of biodiversity certificate

- (1) The holder of a biodiversity certificate:
 - (a) is the legal owner of the certificate; and
 - (b) may, subject to this Act, deal with the certificate as its legal owner and give good discharges for any consideration for any such dealing.

Note: The holder of a biodiversity certificate is the person recorded in the Register as the holder of the certificate (see the definition of *holder* in section 7).

- (2) Subsection (1) only protects a person who deals with the holder of the certificate as a purchaser:
 - (a) in good faith for value; and
 - (b) without notice of any defect in the title of the holder.

74 Transmission of biodiversity certificates

A transmission of a biodiversity certificate, whether by assignment or by any other lawful means, is of no force until the biodiversity certificate has been transferred, in accordance with rules made for the purposes of section 167:

- (a) from a Register account held by the transferor; and
- (b) into a Register account held by the transferee.

75 Registration of equitable interests in relation to biodiversity certificates

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

76 Equitable interests in relation to biodiversity certificates

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

76A Biodiversity certificates not to be used for environmental offsetting purpose

- (1) A biodiversity certificate must not be used for an environmental offsetting purpose.
- (2) This section has effect despite any other provision of this Act or any other law of the Commonwealth, or a State or Territory.
- (3) To avoid doubt, section 225 (Concurrent operation of State and Territory laws) does not apply to this section.

Part 5 Biodiversity certificates

Division 4 Cancellation of biodiversity certificate at the end of the permanence period for a registered biodiversity project

Section 77

Division 4—Cancellation of biodiversity certificate at the end of the permanence period for a registered biodiversity project

77 Cancellation of biodiversity certificate at the end of the permanence period for a registered biodiversity project

Scope

- (1) This section applies if:
 - (a) the permanence period for a registered biodiversity project ends; and
 - (b) a person is the holder of a biodiversity certificate that relates to the project.

Cancellation of biodiversity certificate

- (2) If the biodiversity certificate is not deposited with the Regulator:
 - (a) the biodiversity certificate is cancelled; and
 - (b) the Regulator must remove the entry for the certificate from the person's Register account in which there is an entry for the certificate.
- (3) If the biodiversity certificate is deposited with the Regulator:
 - (a) the biodiversity certificate is cancelled; and
 - (b) the Regulator must remove the entry for the certificate from the Commonwealth Register account in which there is an entry for the certificate.

Note: See also subsection 162(5).

**Division 5—Cancellation of biodiversity certificate if
registration of registered biodiversity project is
cancelled**

**77A Cancellation of biodiversity certificate if registration of
registered biodiversity project is cancelled**

Scope

- (1) This section applies if:
 - (a) the registration of a registered biodiversity project is cancelled; and
 - (b) a person is the holder of a biodiversity certificate that relates to the project.

Cancellation of biodiversity certificate

- (2) If the biodiversity certificate is not deposited with the Regulator:
 - (a) the biodiversity certificate is cancelled; and
 - (b) the Regulator must remove the entry for the certificate from the person's Register account in which there is an entry for the certificate.
- (3) If the biodiversity certificate is deposited with the Regulator:
 - (a) the biodiversity certificate is cancelled; and
 - (b) the Regulator must remove the entry for the certificate from the Commonwealth Register account in which there is an entry for the certificate.

Note: See also subsection 162(5).

Part 6—Purchase of biodiversity certificates by the Commonwealth

Division 1—Introduction

78 Simplified outline of this Part

The Secretary may, on behalf of the Commonwealth, enter into contracts for the purchase by the Commonwealth of biodiversity certificates.

Such a contract is to be known as a biodiversity conservation contract.

The Secretary may enter into a biodiversity conservation contract as the result of a biodiversity conservation purchasing process.

The Secretary may conduct biodiversity conservation purchasing processes on behalf of the Commonwealth. Such processes may include tender processes.

The Secretary must have regard to certain principles and other matters when conducting a biodiversity conservation purchasing process.

Division 2—Biodiversity conservation contracts

79 Biodiversity conservation contracts

- (1) The Secretary may enter into contracts, on behalf of the Commonwealth, for the purchase by the Commonwealth of biodiversity certificates.
- (2) It is immaterial whether the biodiversity certificates are in existence when the contract is entered into.
- (3) For the purposes of this Act, a contract entered into under subsection (1) is to be known as a ***biodiversity conservation contract***.
- (4) For the purposes of this Act, if the Secretary enters into a biodiversity conservation contract with a person, the person is a ***biodiversity conservation contractor***.

80 When biodiversity conservation contracts may be entered into

- (1) The Secretary may enter into a biodiversity conservation contract under section 79 as the result of a biodiversity conservation purchasing process conducted by the Secretary under section 84.
- (2) The Secretary must not enter into a biodiversity conservation contract under section 79 unless the biodiversity conservation contractor for the contract is:
 - (a) a project proponent for a registered biodiversity project (which need not be the project to which a biodiversity certificate to be purchased under the contract relates); or
 - (b) the holder of a biodiversity certificate.
- (3) The rules may prescribe further circumstances in which the Secretary must not enter into a biodiversity conservation contract under section 79.

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81 Secretary has powers etc. of the Commonwealth

- (1) The Secretary, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as a party to a biodiversity conservation contract.
- (2) Without limiting subsection (1):
 - (a) an amount payable by the Commonwealth under a biodiversity conservation contract is to be paid by the Secretary on behalf of the Commonwealth; and
 - (b) an amount payable to the Commonwealth under a biodiversity conservation contract is to be paid to the Secretary on behalf of the Commonwealth; and
 - (c) the Secretary may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a biodiversity conservation contract.

82 Conferral of powers on the Secretary

The Secretary may exercise a power conferred on the Secretary by a biodiversity conservation contract.

Division 3—Biodiversity conservation purchasing processes

83 Biodiversity conservation purchasing process

For the purposes of this Act, a *biodiversity conservation purchasing process* means:

- (a) a tender process; or
- (b) a reverse auction; or
- (c) any other process;

for the purchase by the Commonwealth of biodiversity certificates. (It is immaterial whether the certificates are in existence when the process is conducted.)

84 Conduct of biodiversity conservation purchasing processes

- (1) The Secretary may, on behalf of the Commonwealth, conduct one or more biodiversity conservation purchasing processes.
- (2) In exercising the power conferred by subsection (1), the Secretary must have regard to:
 - (a) the principles set out in subsection (3); and
 - (b) such other matters (if any) as are specified in the rules.

Principles for conduct of biodiversity conservation purchasing processes

- (3) The principles for conducting a biodiversity conservation purchasing process are that the process should:
 - (a) facilitate the Commonwealth receiving value for money when purchasing biodiversity certificates; and
 - (b) maximise the protection or enhancement of biodiversity that results from the process; and
 - (c) be conducted in a manner that ensures that administrative costs are reasonable; and
 - (d) be conducted in a manner that ensures the integrity of the process; and

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 3 Biodiversity conservation purchasing processes

Section 84

- (e) encourage competition; and
 - (f) provide for fair and ethical treatment of all participants in the process.
- (4) To avoid doubt, the mere fact that a person is:
- (a) a project proponent for a registered biodiversity project; or
 - (b) a holder of a biodiversity certificate for a registered biodiversity project;
- does not automatically entitle the person to participate in a biodiversity conservation purchasing process.

Division 4—Miscellaneous

85 Rules may provide for certain matters relating to purchased biodiversity certificates

The rules may make provision for and in relation to any or all of the following matters in respect of biodiversity certificates purchased by the Commonwealth under biodiversity conservation contracts:

- (a) transferring purchased certificates to a specified Register account kept for the Commonwealth;
- (b) prohibiting or restricting the transfer of biodiversity certificates from such an account;
- (c) cancelling biodiversity certificates for which there are entries in such an account.

86 Certain instruments relating to Commonwealth procurement are not applicable

An instrument made under section 105B of the *Public Governance, Performance and Accountability Act 2013* does not apply in relation to the functions and powers of the Secretary under section 79 or 84 of this Act.

Note: Section 105B of the *Public Governance, Performance and Accountability Act 2013* provides for the making of instruments relating to procurement.

87 Biodiversity conservation contracts are not instruments made under this Act

To avoid doubt, a biodiversity conservation contract is taken not to be an instrument made under this Act.

Part 7—Interests in land

Division 1—Introduction

88 Simplified outline of this Part

The registration of a biodiversity project may be subject to a condition requiring the project proponent to obtain the consent of the holders of certain interests in land before a biodiversity certificate may be issued (see section 18 and paragraph 70(2)(d)).

This Part sets out the kinds of interests (*eligible interests*) that may give rise to such a condition.

This Part also requires the Regulator to notify State and Territory Crown lands Ministers of the registration of certain kinds of biodiversity projects, and provides for entries to be recorded in title registers in relation to biodiversity projects.

Division 2—Eligible interest in an area of land

89 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:
- (a) is Crown land; and
 - (b) is not an exclusive possession native title area; and
 - (c) is not land rights land;

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

- (5) The rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the rules 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) the area of land is not an exclusive possession native title area; and
 - (c) 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 persons 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:
- (d) if subparagraph (c)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an *eligible interest* in the area of land; or
 - (e) if subparagraph (c)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an *eligible interest* in the area of land; or
 - (f) if subparagraph (c)(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 an exclusive possession native title area; and

- (c) none of the subparagraphs of paragraph (6)(c) applies to the area of land; and
 - (d) 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.

90 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) an exclusive possession native title area; 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;

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- (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
- (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 rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the rules 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) the area of land is not an exclusive possession native title area; and
- (c) 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 persons 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:
- (d) if subparagraph (c)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an **eligible interest** in the area of land; or

- (e) if subparagraph (c)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an ***eligible interest*** in the area of land; or
 - (f) if subparagraph (c)(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 an exclusive possession native title area; and
 - (c) none of the subparagraphs of paragraph (6)(c) applies to the area of land; and
 - (d) 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.

92 Eligible interest in an area of land—Aboriginal land council

For the purposes of this Act, an Aboriginal land council holds an ***eligible interest*** in an area of land if:

- (a) under a law of the Commonwealth, a State or a Territory, the Aboriginal land council makes a claim for the area of land to become land rights land (within the meaning of the law); and
- (b) the Minister who administers the law makes a decision that the land become land rights land (within the meaning of the law).

Division 3—Freehold land rights land

93 Regulator to notify Crown lands Minister of approval of registration of biodiversity project

Scope

- (1) This section applies if:
 - (a) the Regulator approves under section 15 the registration of a biodiversity project; and
 - (b) the project area is, wholly or partly, freehold land rights land in a particular State or Territory; and
 - (c) the project area is, wholly or partly, Crown land; and
 - (d) the project area is not wholly Torrens system land.

Notification

- (2) As soon as practicable after giving the approval, the Regulator must notify the Crown lands Minister of the State or Territory, in writing, of the approval.

Division 4—Entries in title registers

94 Entries in title registers—general

Scope

- (1) This section applies to a registered biodiversity project.

Entries

- (2) A 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 registered biodiversity 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.

95 Entries in title registers—biodiversity maintenance areas

Scope

- (1) This section applies to one or more areas of land if those areas of land are biodiversity maintenance areas declared under a biodiversity maintenance declaration.

Note: See Part 14 (biodiversity maintenance declarations).

Entries

- (2) A 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 biodiversity maintenance declaration.

Part 8—Fit and proper person

96 Simplified outline of this Part

In determining whether a person is a fit and proper person, the Regulator:

- (a) must have regard to certain matters; and
- (b) may have regard to certain matters.

97 Fit and proper person—individuals

Matters the Regulator must have regard to

- (1) In determining whether an individual is a fit and proper person for the purposes of this Act, the Regulator must have regard to the following matters:
 - (a) whether the individual has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of the Commonwealth, a State or a Territory, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
 - (b) whether the individual has been convicted of an offence against any of the following provisions of the *Criminal Code*:
 - (i) section 136.1 (false or misleading statements in applications);
 - (ii) section 137.1 (false or misleading information);
 - (iii) section 137.2 (false or misleading documents);
 - (c) whether an order has been made against the individual under section 76 (pecuniary penalties) of the *Competition and Consumer Act 2010*;

- (d) whether an order has been made against the individual under section 224 (pecuniary penalties) of the Australian Consumer Law;
- (e) whether the individual has contravened this Act;
- (f) whether the individual has contravened the *Carbon Credits (Carbon Farming Initiative) Act 2011* or regulations or legislative rules made under that Act;
- (g) whether the individual has contravened the *National Greenhouse and Energy Reporting Act 2007* or regulations made under that Act;
- (h) whether the individual has contravened the *Australian National Registry of Emissions Units Act 2011* or regulations made under that Act;
- (i) whether an application under any of the following provisions was refused on the ground that the Regulator was not satisfied that the individual was a fit and proper person:
 - (i) section 11;
 - (ii) section 67;
 - (iii) rules made for the purposes of section 221;
 - (iv) a provision of this Act prescribed by the rules;
- (j) whether the individual is an insolvent under administration;
- (k) a matter (if any) prescribed by the rules;
- (l) such other matters (if any) as the Regulator considers relevant.

Matters the Regulator may have regard to

- (2) In determining whether an individual is a fit and proper person for the purposes of this Act, the Regulator may have regard to the following matters:
 - (a) whether the individual has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or

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- (iv) work health or safety;
- (b) whether, at any time during the previous 3 years, the individual:
 - (i) engaged in conduct that resulted in the individual giving an enforceable undertaking under a law of the Commonwealth, a State or a Territory; or
 - (ii) breached an enforceable undertaking given by the individual under a law of the Commonwealth, a State or a Territory;where that law relates to:
 - (iii) the environment; or
 - (iv) climate change; or
 - (v) work health or safety;
- (c) a matter (if any) prescribed by the rules;
- (d) such other matters (if any) as the Regulator considers relevant.

Spent convictions

- (3) To avoid doubt, nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.
- (4) Rules made for the purposes of paragraph (1)(k) or (2)(c) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* 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.

98 Fit and proper person—corporations

Matters the Regulator must have regard to

- (1) In determining whether a corporation is a fit and proper person for the purposes of this Act, the Regulator must have regard to the following matters:
 - (a) whether the corporation has been convicted of an offence against, or ordered to pay a pecuniary penalty for

- contravening a provision of, a law of the Commonwealth, a State or a Territory, where the offence or provision relates to:
- (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
- (b) whether the corporation has been convicted of an offence against any of the following provisions of the *Criminal Code*:
- (i) section 136.1 (false or misleading statements in applications);
 - (ii) section 137.1 (false or misleading information);
 - (iii) section 137.2 (false or misleading documents);
- (c) whether an order has been made against the corporation under section 76 (pecuniary penalties) of the *Competition and Consumer Act 2010*;
- (d) whether an order has been made against the corporation under section 224 (pecuniary penalties) of the Australian Consumer Law;
- (e) whether the corporation has contravened this Act;
- (f) whether the corporation has contravened the *Carbon Credits (Carbon Farming Initiative) Act 2011* or regulations or legislative rules made under that Act;
- (g) whether the corporation has contravened the *National Greenhouse and Energy Reporting Act 2007* or regulations made under that Act;
- (h) whether the corporation has contravened the *Australian National Registry of Emissions Units Act 2011* or regulations made under that Act;
- (i) whether an application under any of the following provisions was refused on the ground that the Regulator was not satisfied that the corporation was a fit and proper person:
- (i) section 11;
 - (ii) section 67;
 - (iii) rules made for the purposes of section 221;
 - (iv) a provision of this Act prescribed by the rules;

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- (j) whether the corporation is a corporation under external administration;
- (k) whether any of the events set out in paragraphs 97(1)(a) to (j) have happened in relation to an executive officer of the corporation;
- (l) a matter (if any) prescribed by the rules;
- (m) such other matters (if any) as the Regulator considers relevant.

Matters the Regulator may have regard to

- (2) In determining whether a corporation is a fit and proper person for the purposes of this Act, the Regulator may have regard to the following matters:
 - (a) whether the corporation has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
 - (b) whether, at any time during the previous 3 years, the corporation:
 - (i) engaged in conduct that resulted in the corporation giving an enforceable undertaking under a law of the Commonwealth, a State or a Territory; or
 - (ii) breached an enforceable undertaking given by the corporation under a law of the Commonwealth, a State or a Territory;where that law relates to:
 - (iii) the environment; or
 - (iv) climate change; or
 - (v) work health or safety;
 - (c) whether any of the events set out in paragraphs 97(2)(a) or (b) have happened in relation to an executive officer of the corporation;

- (d) a matter (if any) prescribed by the rules;
- (e) such other matters (if any) as the Regulator considers relevant.

Spent convictions

- (3) To avoid doubt, nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.
- (4) Rules made for the purposes of paragraph (1)(l) or (2)(d) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* 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.

99 Fit and proper person—trusts

Matters the Regulator must have regard to

- (1) In determining whether a trust is a fit and proper person for the purposes of this Act, the Regulator must have regard to the following matters:
 - (a) whether the trust or a trustee of the trust has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of the Commonwealth, a State or a Territory, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
 - (b) whether a trustee of the trust has been convicted of an offence against any of the following provisions of the *Criminal Code*:
 - (i) section 136.1 (false or misleading statements in applications);
 - (ii) section 137.1 (false or misleading information);
 - (iii) section 137.2 (false or misleading documents);

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- (c) whether an order has been made against a trustee of the trust under section 76 (pecuniary penalties) of the *Competition and Consumer Act 2010*;
- (d) whether an order has been made against a trustee of the trust under section 224 (pecuniary penalties) of the Australian Consumer Law;
- (e) whether the trust or a trustee of the trust has contravened this Act;
- (f) whether the trust or a trustee of the trust has contravened the *Carbon Credits (Carbon Farming Initiative) Act 2011* or regulations or legislative rules made under that Act;
- (g) whether the trust or a trustee of the trust has contravened the *National Greenhouse and Energy Reporting Act 2007* or regulations made under that Act;
- (h) whether the trust or a trustee of the trust has contravened the *Australian National Registry of Emissions Units Act 2011* or regulations made under that Act;
- (i) whether an application under any of the following provisions was refused on the ground that the Regulator was not satisfied that the trust or a trustee of the trust was a fit and proper person:
 - (i) section 11;
 - (ii) section 67;
 - (iii) rules made for the purposes of section 221;
 - (iv) a provision of this Act prescribed by the rules;
- (j) whether a trustee of the trust is a body corporate under external administration;
- (k) whether a trustee of the trust is an insolvent under administration;
- (l) a matter (if any) prescribed by the rules;
- (m) such other matters (if any) as the Regulator considers relevant.

Matters the Regulator may have regard to

- (2) In determining whether a trust is a fit and proper person for the purposes of this Act, the Regulator may have regard to the following matters:
-

- (a) whether a trustee of the trust has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
- (b) whether, at any time during the previous 3 years, a trustee of the trust:
 - (i) engaged in conduct that resulted in the trustee giving an enforceable undertaking under a law of the Commonwealth, a State or a Territory; or
 - (ii) breached an enforceable undertaking given by the trustee under a law of the Commonwealth, a State or a Territory;where that law relates to:
 - (iii) the environment; or
 - (iv) climate change; or
 - (v) work health or safety;
- (c) a matter (if any) prescribed by the rules;
- (d) such other matters (if any) as the Regulator considers relevant.

Spent convictions

- (3) To avoid doubt, nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.
- (4) Rules made for the purposes of paragraph (1)(l) or (2)(c) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* 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.

99A Fit and proper person—non-corporate government bodies

Matters the Regulator must have regard to

- (1) In determining whether a non-corporate government body is a fit and proper person for the purposes of this Act, the Regulator must have regard to the following matters:
 - (a) whether the non-corporate government body has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of the Commonwealth, a State or a Territory, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
 - (b) whether the non-corporate government body has been convicted of an offence against any of the following provisions of the *Criminal Code*:
 - (i) section 136.1 (false or misleading statements in applications);
 - (ii) section 137.1 (false or misleading information);
 - (iii) section 137.2 (false or misleading documents);
 - (c) whether an order has been made against the non-corporate government body under section 76 (pecuniary penalties) of the *Competition and Consumer Act 2010*;
 - (d) whether an order has been made against the non-corporate government body under section 224 (pecuniary penalties) of the Australian Consumer Law;
 - (e) whether the non-corporate government body has contravened this Act;
 - (f) whether the non-corporate government body has contravened the *Carbon Credits (Carbon Farming Initiative) Act 2011* or regulations or legislative rules made under that Act;
 - (g) whether the non-corporate government body has contravened the *National Greenhouse and Energy Reporting Act 2007* or regulations made under that Act;

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- (h) whether the non-corporate government body has contravened the *Australian National Registry of Emissions Units Act 2011* or regulations made under that Act;
- (i) whether an application under any of the following provisions was refused on the ground that the Regulator was not satisfied that the non-corporate government body was a fit and proper person:
 - (i) section 11;
 - (ii) section 67;
 - (iii) rules made for the purposes of section 221;
 - (iv) a provision of this Act prescribed by the rules;
- (j) a matter (if any) prescribed by the rules;
- (k) such other matters (if any) as the Regulator considers relevant.

Matters the Regulator may have regard to

- (2) In determining whether a non-corporate government body is a fit and proper person for the purposes of this Act, the Regulator may have regard to the following matters:
 - (a) whether the non-corporate government body has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country, where the offence or provision relates to:
 - (i) dishonesty or fraudulent conduct; or
 - (ii) the environment; or
 - (iii) climate change; or
 - (iv) work health or safety;
 - (b) whether, at any time during the previous 3 years, the non-corporate government body:
 - (i) engaged in conduct that resulted in the non-corporate government body giving an enforceable undertaking under a law of the Commonwealth, a State or a Territory; or
 - (ii) breached an enforceable undertaking given by the non-corporate government body under a law of the Commonwealth, a State or a Territory;

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where that law relates to:

- (iii) the environment; or
- (iv) climate change; or
- (v) work health or safety;
- (c) a matter (if any) prescribed by the rules;
- (d) such other matters (if any) as the Regulator considers relevant.

Spent convictions

- (3) To avoid doubt, nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.
- (4) Rules made for the purposes of paragraph (1)(j) or (2)(c) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* 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 9—Reporting and notification requirements

Division 1—Introduction

100 Simplified outline of this Part

If a project proponent applies for the Regulator to issue a biodiversity certificate, the application must be accompanied by a category A biodiversity project report.

After a biodiversity certificate is issued in respect of a project, the project proponent must give subsequent category A biodiversity project reports for the rest of the permanence period of the project (unless an exemption applies).

If a biodiversity certificate has not been issued in respect of a project, the project proponent must give category B biodiversity project reports.

Division 3 sets out requirements for a project proponent to notify the Regulator of various matters, including the following:

- (a) the project proponent ceasing to have the right to carry out the project;
- (b) the project proponent becoming aware of a significant reversal of the biodiversity outcome to which the project relates;
- (c) other matters set out in the rules.

Division 2—Reporting requirements

Subdivision A—Category A biodiversity project reports

101 Category A biodiversity project reports—first report

- (1) This section applies if the project proponent for a registered biodiversity project applies under section 67 for the Regulator to issue a biodiversity certificate in respect of the project.
- (2) The application must be accompanied by a written report (a *category A biodiversity project report*), in accordance with section 103, about the project.
Note: See paragraph 68(1)(f).
- (3) The report must relate to a period (the *reporting period* for the report) that:
 - (a) begins when the project was registered; and
 - (b) ends within 6 months before the application is made.
- (4) However, if a category B biodiversity project report about the project was previously given for a period (the *category B period*), the category B period is not included in the reporting period unless the category A biodiversity project report is required to set out information that was not set out in the category B biodiversity project report.

102 Category A biodiversity project reports—subsequent reports

- (1) This section applies to a registered biodiversity project if the Regulator has issued a biodiversity certificate in relation to the project (whether or not the certificate is in effect).
- (2) The project proponent for the project must give the Regulator a written report (a *category A biodiversity project report*) in accordance with section 103 about the project for a period that:
 - (a) is expressed to be the *reporting period* for the report; and

- (b) begins immediately after the end of the previous reporting period for a report under this section, or section 101, in relation to the project; and
 - (c) subject to paragraph (e), is not shorter than:
 - (i) 6 months; or
 - (ii) if, under the rules, a specified lesser number of months is the minimum number of months applicable to the report—that specified lesser number of months; and
 - (d) subject to paragraph (e), is not longer than 5 years; and
 - (e) does not end after the end of the permanence period for the project.
- (3) The Regulator may, by written notice given to the project proponent for the project, exempt the project from subsection (2) if:
- (a) the project proponent requests the exemption; and
 - (b) the Regulator is satisfied that it is appropriate to exempt the project, having regard to:
 - (i) the stage of the project; and
 - (ii) such other matters (if any) as the Regulator considers relevant.

Note: For review of decisions, see Part 20.

- (4) The project proponent for the project contravenes this subsection if:
- (a) subsection (2) requires the project proponent to give a category A biodiversity project report for a reporting period; and
 - (b) the project proponent does not comply with the requirement before the end of the period mentioned in paragraph 103(1)(h).

Civil penalty: 200 penalty units.

- (5) The maximum civil penalty for each day that a contravention of subsection (4) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (4) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

103 Requirements for category A biodiversity project reports

- (1) A category A biodiversity project report about a registered biodiversity project for a reporting period must:
 - (a) be given in the manner and form prescribed by the rules; and
 - (b) set out the information (if any) specified in the rules; and
 - (c) set out the information (if any) specified in the methodology determination that covers the project; and
 - (d) if, under the rules or the methodology determination that covers the project, the category A biodiversity project report is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the rules or the methodology determination that covers the project (as the case requires); and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (e) if, before the category A biodiversity project report was given to the Regulator, the Regulator gave the project proponent a written notice stating that the report would be subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the rules; and
 - (ii) 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 such other documents (if any) as are specified in the rules; and
 - (g) be accompanied by such other documents (if any) as are specified in the methodology determination that covers the project; and
 - (h) for a category A biodiversity project report under section 102 (subsequent biodiversity project reports)—be given to the Regulator within:
 - (i) 6 months after the end of the reporting period; or

- (ii) if a greater number of months is specified in the methodology determination that covers the project— that greater number of months after the end of the reporting period.
 - (2) To avoid doubt, a category A biodiversity project report for a period may deal with matters that occur before the start of the period.
 - (3) Information specified in rules made for the purposes of paragraph (1)(b) or a provision of a methodology determination made for the purposes of paragraph (1)(c) may relate to a matter arising before, during or after the reporting period.
 - (4) Without limiting paragraph (1)(d), the rules or a methodology determination may provide that a Category A biodiversity project report is subject to audit under this Act if either or both of the following apply:
 - (a) the report is specified in the rules or determination (as the case may be);
 - (b) the report is for a reporting period specified in, or ascertained in accordance with, the rules or determination (as the case may be).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (5) Paragraphs (1)(d) and (e) do not apply to a category A biodiversity project report about a registered biodiversity project for a reporting period if the Regulator and the project proponent for the project have entered into an alternative assurance agreement that applies to the project for the period.
 - (6) A document specified in rules made for the purposes of paragraph (1)(f) or a provision of a methodology determination made for the purposes of paragraph (1)(g) may relate to a matter arising before, during or after the reporting period.

Subdivision B—Category B biodiversity project reports

104 Category B biodiversity project reports

- (1) This section applies if the Regulator has not issued a biodiversity certificate in relation to a registered biodiversity project.
- (2) The project proponent for the project must give the Regulator a written report (a *category B biodiversity project report*) for each period that, under the rules, is a *reporting period* for the purposes of this section.
- (3) A category B biodiversity project report about a project for a reporting period must:
 - (a) be given in the manner and form prescribed by the rules; and
 - (b) set out the information (if any) specified in the rules; and
 - (c) set out the information (if any) specified in the methodology determination that covers the project; and
 - (d) if, under the rules or the methodology determination that covers the project, the category B biodiversity project report is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the rules or the methodology determination that covers the project (as the case requires); and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (e) if, before the category B biodiversity project report was given to the Regulator, the Regulator gave the project proponent a written notice stating that the report would be subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the rules; and
 - (ii) 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 such other documents (if any) as are specified in the rules; and

- (g) be accompanied by such other documents (if any) as are specified in the methodology determination that covers the project; and
 - (h) be given to the Regulator within the period ascertained in accordance with the rules.
- (4) Without limiting paragraph (3)(d), the rules or a methodology determination may provide that a Category B biodiversity project report is subject to audit under this Act if either or both of the following apply:
- (a) the report is specified in the rules or determination (as the case may be);
 - (b) the report is for a reporting period specified in, or ascertained in accordance with, the rules or determination (as the case may be).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (5) Paragraphs (3)(d) and (e) do not apply to a category B biodiversity project report about a registered biodiversity project for a reporting period if the Regulator and the project proponent for the project have entered into an alternative assurance agreement that applies to the project for the period.
- (6) To avoid doubt, a category B biodiversity project report for a period may deal with matters that occur before the start of the period.
- (7) Information specified in rules made for the purposes of paragraph (3)(b) or a provision of a methodology determination made for the purposes of paragraph (3)(c) may relate to a matter arising before, during or after the reporting period.
- (8) A document specified in rules made for the purposes of paragraph (3)(f) or a provision of a methodology determination made for the purposes of paragraph (3)(g) may relate to a matter arising before, during or after the reporting period.

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Civil penalty provision

- (9) The project proponent for the project contravenes this subsection if:
- (a) subsection (2) requires the project proponent to give a category B biodiversity project report for a reporting period; and
 - (b) the project proponent does not comply with the requirement before the end of the period ascertained in accordance with rules made for the purposes of paragraph (3)(h).

Civil penalty: 200 penalty units.

- (10) The maximum civil penalty for each day that a contravention of subsection (9) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (9) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Subdivision C—Alternative assurance agreements

104A Alternative assurance agreements

- (1) The Regulator and the project proponent for a registered biodiversity project may enter into a written agreement that:
- (a) applies to a specified reporting period; and
 - (b) is for the purpose of providing assurance to the Regulator about the project proponent's compliance with this Act in relation to the project during the reporting period; and
 - (c) contains one or more assurance measures, where each measure is of a kind prescribed by the rules.
- (2) An agreement under subsection (1) is to be known as an ***alternative assurance agreement***.

Civil penalty provision

- (3) The project proponent for a registered biodiversity project contravenes this subsection if:

- (a) the project proponent enters into an alternative assurance agreement with the Regulator; and
- (b) the project proponent does not comply with the alternative assurance agreement.

Civil penalty: 200 penalty units.

- (4) The maximum civil penalty for each day that a contravention of subsection (3) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Division 3—Notification requirements

105 Notification requirement—project proponent ceases to have right to carry out project

Scope

- (1) This section applies to an eligible person if:
 - (a) the eligible person is the project proponent of a registered biodiversity project that has one project proponent; and
 - (b) the eligible person ceases to have a right that is necessary for the project to be carried out.
- (2) This section also applies to an eligible person if:
 - (a) the eligible person is one of the project proponents of a registered biodiversity project that has multiple project proponents; and
 - (b) any of the project proponents ceases to have a right that is necessary for the project to be carried out; and
 - (c) the cessation results in no project proponent having that right.

Notification

- (3) The eligible person must, within 90 days after the cessation occurs, notify the Regulator, in writing, of the cessation.

Civil penalty: 200 penalty units.

- (4) The maximum civil penalty for each day that a contravention of subsection (3) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

106 Notification requirement—withdrawal or cessation of regulatory approval

Scope

- (1) This section applies to the project proponent of a registered biodiversity project if a regulatory approval required for the project to be carried out:
 - (a) is withdrawn; or
 - (b) otherwise ceases to have effect for any reason.

Notification

- (2) The project proponent must, within 90 days after the withdrawal or cessation occurs, notify the Regulator, in writing, of the withdrawal or cessation.

Civil penalty: 200 penalty units.

- (3) The maximum civil penalty for each day that a contravention of subsection (2) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

107 Notification requirement—death of project proponent

Scope

- (1) This section applies if a person who is the project proponent for a registered biodiversity project dies.

Notification

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

Civil penalty: 60 penalty units.

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- (3) The maximum civil penalty for each day that a contravention of subsection (2) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

108 Notification requirement—methodology determinations

Scope

- (1) This section applies if:
- (a) there is a registered biodiversity project; and
 - (b) under the methodology determination that covers the project, the project proponent for the project is subject to a requirement to notify the Regulator of one or more matters relating to the project.

Notification

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

Civil penalty: 60 penalty units.

- (3) The maximum civil penalty for each day that a contravention of subsection (2) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

109 Notification requirement—reversal of biodiversity outcome

Scope

- (1) This section applies if:
- (a) there is a registered biodiversity project; and
 - (b) the project proponent for the project becomes aware of a significant reversal of the biodiversity outcome to which the project relates.

Note: See section 111.

Notification

- (2) The project proponent must notify the Regulator, in writing, of the reversal within 60 days after the project proponent becomes aware of the reversal.

Civil penalty: 200 penalty units.

- (3) The maximum civil penalty for each day that a contravention of subsection (2) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

110 Notification requirement—event or conduct that causes, or is likely to cause, reversal of biodiversity outcome*Scope*

- (1) This section applies if:
- (a) there is a registered biodiversity project; and
 - (b) the project proponent for the project becomes aware of any of the following:
 - (i) a natural disturbance that causes a significant reversal of the biodiversity outcome to which the project relates;
 - (ii) a natural disturbance that is likely to cause a significant reversal of the biodiversity outcome to which the project relates;
 - (iii) conduct engaged in by the project proponent for the project, or any other person, that causes a significant reversal of the biodiversity outcome to which the project relates;
 - (iv) conduct engaged in by the project proponent for the project, or any other person, that is likely to cause a significant reversal of the biodiversity outcome to which the project relates.

Note: See section 111.

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Notification

- (2) The project proponent must notify the Regulator, in writing, of the matter mentioned in paragraph (1)(b) within 60 days after the project proponent becomes aware of the matter.

Civil penalty: 200 penalty units.

- (3) The maximum civil penalty for each day that a contravention of subsection (2) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

111 Significant reversals in biodiversity outcomes—notification requirements

- (1) The rules may prescribe circumstances in which, for the purposes of paragraphs 109(1)(b) and 110(1)(b):
- (a) there is taken to have been a reversal of a biodiversity outcome to which a registered biodiversity project relates; and
 - (b) the reversal is taken to be significant, or not taken to be significant.
- (2) This section does not limit section 148 (significant reversals in biodiversity outcomes—relinquishment requirements).

112 Notification requirement—event relevant to whether a project proponent is a fit and proper person

Scope

- (1) This section applies to a project proponent of a registered biodiversity project if:
- (a) in a case where the project proponent is an individual—an event set out in paragraph 97(1)(a), (b), (c), (d) or (j) or (2)(a) occurred in relation to the project proponent; or
 - (b) in a case where the project proponent is a corporation:

- (i) an event set out in paragraph 98(1)(a), (b), (c), (d) or (j) or (2)(a) occurred in relation to the project proponent; or
 - (ii) an event set out in paragraph 97(1)(a), (b), (c), (d) or (j) or (2)(a) occurred in relation to an executive officer of the project proponent; or
 - (c) in a case where the project proponent is a trust:
 - (i) an event set out in paragraph 99(1)(a), (b), (c) or (d) or (2)(a) occurred in relation to the project proponent; or
 - (ii) an event set out in paragraph 97(1)(a), (b), (c), (d) or (j) or (2)(a) occurred in relation to a trustee of the project proponent; or
 - (d) in a case where the project proponent is a non-corporate government body—an event set out in paragraph 99A(1)(a), (b), (c), (d) or (i) or (2)(a) occurred in relation to the project proponent; or
 - (e) an event prescribed by the rules has occurred in relation to the project proponent.
- (2) However, this section does not apply to a project proponent of a registered biodiversity project if the event consists of a breach of:
- (a) this Act or an instrument under this Act; or
 - (b) a climate change law (within the meaning of the *Clean Energy Regulator Act 2011*).

Notification

- (3) The project proponent must, within 90 days after the event, notify the Regulator, in writing, of the event.

Civil penalty: 200 penalty units.

- (4) The maximum civil penalty for each day that a contravention of subsection (3) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

113 Notification requirement—variation of project plan

- (1) If:
- (a) the project plan for a registered biodiversity project is varied;
and
 - (b) the variation is not of a minor nature;
- the project proponent for the project must, within 60 days after the variation has taken effect:
- (c) notify the Regulator, in writing, of:
 - (i) the details of the variation; and
 - (ii) the date the variation took effect; and
 - (d) give the Regulator a copy of the project plan as varied.

Civil penalty: 60 penalty units.

- (2) The maximum civil penalty for each day that a contravention of subsection (1) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (1) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

- (3) If:
- (a) the project plan for a registered biodiversity project is varied;
and
 - (b) the variation is of a minor nature;
- the Regulator may, by written notice given to the project proponent for the project, require the project proponent to:
- (c) give the Regulator a copy of the project plan as varied; and
 - (d) do so within 60 days after the notice is given.

Civil penalty: 60 penalty units.

- (4) The maximum civil penalty for each day that a contravention of subsection (3) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

114 The rules may impose notification requirements

- (1) The rules may make provision requiring the project proponent of a registered biodiversity project to notify the Regulator of a matter within a period specified in the rules.
- (2) A matter specified in rules made for the purposes of subsection (1) must be relevant to the operation of this Act.

Notification

- (3) If a person is subject to a requirement under rules made for the purposes of subsection (1), the person must comply with that requirement within the period specified in those rules.

Civil penalty: 60 penalty units.

- (4) The maximum civil penalty for each day that a contravention of subsection (3) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Part 10—Information-gathering powers

115 Simplified outline of this Part

The Regulator may obtain information or documents.
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116 Regulator may obtain information or documents

Scope

- (1) This section applies to a person if the Regulator believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act.

Requirement

- (2) The Regulator may, by written notice given to the person, require the person:
 - (a) to give to the Regulator, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Regulator, 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 Regulator, 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.

Civil penalty: 60 penalty units.

- (5) The maximum civil penalty for each day that a contravention of subsection (4) continues is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (4) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

No limitation

- (6) This section is not limited by any other provision of this Act that relates to the powers of the Regulator to obtain information or documents.

117 Copying documents—compensation

A person is entitled to be paid by the Regulator, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 116(2)(c).

118 Copies of documents

- (1) The Regulator may:
- (a) inspect a document or copy produced under subsection 116(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The Regulator may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 116(2)(c).

119 Regulator may retain documents

- (1) The Regulator may take, and retain for as long as is necessary, possession of a document produced under subsection 116(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 Regulator 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.
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- (4) Until a certified copy is supplied, the Regulator must, at such times and places as the Regulator 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.

Part 11—Audits

Division 1—Introduction

120 Simplified outline of this Part

The Regulator may require audits of one or more aspects of a person's compliance with this Act to be carried out.

An audit team leader or a person assisting an audit team leader must not use or disclose protected audit information unless the use or disclosure is:

- (a) authorised by a provision of this Part; or
- (b) authorised or required by a law of the Commonwealth or a prescribed law of a State or Territory.

An audit team leader or person assisting an audit team leader may use or disclose audit information in certain circumstances.

Division 2—Audits

121 Compliance audits

Scope

- (1) This section applies if:
 - (a) a person is, or has been, the project proponent for a registered biodiversity project; and
 - (b) the Regulator has reasonable grounds to suspect that the person has contravened, is contravening, or is proposing to contravene, this Act.

Audit

- (2) The Regulator 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 Regulator specifies a registered greenhouse and energy auditor in the notice—that auditor; or
 - (iii) if the Regulator 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; 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 Regulator 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 75 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.

Civil penalty: 60 penalty units.

- (5) Without limiting subsection (4), providing assistance that is reasonably necessary includes complying with any request under section 123 that relates to the audit.
- (6) Subsection (4) does not require a person to allow an audit team leader or a person assisting an audit team leader:
- (a) to enter premises; or
 - (b) to take samples of any thing on premises; or
 - (c) to inspect any thing on premises.

- (7) If the Regulator gives a person written notice under subsection (2), the person must comply with the requirements of the notice.

Civil penalty: 200 penalty units.

- (8) The maximum civil penalty for each day that a contravention of subsection (7) continues after the day specified for the purposes of paragraph (2)(d) is 5% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (7) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Reimbursement

- (9) If:
- (a) the Regulator 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; and

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- (c) the person requests the Regulator to reimburse the person for reasonable costs incurred by the person in relation to the carrying out of the audit;

the Regulator may, on behalf of the Commonwealth, reimburse the person for those costs if the Regulator considers it appropriate to do so.

Note: For review of decisions, see Part 20.

- (10) A request under paragraph (9)(c) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the rules; and
 - (d) be accompanied by such documents (if any) as are specified in the rules.
- (11) The approved form of request may provide for verification by statutory declaration of statements in requests.
- (12) In deciding under subsection (9) whether to reimburse a person for reasonable costs incurred by the person in relation to the carrying out of an audit, the Regulator must have regard to:
 - (a) the report prepared by an audit team leader in accordance with the notice; and
 - (b) whether the person would suffer financial hardship if the person were not reimbursed for those costs; and
 - (c) such other matters (if any) as the Regulator considers relevant.

122 Other audits

Audit

- (1) If a person is, or has been, the project proponent for a registered biodiversity project, the Regulator 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.

- (2) The Regulator 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.

Civil penalty: 60 penalty units.

- (4) Without limiting subsection (3), providing assistance that is reasonably necessary includes complying with any request under section 123 that relates to the audit.
- (5) Subsection (3) does not require a person to allow an audit team leader or a person assisting an audit team leader:
- (a) to enter premises; or
 - (b) to take samples of any thing on premises; or
 - (c) to inspect any thing on premises.

123 Information-gathering of audit team leaders and persons assisting audit team leaders

- (1) For the purpose of carrying out an audit under section 121 or 122, an audit team leader or a person assisting an audit team leader may request a person who the audit team leader or person assisting the audit team leader reasonably believes has information or documents that are relevant to the audit to:
- (a) provide any such information; or

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- (b) produce any such documents.
- (2) An audit team leader or a person assisting an audit team leader may make copies of, or take extracts from, a document produced under subsection (1).

Division 3—Audit information

Subdivision A—Information

124 Meaning of *audit information*

For the purposes of this Act, *audit information* means information that satisfies the following conditions:

- (a) the information was obtained by a person in the person's capacity as an audit team leader or a person assisting an audit team leader;
- (b) the information was obtained in the course of, or for the purposes of:
 - (i) carrying out a biodiversity audit; or
 - (ii) preparing a biodiversity audit report.

125 Meaning of *protected audit information*

For the purposes of this Act, *protected audit information* means audit information that is:

- (a) information the use or disclosure of which could reasonably be expected to substantially prejudice the commercial interests of a person; or
- (b) information the disclosure of which could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence; or
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection or investigation of, or the conduct of proceedings relating to, an offence or a contravention of a civil penalty provision; or
- (d) information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment; or
- (e) information the disclosure of which could reasonably be expected to endanger the life or safety of an individual or group of individuals.

Subdivision B—Secrecy

126 Secrecy—protected audit information

- (1) If:
- (a) a person is, or has been, an audit team leader or a person assisting an audit team leader; and
 - (b) the person has obtained protected audit information:
the person must not:
 - (c) disclose the information to another person; or
 - (d) use the information.

Civil penalty: 120 penalty units.

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 authorised or required by:
 - (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 the matter in this subsection (see section 96 of the Regulatory Powers Act).

Subdivision C—Disclosure or use of audit information

127 Disclosure or use for purposes of carrying out biodiversity audit or preparing biodiversity audit report etc.

An audit team leader or a person assisting an audit team leader may disclose or use audit information if:

- (a) the disclosure or use is for the purposes of carrying out a biodiversity audit; or
- (b) the disclosure or use is for the purposes of preparing a biodiversity audit report; or
- (c) if the information relates to a biodiversity project that is, or is to be, the subject of an application under section 11—the

disclosure or use is for the purposes of giving a biodiversity audit report to:

- (i) if the project is to have one project proponent—the eligible person who is proposed to be the project proponent for the project; or
 - (ii) if the project is to have 2 or more project proponents—any of the eligible persons who are proposed to be the project proponents for the project; or
- (d) if the information relates to a registered biodiversity project—the disclosure or use is for the purposes of giving a biodiversity audit report to:
- (i) if one person is registered as the project proponent for the project—that person; or
 - (ii) if there are 2 or more persons registered as the project proponents for the project—any of those persons.

128 Disclosure to the Regulator

An audit team leader or a person assisting an audit team leader may disclose audit information to the Regulator if:

- (a) the disclosure is for the purposes of this Act; and
- (b) the audit team leader or person assisting an audit team leader is satisfied that the disclosure is likely to assist the Regulator in performing functions or exercising powers under this Act.

129 Disclosure to Minister etc.

An audit team leader or a person assisting an audit team leader may disclose audit information to the Minister.

130 Disclosure to the Secretary etc.

- (1) An audit team leader or a person assisting an audit team leader may disclose audit 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:

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- (c) the disclosure is for the purposes of this Act; and
 - (d) the audit team leader or person assisting an audit team leader is satisfied the disclosure is likely to assist in the performance of functions, or the exercise of powers, under this Act.
- (2) To avoid doubt, an authorisation under paragraph (1)(b) may:
- (a) authorise a specified officer; or
 - (b) authorise a person who holds, occupies or performs the duties of, a specified office or position.

131 Disclosure to reduce serious risk to life or health of individual

An audit team leader or a person assisting an audit team leader may disclose audit information if:

- (a) the audit team leader or person assisting an audit team leader believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious risk to the life or health of an individual; and
- (b) the disclosure is for the purposes of preventing or lessening that risk.

132 Disclosure to reduce serious risk to the environment

An audit team leader or a person assisting an audit team leader may disclose audit information if:

- (a) the audit team leader or person assisting the audit team leader reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to the environment; and
- (b) the disclosure is for the purposes of preventing or lessening that risk.

133 Disclosure to a court, tribunal etc

An audit team leader or a person assisting an audit team leader may disclose audit information:

- (a) for the purposes of proceedings before:
 - (i) a court; or

- (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or
- (b) in accordance with an order of a court or such a tribunal, authority or person.

134 Disclosure of publicly available information

An audit team leader or a person assisting an audit team leader may disclose audit information if it has already been lawfully made available to the public.

135 Disclosure with consent

An audit team leader or a person assisting an audit team leader may disclose audit 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.

136 Disclosure to person to whom audit information relates

An audit team leader or a person assisting an audit team leader may disclose audit information to a person if the information relates to the affairs of the person.

137 Disclosure to person who provided audit information

An audit team leader or a person assisting an audit team leader may disclose audit information to a person if the audit team leader or person assisting an audit team leader obtained the information from the person.

138 Disclosure of statistics

An audit team leader or a person assisting an audit team leader may disclose statistics derived from audit information if those statistics are not likely to enable the identification of a person.

Part 12—Deposit of biodiversity certificates with the Regulator

139 Simplified outline of this Part

The Regulator may approve the deposit of a biodiversity certificate with the Regulator.

If a biodiversity certificate is deposited with the Regulator, the certificate cannot be transmitted or otherwise dealt with.

140 Application to approve the deposit of a biodiversity certificate with the Regulator

- (1) If a person is the holder of a biodiversity certificate, the person may apply to the Regulator for the Regulator to approve the deposit of the certificate with the Regulator.
- (2) An application must:
 - (a) be in a form approved, in writing, by the Regulator; and
 - (b) specify the biodiversity certificate; and
 - (c) specify the account number of the person's Register account in which there is an entry for the biodiversity certificate; and
 - (d) contain such other information (if any) required by the approved form.
- (3) An application must be accompanied by:
 - (a) such documents (if any) as are specified in the rules; and
 - (b) the fee (if any) specified in the rules.
- (4) A fee specified under paragraph (3)(b) must not be such as to amount to taxation.

141 Approval of deposit of a biodiversity certificate with the Regulator*Scope*

- (1) This section applies if an application under section 140 has been made for the Regulator to approve the deposit of a biodiversity certificate (the *relevant biodiversity certificate*) with the Regulator.

Approval

- (2) After considering the application, the Regulator must decide to:
 - (a) approve the deposit of the relevant biodiversity certificate with the Regulator; or
 - (b) refuse to approve the deposit of the relevant biodiversity certificate with the Regulator.

Note: For review of decisions, see Part 20.

- (3) The Regulator must give written notice of a decision under subsection (2) to the applicant.

Criteria for approval

- (4) The Regulator must approve the deposit of the relevant biodiversity certificate with the Regulator unless the Regulator is satisfied that:
 - (a) it would be inappropriate to approve the deposit of the relevant biodiversity certificate with the Regulator; or
 - (b) both:
 - (i) another biodiversity certificate in respect of a registered biodiversity project has previously been relinquished under section 152; and
 - (ii) the relevant biodiversity certificate is in respect of that registered biodiversity project.

142 Deposit of a biodiversity certificate with the Regulator

- (1) If the Regulator approves the deposit of a biodiversity certificate with the Regulator:
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- (a) the Regulator must transfer the certificate, in accordance with rules made for the purposes of section 167, from the Register account in which there is an entry for the certificate to a Commonwealth Register account; and
- (b) the certificate must not be transferred from the Commonwealth Register account to another Register account; and
- (c) while an entry for the certificate is in the Commonwealth Register account, the certificate is taken, for the purposes of this Act, to be ***deposited with the Regulator***; and
- (d) subject to section 152 (relinquishment), while an entry for the certificate is in the Commonwealth Register account:
 - (i) the certificate remains in force; and
 - (ii) the person who applied for the approval must be recorded in the Register as the holder of the certificate; and
 - (iii) the certificate cannot be transmitted or otherwise dealt with; and
- (e) the Regulator must remove the entry for the certificate from the Commonwealth Register account at whichever is the earlier of the following times:
 - (i) when the Regulator is required by section 77 (cancellation) to remove the entry;
 - (ii) when the Regulator is required by section 152 (relinquishment) to remove the entry.

Note: Section 73 provides that the holder of a biodiversity certificate is the legal owner of the certificate.

- (2) The Register must set out a record of each transfer under paragraph (1)(a).

Part 13—Relinquishment requirements

Division 1—Introduction

143 Simplified outline of this Part

A biodiversity certificate may be required to be relinquished if:

- (a) the certificate was issued as a result of false or misleading information; or
- (b) there is a significant reversal of a biodiversity outcome; or
- (c) circumstances prescribed by the rules exist.

A requirement to relinquish a biodiversity certificate may be satisfied by relinquishment of one or more equivalent certificates instead.

A civil penalty may apply to a failure to comply with a relinquishment requirement, and a biodiversity maintenance declaration may be made under Part 14.

Division 2—Relinquishment notices

144 Relinquishment notice—false or misleading information

Scope

- (1) This section applies to a person if:
 - (a) a biodiversity certificate (the *original biodiversity certificate*) has been issued to the person in relation to a biodiversity project (whether or not the person still holds the certificate, and whether or not the certificate remains in effect); and
 - (b) information was given by the person to the Regulator in connection with the project; and
 - (c) the information was:
 - (i) contained in an application under this Act; or
 - (ii) given in connection with an application under this Act; or
 - (iii) contained in a biodiversity project report; or
 - (iv) contained in a notification under Division 3 of Part 9; and
 - (d) the information was false or misleading in a material particular; and
 - (e) the issue of the certificate was substantially attributable (whether directly or indirectly) to the false or misleading information; and
 - (f) the permanence period of the project has not ended.

Relinquishment notice

- (2) The Regulator may give a relinquishment notice to the person in relation to the original biodiversity certificate.

Note: For review of decisions, see Part 20.

146 Relinquishment notice—reversal of biodiversity outcome other than due to natural disturbance or conduct etc.*Scope*

- (1) This section applies if:
 - (a) a biodiversity certificate (the *original biodiversity certificate*) has been issued in relation to a biodiversity project (whether or not the certificate remains in effect); and
 - (b) subject to rules made for the purposes of section 148, there has been a significant reversal of the biodiversity outcome to which the project relates; and
 - (c) 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
 - (d) the permanence period of the project has not ended.

Relinquishment notice

- (2) The Regulator may give a relinquishment notice, in relation to the original biodiversity certificate, to the project proponent.

Note 1: For projects with multiple project proponents, see Part 3 (and in particular sections 40 and 43).

Note 2: For review of decisions, see Part 20.

147 Relinquishment notice—reversal of biodiversity outcome due to natural disturbance or conduct and no mitigation happens*Scope*

- (1) This section applies if:
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- (a) a biodiversity certificate (the *original biodiversity certificate*) has been issued in relation to a biodiversity project (whether or not the certificate remains in effect); and
- (b) subject to rules made for the purposes of section 148, there has been a significant reversal of the biodiversity outcome to which the project relates; and
- (c) 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
- (d) the Regulator 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
- (e) the permanence period of the project has not ended.

Relinquishment notice

- (2) The Regulator may give a relinquishment notice, in relation to the original biodiversity certificate, to the project proponent.

Note 1: For projects with multiple project proponents, see Part 3 (and in particular sections 40 and 43).

Note 2: For review of decisions, see Part 20.

147A Relinquishment notice—circumstances prescribed by the rules

Scope

- (1) This section applies if:
 - (a) a biodiversity certificate (the *original biodiversity certificate*) has been issued in relation to a biodiversity project (whether or not the certificate remains in effect); and
 - (b) circumstances prescribed by the rules exist in relation to the project.

Relinquishment notice

- (2) The Regulator may give a relinquishment notice, in relation to the original biodiversity certificate, to the project proponent.

Note 1: For projects with multiple project proponents, see Part 3 (and in particular sections 40 and 43).

Note 2: For review of decisions, see Part 20.

148 Significant reversals in biodiversity outcomes—relinquishment requirements

- (1) The rules may prescribe circumstances in which, for the purposes of paragraphs 146(1)(b) and 147(1)(b):
- (a) there is taken to have been a reversal of the biodiversity outcome to which a registered biodiversity project relates; and
 - (b) the reversal is taken to be significant, or not taken to be significant.
- (2) This section does not limit section 111 (significant reversals in biodiversity outcomes—notification requirements).

149 Form and content of relinquishment notice

A relinquishment notice must:

- (a) be in writing; and
- (b) include the information prescribed by the rules.

Division 3—Complying with a relinquishment notice

150 Requirement for compliance with relinquishment notice

- (1) A relinquishment notice given to a person (the *notice recipient*) under this Part must be complied with under section 151 before the end of 6 months after the notice is given.

Extension of period to comply

- (2) The Regulator may extend the period mentioned in subsection (1) by a further period of up to 6 months if the Regulator is satisfied that:
 - (a) not doing so would lead to significant hardship for the notice recipient; or
 - (b) the notice recipient cannot relinquish the original biodiversity certificate under paragraph 151(1)(a), and there are no certificates that could be used to comply with paragraph 151(1)(b) reasonably available for the notice recipient to obtain.

Note: For review of decisions, see Part 20.

- (3) Only one extension under subsection (2) may be given in respect of any relinquishment notice.
- (4) The rules may provide for and in relation to:
 - (a) a person applying for the Regulator to grant an extension under subsection (2); and
 - (b) the Regulator considering, and making a decision on, such an application.

Civil penalty

- (5) A person is liable to a civil penalty if:
 - (a) the person is given a relinquishment notice under this Part; and

- (b) the notice is not complied with before the end of the period mentioned in subsection (1) (subject to any extension under subsection (2)).
- (6) Subsection (5) is a civil penalty provision.
- (7) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty in relation to a contravention of subsection (5) of this section (whether the person is a body corporate or otherwise) must not be more than the greater of:
 - (a) 2,000 penalty units; and
 - (b) if the court can determine the market value of the biodiversity certificate in relation to which the relinquishment notice was given—twice that market value.
- (8) In determining the pecuniary penalty, the court must take into account:
 - (a) the nature and extent of any harm to the environment that has been, might be or will be caused by the conduct or circumstances that resulted in the relinquishment notice being given; and
 - (b) the nature and extent of any harm to the market for biodiversity certificates that has been, might be or will be caused by:
 - (i) the conduct or circumstances that resulted in the relinquishment notice being given; or
 - (ii) the failure to comply with the relinquishment notice.
- (9) Subsection (8) does not limit subsection 82(6) of the Regulatory Powers Act.
- (10) To avoid doubt, a person may be liable to pay a pecuniary penalty for a contravention of subsection (5) even if:
 - (a) the person is not the holder of any biodiversity certificates; or
 - (b) the person is not the holder of the biodiversity certificate in relation to which the relinquishment notice was given; or
 - (c) the biodiversity certificate in relation to which the relinquishment notice was given is no longer in effect; or

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- (d) the person is not the holder of one or more biodiversity certificates that, if relinquished under section 152 in relation to the relinquishment notice, would result in the relinquishment notice being complied with under paragraph 151(1)(b); or
 - (e) no biodiversity certificates exist that, if relinquished under section 152 in relation to the relinquishment notice, would result in the relinquishment notice being complied with under paragraph 151(1)(b).
- (11) Section 93 (continuing contraventions) of the Regulatory Powers Act does not apply to subsection (5) of this section.

151 Compliance with relinquishment requirement—relinquishing equivalent biodiversity certificate or certificates

- (1) A relinquishment notice that relates to a biodiversity certificate (the *original biodiversity certificate*) is complied with if:
- (a) the original biodiversity certificate is relinquished, in relation to the notice, in accordance with section 152; or
 - (b) both of the following apply:
 - (i) one or more other biodiversity certificates (*relinquished certificates*) are relinquished, in relation to the notice, in accordance with section 152;
 - (ii) the relinquished certificate or certificates meet the relinquishment equivalence requirements in relation to the original biodiversity certificate.
- Note: The certificate or certificates may be relinquished by the person who was given the relinquishment notice, or by another person.
- (2) The rules may prescribe the circumstances in which:
- (a) a biodiversity certificate meets the *relinquishment equivalence requirements* in relation to another biodiversity certificate; or
 - (b) 2 or more biodiversity certificates together meet the *relinquishment equivalence requirements* in relation to another biodiversity certificate.

152 How biodiversity certificates are relinquished

- (1) If a person is the holder of a biodiversity certificate, the person may, by electronic notice transmitted to the Regulator, relinquish the certificate.
- (2) A notice under subsection (1) must:
 - (a) specify the biodiversity certificate that is being relinquished; and
 - (b) if the certificate is being relinquished in order to comply with a relinquishment notice given under section 144, 146, 147 or 147A—identify the relinquishment notice in relation to which the certificate is being relinquished; and
 - (c) if the certificate is being voluntarily relinquished in order to satisfy a condition for cancellation of the registration of a biodiversity project under section 23 (voluntary cancellation of registration where certificate is in effect)—identify the registered biodiversity project in relation to which the certificate is being relinquished; and
 - (d) if the certificate is being voluntarily relinquished for the purposes of paragraph 158(1)(c) (revocation of a biodiversity maintenance declaration)—identify the biodiversity maintenance declaration in relation to which the certificate is being relinquished; and
 - (e) if there is an entry for the certificate in the person’s Register account—specify the account number of that account; and
 - (f) if the certificate is deposited with the Regulator—include a statement to the effect that the certificate is deposited with the Regulator; and
 - (g) include any other information prescribed by the rules.
- (3) If a person relinquishes a biodiversity certificate under this section, then:
 - (a) in a case where the biodiversity certificate is not deposited with the Regulator:
 - (i) the biodiversity certificate is cancelled; and
 - (ii) the Regulator must remove the entry for the certificate from the person’s Register account in which there is an entry for the certificate; or

Part 13 Relinquishment requirements

Division 3 Complying with a relinquishment notice

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- (b) in a case where the biodiversity certificate is deposited with the Regulator:
 - (i) the biodiversity certificate is cancelled; and
 - (ii) the Regulator must remove the entry for the certificate from the Commonwealth Register account in which there is an entry for the certificate.

Note: A biodiversity certificate that is cancelled under subsection (3) may have originally been issued for a biodiversity project that remains a registered biodiversity project (this may occur, for example, if the cancelled certificate was relinquished in accordance with paragraph 151(1)(b) to comply with a relinquishment notice issued for a different project).

In such a case, the cancellation of the certificate does not affect the registration of the biodiversity project to which the certificate relates, and the obligations of the project proponent in relation to that project may continue to apply.

- (4) To avoid doubt, the relinquishment of a particular biodiversity certificate is effective for only one purpose mentioned in paragraph (2)(b), (c) or (d).
- (5) The Register must set out a record of each notice under subsection (1).

Part 14—Biodiversity maintenance declarations

Division 1—Introduction

153 Simplified outline of this Part

If a relinquishment requirement under Part 13 that relates to a biodiversity project is not complied with, the Regulator may declare a biodiversity maintenance area.

The declaration may prohibit specified activities in the area. A civil penalty may apply to a person who contravenes a prohibition in a biodiversity maintenance declaration.

Division 2—Biodiversity maintenance declarations

154 Biodiversity maintenance declaration

Declaration

- (1) The Regulator may, by writing, declare that a specified area is a ***biodiversity maintenance area*** if:
- (a) the biodiversity maintenance area is, or has been, the project area, or part of the project area, of a biodiversity project (the ***maintained project***); and
 - (b) the maintained project is, or has been, a registered biodiversity project; and
 - (c) a biodiversity certificate (the ***original biodiversity certificate***) has been issued in relation to the maintained biodiversity project (whether or not the certificate remains in effect); and
 - (d) any of the following apply:
 - (i) a relinquishment notice has been given in relation to the original biodiversity certificate, and the notice was not complied with in accordance with section 150;
 - (ii) a relinquishment notice has been given in relation to the original biodiversity certificate, and the Regulator is satisfied that it is likely that the notice will not be complied with in accordance with section 150;
 - (iii) the Regulator is satisfied that a relinquishment notice is likely to be given in relation to the original biodiversity certificate, and that it is likely that the notice, if given, would not be complied with in accordance with section 150;
 - (iv) the Regulator is satisfied that it would be appropriate to give a relinquishment notice in relation to the original biodiversity certificate, but the notice cannot be given because the person to whom the Regulator would give the notice cannot be located or no longer exists, or for some other reason.

Note: For review of decisions, see Part 20.

- (2) A declaration under subsection (1) is a ***biodiversity maintenance declaration***.
- (3) The biodiversity maintenance area specified in a biodiversity maintenance declaration may consist of:
 - (a) a single area; or
 - (b) multiple areas, which need not be contiguous.

Declared prohibited activities

- (4) A biodiversity maintenance declaration may specify one or more activities that are ***declared prohibited activities*** in relation to the biodiversity maintenance area.
- (5) Without limiting subsection (4), an activity may be specified under that subsection by reference to:
 - (a) the area or areas (which must be, or fall within, the biodiversity maintenance area) on or in which the activity must not be carried out; or
 - (b) a manner or manners in which the activity must not be carried out; or
 - (c) the time or times at which the activity must not be carried out; or
 - (d) the period or periods during which the activity must not be carried out; or
 - (e) the person or persons who must not carry out the activity.

Notice of declaration

- (6) If the Regulator makes a biodiversity maintenance declaration under subsection (1), the Regulator must take all reasonable steps to ensure that notice of the making of the declaration is given to:
 - (a) the project proponent for the maintained project; and
 - (b) if a biodiversity certificate relating to the maintained project is held by a person other than the project proponent for the maintained project—the holder of the certificate; and
 - (c) if there is a relevant land registration official in relation to the maintained project—the relevant land registration official; and

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- (d) if:
 - (i) the biodiversity maintenance area is or includes a native title area; and
 - (ii) there is a registered native title body corporate for the native title area; and
 - (iii) the registered native title body corporate is not the project proponent for the maintained project; the registered native title body corporate; and
- (e) any other person specified in the rules.

Biodiversity maintenance declaration to be published

- (7) If the Regulator makes a biodiversity maintenance declaration under subsection (1), the Regulator must publish the biodiversity maintenance declaration on the Regulator's website as soon as practicable after the declaration is made.

Biodiversity maintenance declaration is not a legislative instrument

- (8) A biodiversity maintenance declaration is not a legislative instrument.

155 Civil penalty for carrying out declared prohibited activity

A person must not carry out an activity in a biodiversity maintenance area if the activity is a declared prohibited activity in relation to the biodiversity maintenance area.

Civil penalty: 2,000 penalty units.

156 When a biodiversity maintenance declaration ceases to be in force

Unless sooner revoked, a biodiversity maintenance declaration ceases to be in force at the earlier of the following times:

- (a) the end of the permanence period for the maintained project;
- (b) if a civil penalty order is made under Part 4 of the Regulatory Powers Act, as that Part applies in relation to

subsection 150(5) of this Act, that relates to a relinquishment notice given in respect of the biodiversity certificate issued in respect of the maintained project—the time the penalty is paid in full to the Commonwealth.

157 Variation or revocation of biodiversity maintenance declaration

Scope

- (1) This section applies if a biodiversity maintenance declaration is in force in relation to an area or areas.

Variation or revocation

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

Note: For review of decisions, see Part 20.

- (4) The Regulator must not vary or revoke the declaration unless the Regulator is satisfied that it is appropriate to do so, having regard to:
 - (a) the reasons for making the declaration; and
 - (b) such other matters (if any) as the Regulator considers relevant.

Application

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

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Notification of variation or revocation

- (7) If the Regulator varies or revokes the declaration, the Regulator must take all reasonable steps to ensure that notice of the variation or revocation is given to:
- (a) the project proponent for the maintained project; and
 - (b) if a biodiversity certificate relating to the maintained project is held by a person other than the project proponent for the maintained project—the holder of the certificate; and
 - (c) if there is a relevant land registration official in relation to the maintained project—the relevant land registration official; and
 - (d) if:
 - (i) the biodiversity maintenance area is or includes a native title area; and
 - (ii) there is a registered native title body corporate for the native title area; and
 - (iii) the registered native title body corporate is not the project proponent for the maintained project; the registered native title body corporate; and
 - (e) any other person specified in the rules.

Variation or revocation to be published

- (8) If the Regulator varies or revokes the declaration, the Regulator must publish the instrument of variation or revocation on the Regulator's website as soon as practicable after the instrument is made.

Refusal

- (9) If the Regulator decides to refuse to vary or revoke the declaration on an application under paragraph (3)(b), the Regulator must give written notice of the decision to the applicant.

Variation or revocation is not a legislative instrument

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

158 Revocation of biodiversity maintenance declaration—voluntary relinquishment of biodiversity certificate

Scope

- (1) This section applies if:
 - (a) a biodiversity maintenance declaration is in force; and
 - (b) a person applies to the Regulator for the revocation of the biodiversity maintenance declaration; and
 - (c) before the application was made, the applicant or another person voluntarily relinquished, in accordance with section 152 and in relation to the biodiversity maintenance declaration:
 - (i) the biodiversity certificate for the maintained project; or
 - (ii) one or more other biodiversity certificates that meet the relinquishment equivalence requirements in relation to the biodiversity certificate for the maintained project.

Note: For when one or more biodiversity certificates meet the **relinquishment equivalence requirements** in relation to another biodiversity certificate, see rules made for the purposes of subsection 151(2).

Revocation

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

Note: For review of decisions, see Part 20.

Application

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

Notification of revocation

- (4) If the Regulator revokes the declaration, the Regulator must take all reasonable steps to ensure that notice of the revocation is given to:
 - (a) the project proponent for the maintained project; and

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- (b) if a biodiversity certificate relating to the maintained project is held by a person other than the project proponent for the maintained project—the holder of the certificate; and
- (c) if there is a relevant land registration official in relation to the maintained project—the relevant land registration official; and
- (d) if:
 - (i) the biodiversity maintenance area is or includes a native title area; and
 - (ii) there is a registered native title body corporate for the native title area; and
 - (iii) the registered native title body corporate is not the project proponent for the maintained project; the registered native title body corporate; and
- (e) any other person specified in the rules.

Revocation to be published

- (5) If the Regulator revokes the declaration, the Regulator must publish the instrument of revocation on the Regulator’s website as soon as practicable after the instrument is made.

Refusal

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

Revocation is not a legislative instrument

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

Part 15—Registers

Division 1—Introduction

160 Simplified outline of this Part

The Biodiversity Market Register holds entries for each registered biodiversity project and each biodiversity certificate. The Regulator must keep the Register in accordance with the rules.

The rules may also provide for an online platform, to facilitate trading in biodiversity certificates and for other purposes.

Division 2—Biodiversity Market Register

161 Biodiversity Market Register

- (1) The Regulator must keep a register, to be known as the Biodiversity Market Register.

Note: In this Act, the Biodiversity Market Register is known as the Register (see the definition of *Register* in section 7).

- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Regulator’s website.
- (4) The Regulator must ensure that the Register is up to date.

162 Entries in the Register—registered biodiversity projects and former registered biodiversity projects

- (1) The Register must set out, for each registered biodiversity project:
 - (a) the name of the project; and
 - (b) a description, in accordance with the rules, of the project area for the project; and
 - (c) a description of the project, including such details (if any) as are prescribed by the rules; and
 - (d) the project proponent or project proponents for the project; and
 - (e) the methodology determination that covers the project; and
 - (f) whether the registration of the project is subject to a condition under section 17 (conditions about obtaining regulatory approvals); and
 - (g) whether the registration of the project is subject to a condition under section 18 (conditions about obtaining consent from eligible interest holders); and
 - (h) whether the registration of the project is subject to a condition under section 18A (condition about obtaining consent from registered native title body corporate); and
 - (i) if:

- (i) the project proponent has requested the Regulator that the Register contain particular information about the extent to which the project area, or any part of the project area, is also an area on or in which a registered project under a related scheme has been, is being, or is to be, carried out; and
- (ii) the request has not been withdrawn; and
- (iii) the Regulator is satisfied that the requested information meets the requirements specified in the rules;
the requested information; and
- (j) if a project plan is required by the methodology determination that covers the project—such information (if any) about the project plan as is prescribed by the rules; and
- (k) such other information (if any) as is provided for under paragraph 45(1)(c) by the methodology determination that covers the project; and
- (l) such other information (if any) as the Regulator considers appropriate; and
- (m) such other information (if any) as is prescribed by the rules.

Note: For projects with multiple project proponents, see Part 3.

- (2) Subsection (1) has effect subject to sections 163 and 163A.

Note: Sections 163 and 163A deal with requests for information not to be set out in the Register.

- (3) A request under subparagraph (1)(i)(i) must:
- (a) be in a form approved, in writing, by the Regulator; and
 - (b) be accompanied by such documents (if any) as are specified in the rules.
- (4) If:
- (a) the Register contains information covered by paragraph (1)(i); and
 - (b) the Regulator becomes aware that the information has ceased to be correct;
- the Regulator may remove the information from the Register.

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Former registered biodiversity projects

- (5) The rules may provide for the Register to set out prescribed information for biodiversity projects that have been, but have ceased to be, registered biodiversity projects (including such projects that are no longer being carried on).

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

- (1) The Register must not set out a description of the project area, or a part of the project area, for a registered biodiversity project if:
- (a) either:
 - (i) the project proponent for the project; or
 - (ii) another person;has requested the Regulator not to set out the description of the project area, or the part of the project area, as the case may be, in the Register; and
 - (b) the Regulator is satisfied that:
 - (i) setting out a description of the project area, or the part of the project area, as the case may be, could reasonably be expected to substantially prejudice a matter referred to in subsection (2); and
 - (ii) the prejudice outweighs the public interest in the setting out of the description of the project area, or the part of the project area, as the case may be.

Note: For review of decisions, see Part 20.

- (2) For the purposes of subparagraph (1)(b)(i), the matters are the following:
- (a) the biodiversity of the project area, or the part of the project area, as the case may be;
 - (b) the safety of any person.
- (3) The Register must not set out a description of the project area, or a part of the project area, for a registered biodiversity project if:
- (a) either:
 - (i) the project proponent for the project; or

- (ii) another person;
has requested the Regulator not to set out a description of the project area, or the part of the project area, as the case may be, in the Register; and
- (b) the Regulator is satisfied that:
 - (i) there is a local community of Aboriginal persons, or Torres Strait Islanders, who have a connection to the project area, or the part of the project area, as the case may be; and
 - (ii) setting out the description of the project area, or the part of the project area, as the case may be, could reasonably be expected to have a material adverse impact on that community; and
 - (iii) the adverse impact outweighs the public interest in the setting out of the description of the project area, or the part of the project area, as the case may be.

Note: For review of decisions, see Part 20.

- (4) A request under subsection (1) or (3) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.
- (5) In considering whether to comply with a request under subsection (1) or (3), the Regulator may consult such persons, bodies and communities as the Regulator considers appropriate.
- (6) The Regulator must take all reasonable steps to ensure that a decision is made on the request within 30 days after the request was made.
- (7) If:
 - (a) the Regulator decides to comply with the request; and
 - (b) the person who made the request is a person other than the project proponent;the Regulator must give written notice of the decision to the project proponent.
- (8) If the Regulator decides to refuse the request, the Regulator must give written notice of the decision to:

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- (a) the project proponent; and
- (b) if the person who made the request is a person other than the project proponent—the person who made the request.

163A Requests for information about a project not to be set out in the Register

- (1) The Register must not set out information about a registered biodiversity project if:
 - (a) either:
 - (i) the project proponent for the project; or
 - (ii) another person;has requested the Regulator not to set out the information in the Register; and
 - (b) the Regulator is satisfied that:
 - (i) setting out the information could reasonably be expected to substantially prejudice a matter referred to in subsection (2); and
 - (ii) the prejudice outweighs the public interest in the setting out of the information; and
 - (c) the information:
 - (i) is not a description of the project area, or a part of the project area, for the project; and
 - (ii) is of a kind specified in the rules.

Note: For review of decisions, see Part 20.

- (2) For the purposes of subparagraph (1)(b)(i), the matters are the following:
 - (a) the biodiversity of the project area, or a part of the project area, for the project;
 - (b) the safety of any person.
- (3) The Register must not set out information about a registered biodiversity project if:
 - (a) either:
 - (i) the project proponent for the project; or
 - (ii) another person;

has requested the Regulator not to set out the information in the Register; and

- (b) the Regulator is satisfied that:
 - (i) there is a local community of Aboriginal persons, or Torres Strait Islanders, who have a connection to the project area, or the part of the project area, as the case may be; and
 - (ii) setting out the information could reasonably be expected to have a material adverse impact on that community; and
 - (iii) the adverse impact outweighs the public interest in the setting out of the information; and
- (c) the information does not consist of a description of the project area, or a part of the project area, for the project.

Note: For review of decisions, see Part 20.

- (4) A request under subsection (1) or (3) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.
- (5) In considering whether to comply with a request under subsection (1) or (3), the Regulator may consult such persons, bodies and communities as the Regulator considers appropriate.
- (6) The Regulator must take all reasonable steps to ensure that a decision is made on the request within 30 days after the request was made.
- (7) If:
 - (a) the Regulator decides to comply with the request; and
 - (b) the person who made the request is a person other than the project proponent;the Regulator must give written notice of the decision to the project proponent.
- (8) If the Regulator decides to refuse the request, the Regulator must give written notice of the decision to:
 - (a) the project proponent; and

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- (b) if the person who made the request is a person other than the project proponent—the person who made the request.

164 Entries in the Register—biodiversity certificates

- (1) The Register must set out, for each biodiversity certificate that is in effect:
 - (a) the biodiversity project to which the certificate relates; and
 - (b) the date of issue of the certificate; and
 - (c) the holder of the certificate; and
 - (d) such other information (if any) as is provided for under paragraph 45(1)(g) by the methodology determination that covers the project; and
 - (e) such other information (if any) as is prescribed by the rules.
- (2) The Register must set out, for each biodiversity certificate that has been in effect, but has ceased to be in effect:
 - (a) the biodiversity project to which the certificate related; and
 - (b) the date of issue of the certificate; and
 - (c) the date on which the certificate ceased to be in effect; and
 - (d) such other information (if any) as is provided for under paragraph 45(1)(g) by the methodology determination that covers the project; and
 - (e) such other information (if any) as is prescribed by the rules.

165 Entries in the Register—accounts for holding biodiversity certificates

The rules may make provision for and in relation to empowering the Regulator to open accounts in the Register to hold biodiversity certificates.

166 Suspension of operation of the Register

- (1) The Regulator may temporarily suspend the operation of the Register if the Regulator is satisfied that:
 - (a) the suspension is required so that maintenance can be carried out; or

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

167 Rules may make provision in relation to the Register

- (1) The rules may make provision for and in relation to the Register.
- (2) Without limiting subsection (1), the rules may make provision for or in relation to any of the following:
 - (a) matters that are to be recorded in the Register;
 - (b) the manner in which information may be communicated to or by the Regulator in relation to the Register;
 - (c) requests to open, close, transfer or otherwise deal with accounts in the Register (including forms for making requests, information that must accompany a request and the consideration of a request by the Regulator);
 - (d) identification procedures that the Regulator may or must carry out in relation to a record in the Register;
 - (e) joint accounts;
 - (f) accounts to be kept for the Commonwealth;
 - (g) unilateral closure of accounts by the Regulator;
 - (h) the holding of biodiversity certificates in accounts in the Register, and the transfer of certificates between accounts;
 - (i) requiring the holders of accounts to notify the Regulator of specified events;
 - (j) correction or rectification of the Register;

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- (k) verification by statutory declaration of information provided to the Regulator in relation to the Register;
 - (l) fees for things done by the Regulator in relation to the Register.
- (3) A fee provided for by rules made for the purposes of this section must not be such as to amount to taxation.
- (4) A person must not contravene rules made for the purposes of paragraph (2)(i).
- Civil penalty: 200 penalty units.

168 Use and disclosure of information obtained from the Register

Use

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

Disclosure

- (2) The rules may provide that a person (the **first person**) must not disclose information that:
- (a) is about another person; and
 - (b) was obtained from the Register; and
 - (c) the first person knows is likely to be used to contact or send material to the other person.
- (3) A person must not contravene rules made for the purposes of subsection (1) or (2).

Civil penalty: 200 penalty units.

Exception

- (4) Subsection (3) does not apply in circumstances specified by the rules.

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Note: A person who wishes to rely on subsection (4) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection: see section 96 of the Regulatory Powers Act.

Division 3—Online platform

169 Online Platform

- (1) The rules may make provision for and in relation to empowering the Regulator to maintain an online platform for any of the following purposes:
 - (a) facilitating the trading of any of the following:
 - (i) biodiversity certificates;
 - (ii) other certificates, units or credits (however described, and whether issued under a law of the Commonwealth, a State or a Territory, or in some other way) that relate to biodiversity projects;
 - (b) facilitating arrangements between project proponents, or prospective project proponents, of registered biodiversity projects and prospective purchasers of biodiversity certificates;
 - (c) facilitating arrangements relating to biodiversity projects that are not, and are not intended to be, registered under this Act;
 - (d) any other purpose incidental or related to any of the above.
- (2) The rules must not require a person to use the online platform in order to:
 - (a) be the project proponent of a registered biodiversity project; or
 - (b) be issued with, hold or deal with a biodiversity certificate; or
 - (c) otherwise receive the benefit of any other provision of this Act.

Part 16—Publication of information

Division 1—Introduction

170 Simplified outline of this Part

This Part allows or requires the Regulator and the Secretary to publish certain information about biodiversity certificates, registered biodiversity projects and the operation of this Act.

Division 2—Information about biodiversity certificates

171 Information about biodiversity certificates

- (1) As soon as practicable after a biodiversity certificate is issued to a person, the Regulator must publish on the Regulator’s website:
 - (a) the name of the person; and
 - (b) such other information relating to the certificate as is prescribed by the rules.
- (2) As soon as practicable after a variation of a biodiversity certificate is made, the Regulator must publish on the Regulator’s website:
 - (a) the name of the holder of the certificate; and
 - (b) such other information relating to the certificate or the variation as is prescribed by the rules.
- (3) As soon as practicable after a biodiversity certificate is transferred from one Register account to another Register account, the Regulator must publish on the Regulator’s website:
 - (a) the name of the holder of each of those accounts; and
 - (b) such other information relating to the certificate or the transfer as is prescribed by the rules.

172 Reports about activities of Regulator

- (1) As soon as practicable after the end of a financial year, the Regulator must prepare a report about the activities of the Regulator under this Act during the financial year.
- (2) The report must deal with any matters prescribed by the rules.
- (3) The Regulator must:
 - (a) give the report to the Minister; and
 - (b) publish the report on the Regulator’s website;as soon as practicable after the report is prepared.

- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

173 Publication of concise description of the characteristics of biodiversity certificates

The Regulator must:

- (a) publish on the Regulator's website a statement setting out a concise description of the characteristics of biodiversity certificates; and
- (b) keep that statement up to date.

173A Information about market for biodiversity certificates

The Secretary may publish information on the Department's website about the market for biodiversity certificates, including information about any of the following:

- (a) the development of the market;
- (b) opportunities to participate in the market;
- (c) the way in which the market contributes, or could contribute, to the enhancement or protection of biodiversity in native species in Australia.

Division 3—Information about biodiversity certificates purchased by the Commonwealth

174 Information about biodiversity conservation purchasing processes

After the Secretary conducts a biodiversity conservation purchasing process, the Secretary may publish on the Department's website the following information:

- (a) when the process was conducted;
- (b) the total amount that the Commonwealth agreed to pay by way of purchasing biodiversity certificates through the process (whether or not those payments have been made);
- (c) such other summary information (if any) relating to the process as the Secretary considers appropriate;
- (d) such other statistics (if any) relating to the process as the Secretary considers appropriate.

175 Annual reports about purchases of biodiversity certificates

- (1) The Secretary may prepare a report, in relation to a financial year, on the following matters:
 - (a) the total number of biodiversity certificates that the Commonwealth has purchased, or has agreed to purchase, under biodiversity conservation contracts entered into during the financial year;
 - (b) the total amount that the Commonwealth will be liable to pay, or has paid, under biodiversity conservation contracts entered into during the financial year;
 - (c) the total number of biodiversity certificates that were transferred to the Commonwealth during the financial year as a result of biodiversity conservation contracts (including such contracts entered into before the financial year);
 - (d) the total amount that the Commonwealth paid during the financial year under biodiversity conservation contracts (including such contracts entered into before the financial year);

- (e) for each biodiversity certificate transferred to the Commonwealth during the financial year as a result of a biodiversity conservation contract (including such a contract entered into before the financial year)—sufficient information to identify the registered biodiversity project in relation to which the certificate was issued;
 - (f) such other summary information (if any) relating to the purchase of biodiversity certificates by the Commonwealth under biodiversity conservation contracts as the Secretary considers appropriate;
 - (g) such other statistics (if any) relating to the purchase of biodiversity certificates by the Commonwealth under biodiversity conservation contracts as the Secretary considers appropriate.
- (2) The Secretary must give a report prepared under subsection (1) to the Minister as soon as practicable after the report is prepared.
- (3) The Minister must cause a copy of a report received under subsection (2) to be:
- (a) tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister; and
 - (b) published on the Department's website as soon as practicable after the report is given to the Minister.

Division 4—Information about relinquishment requirements

176 Information about relinquishment requirements

Scope

- (1) This section applies if the Regulator gives a person a relinquishment notice under Part 13.

Relinquishment requirement

- (2) As soon as practicable after giving the relinquishment notice, the Regulator must publish on the Regulator'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 one or more biodiversity certificates is being reconsidered by the Regulator under section 215;
 - (b) the decision to require the person to relinquish one or more biodiversity certificates has been affirmed or varied by the Regulator under section 215, 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 one or more biodiversity certificates is the subject of an application for review by the Administrative Appeals Tribunal;the Regulator must:
 - (d) publish an appropriate annotation on the Regulator's website; and
 - (e) if paragraph (a) applies—when the Regulator notifies the applicant for reconsideration of the Regulator's decision on the reconsideration, the Regulator must publish an appropriate annotation on the Regulator'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 Regulator must publish an appropriate annotation on the Regulator’s website.

177 Information about relinquished certificates

Scope

- (1) This section applies if:
- (a) the Regulator gives a person a relinquishment notice; and
 - (b) one or more biodiversity certificates are relinquished under section 152 in order to comply with the relinquishment notice.

Biodiversity certificates relinquished

- (2) As soon as practicable after receiving the notice under section 152 relinquishing the biodiversity certificate or certificates, the Regulator must publish on the Regulator’s website:
- (a) the name of the person; and
 - (b) such information in relation to the biodiversity certificate or certificates as the Regulator thinks appropriate.

Part 17—Record-keeping and project monitoring requirements

Division 1—Introduction

178 Simplified outline of this Part

The rules 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 a biodiversity project report.

A project proponent must comply with record-keeping and project monitoring requirements imposed by a methodology determination.

Division 2—Record-keeping requirements

179 Record-keeping requirements—general

- (1) The rules 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 rules made for the purposes of subsection (1), the person must comply with that requirement.

Civil penalty: 200 penalty units.

Other provisions do not limit this section

- (3) This section is not limited by any other provision of this Act that relates to the keeping or retention of records.

180 Record-keeping requirements—preparation of biodiversity project report

Scope

- (1) This section applies if a person:
 - (a) made a record of particular information; and
 - (b) used the information to prepare a biodiversity project report.

Record-keeping requirements

- (2) The rules may require the person to retain:
 - (a) the record; or
 - (b) a copy of the record;

Part 17 Record-keeping and project monitoring requirements

Division 2 Record-keeping requirements

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for 7 years after the biodiversity project report was given to the Regulator.

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

Civil penalty: 200 penalty units.

181 Record-keeping requirements—methodology determinations

Scope

- (1) This section applies to a person if:
- (a) the person is the project proponent for a registered biodiversity project; and
 - (b) under the methodology determination that covers the project, the person is subject to a record-keeping requirement relating to the project.

Record-keeping requirement

- (2) The person must comply with the requirement.

Civil penalty: 200 penalty units.

Division 3—Project monitoring requirements

182 Project monitoring requirements—methodology determinations

Scope

- (1) This section applies to a person if:
 - (a) the person is the project proponent for a registered biodiversity project; and
 - (b) under the methodology determination that covers the project, the person is subject to a requirement to monitor the project.

Project monitoring requirement

- (2) The person must comply with the requirement.

Civil penalty: 200 penalty units.

Part 18—Enforcement

Division 1—Introduction

183 Simplified outline of this Part

Certain provisions are subject to monitoring under Part 2 of the Regulatory Powers Act.

Certain provisions are subject to investigation under Part 3 of the Regulatory Powers Act.

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions.

Infringement notices may be given under Part 5 of the Regulatory Powers Act for alleged contraventions of civil penalty provisions.

Undertakings to comply with certain provisions may be accepted and enforced under Part 6 of the Regulatory Powers Act.

Injunctions under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening section 155 of this Act (civil penalty for carrying out declared prohibited activity) or to compel compliance with that section.

184 Appointment of inspectors

- (1) The Chair of the Regulator may, in writing, appoint a person who is one of the following as an inspector for the purposes of this Act:
 - (a) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee;
 - (b) 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 1 or 2 position or an equivalent position;
- (c) a member or special member of the Australian Federal Police.

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) The Chair must not appoint a person as an inspector unless the Chair is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an inspector.
- (3) An inspector must, in exercising powers as such, comply with any directions of the Chair.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Division 2—Monitoring powers

185 Monitoring powers

Provisions subject to monitoring

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) each provision of this Act;
 - (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to one or more of the provisions mentioned in paragraph (a).

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions mentioned in this subsection have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) there are no related provisions; and
 - (b) an inspector is an authorised applicant; and
 - (c) an inspector is an authorised person; and
 - (d) a magistrate is an issuing officer; and
 - (e) the Chair of the Regulator is the relevant chief executive; and
 - (f) each of the following is a relevant court:
 - (i) the Federal Court;

- (ii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (4) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (5) to a person who is:
- (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.
- Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.
- (5) The powers and functions that may be delegated are:
- (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (6) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Person assisting

- (7) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Extension to external Territories

- (8) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

186 Modifications of Part 2 of the Regulatory Powers Act

Additional monitoring power

- (1) For the purposes of determining:
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- (a) whether a provision mentioned in subsection 185(1) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection 185(2);
- the additional powers mentioned in subsection (2) of this section are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (2) The additional monitoring powers are:
 - (a) the power to take samples of any thing on premises entered under Part 2 of the Regulatory Powers Act; and
 - (b) the power to remove, test and analyse such samples; and
 - (c) the power to secure premises entered under Part 2 of the Regulatory Powers Act; and
 - (d) the power to secure things on premises entered under Part 2 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things; and
 - (e) the power to secure a container on premises entered under Part 2 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing).

Use of force in executing a monitoring warrant

- (3) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act:
 - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Identity cards

- (4) A reference to an identity card in sections 25 and 26 and subsection 35(6) of the Regulatory Powers Act, as those provisions apply in relation to the provisions mentioned in subsection 185(1) of this Act and information mentioned in subsection 185(2) of this Act, is taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police.
- (5) Subsection 35(1) of the Regulatory Powers Act, as that subsection applies in relation to the provisions mentioned in subsection 185(1) of this Act and information mentioned in subsection 185(2) of this Act, does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police.

Division 3—Investigation powers

187 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
 - (a) a civil penalty provision of this Act; or
 - (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) there are no related provisions; and
 - (b) an inspector is an authorised applicant; and
 - (c) an inspector is an authorised person; and
 - (d) a magistrate is an issuing officer; and
 - (e) the Chair of the Regulator is the relevant chief executive; and
 - (f) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (3) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (4) to a person who is:
 - (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.

Note: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (5) A person exercising powers or performing functions under a delegation under subsection (3) must comply with any directions of the relevant chief executive.

Person assisting

- (6) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories

- (7) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

188 Modifications of Part 3 of the Regulatory Powers Act

Additional investigative powers

- (1) The additional powers mentioned in subsection (2) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 187(1) of this Act.
- (2) The additional investigation powers are:
- (a) the power to take samples of any thing on premises entered under Part 3 of the Regulatory Powers Act; and
 - (b) the power to remove, test and analyse such samples; and

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- (c) the power to secure premises entered under Part 3 of the Regulatory Powers Act; and
- (d) the power to secure things on premises entered under Part 3 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things; and
- (e) the power to secure a container on premises entered under Part 3 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing).

Operating electronic equipment etc. that may contain evidential material

- (3) Subsection 50(1) of the Regulatory Powers Act is taken to include the power (subject to subsections 50(3) and (4) of that Act) to:
 - (a) operate electronic equipment on premises entered under Part 3 of that Act, as that Part applies to evidential material that relates to a provision mentioned in subsection 187(1) of this Act; and
 - (b) use a disk, tape or other storage device that:
 - (i) is on those premises; and
 - (ii) can be used with the equipment or is associated with it;to find out whether the equipment, disk, tape or other storage device contains such evidential material.

Use of force in executing an investigation warrant

- (4) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 187(1) of this Act:
 - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Identity cards

- (5) A reference to an identity card in sections 55 and 56 and subsection 76(6) of the Regulatory Powers Act, as those provisions apply in relation to evidential material that relates to a provision mentioned in subsection 187(1) of this Act, is taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police.
- (6) Subsection 76(1) of the Regulatory Powers Act, as that subsection applies in relation to evidential material that relates to a provision mentioned in subsection 187(1) of this Act, does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police.

Division 4—Civil penalty provisions

189 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Chair of the Regulator is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) An authorised applicant may, in writing, delegate the authorised applicant's powers and functions under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to a person who is:
 - (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) In performing functions, or exercising powers, under a delegation made by an authorised applicant under subsection (3), the delegate must comply with any directions of the authorised applicant.

Relevant court

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court;
 - (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (6) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Liability of Crown

- (7) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

Division 5—Infringement notices

190 Infringement notices

Provisions subject to an infringement notice

- (1) A civil penalty provision of this Act (other than a provision specified in subsection (2)) is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) The following provisions are specified:

- (a) subsection 46(1);
- (b) subsection 46(2);
- (c) subsection 113(1);
- (d) subsection 113(3);
- (e) subsection 116(4);
- (f) subsection 121(4);
- (g) subsection 121(7);
- (h) subsection 122(3);
- (i) subsection 150(5);
- (j) section 155;
- (k) subsection 168(3).

Infringement officer

- (3) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions covered by subsection (1):

- (a) an inspector;
- (b) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Relevant chief executive

- (4) For the purposes of Part 5 of the Regulatory Powers Act, the Chair of the Regulator is the relevant chief executive in relation to the provisions covered by subsection (1).
- (5) The relevant chief executive may, in writing, delegate the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions covered by subsection (1) to a person who is:
 - (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.

Note: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (6) A person exercising powers or performing functions under a delegation under subsection (5) must comply with any directions of the relevant chief executive.

Extension to external Territories

- (7) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions covered by subsection (1), extends to every external Territory.

Division 6—Enforceable undertakings

191 Enforceable undertakings

Enforceable provisions

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
 - (a) each provision of this Act;
 - (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to one or more of the provisions mentioned in paragraph (a).

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Chair of the Regulator is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) An authorised person may, in writing, delegate the authorised person's powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to a person who is:
 - (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.

Note: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) In performing functions, or exercising powers, under a delegation made by an authorised person under subsection (3), the delegate must comply with any directions of the authorised person.

Relevant court

- (5) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
 - (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Enforceable undertaking may be published on the Regulator's website

- (6) The Regulator may cause an undertaking given under Part 6 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) to be published on the Regulator's website.

Extension to external Territories

- (7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Division 7—Injunctions

192 Injunctions

Enforceable provisions

- (1) Each provision of this Act is enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Chair of the Regulator is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) An authorised person may, in writing, delegate the authorised person's powers and functions under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to a person who is:
 - (a) a member of the staff of the Regulator; and
 - (b) an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) In performing functions, or exercising powers, under a delegation made by an authorised person under subsection (3), the delegate must comply with any directions of the authorised person.

Relevant court

- (5) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
 - (a) the Federal Court;
 - (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (6) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provision mentioned in subsection (1), extends to every external Territory.

Part 19—Nature Repair Committee

Division 1—Introduction

193 Simplified outline of this Part

This Part establishes the Nature Repair Committee.

This Part also sets out the following:

- (a) the functions of the Committee;
- (b) the membership of the Committee;
- (c) the appointment of Committee members;
- (d) other terms and conditions on which Committee members hold office.

The Regulator and the Department may assist the Nature Repair Committee in the performance of its functions.

Division 2—Establishment and functions of the Nature Repair Committee

194 Nature Repair Committee

The Nature Repair Committee is established by this section.

195 Functions of the Nature Repair Committee

The Nature Repair Committee has the following functions:

- (a) the functions that are conferred on it by this Act;
- (b) to advise the Minister about matters that:
 - (i) relate to biodiversity projects; and
 - (ii) are referred to the Committee by the Minister;
- (c) to advise the Minister about the suspension of the consideration by the Regulator of applications for the registration of biodiversity projects (see section 16);
- (d) to monitor the compliance of methodology determinations with the biodiversity integrity standards;
- (e) to advise the Minister about the development or prioritisation of methodology determinations;
- (f) to advise the Secretary about the development or prioritisation of methodology determinations;
- (g) to undertake public consultation in relation to advice to be given to the Minister or the Secretary about the development or prioritisation of methodology determinations;
- (h) to undertake periodic reviews of methodology determinations;
- (i) to undertake public consultation in relation to reviews of methodology determinations;
- (j) to advise the Minister in relation to the outcomes of reviews of methodology determinations and any related public consultation;
- (k) to advise the Secretary in relation to the outcomes of reviews of methodology determinations and any related public consultation;

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- (l) to advise the Minister about the development or prioritisation of biodiversity assessment instruments;
- (m) to advise the Secretary about the development or prioritisation of biodiversity assessment instruments;
- (n) to undertake public consultation in relation to advice to be given to the Minister or the Secretary about the development or prioritisation of biodiversity assessment instruments;
- (o) to undertake periodic reviews of biodiversity assessment instruments;
- (p) to undertake public consultation in relation to reviews of biodiversity assessment instruments;
- (q) to advise the Minister in relation to the outcomes of reviews of biodiversity assessment instruments and any related public consultation;
- (r) to advise the Secretary in relation to the outcomes of reviews of biodiversity assessment instruments and any related public consultation;
- (s) to do anything incidental to or conducive to the performance of the above functions.

195A Request for review of methodology determinations

- (1) A person may, by written notice given to the Nature Repair Committee, request the Committee to review one or more methodology determinations under paragraph 195(h).
- (2) A request under subsection (1) must be accompanied by a statement that sets out:
 - (a) the reasons why the methodology determinations should be reviewed; and
 - (b) if there are any inconsistencies between the methodology determinations and the biodiversity integrity standards—an explanation of those inconsistencies.
- (3) If the Nature Repair Committee receives a request under subsection (1), the Committee must consider whether to undertake a review in response to the request.

196 Nature Repair Committee may obtain advice

- (1) The Nature Repair Committee may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the Nature Repair Committee.
- (2) Subsection (1) does not limit paragraph 195(s).

196A Nature Repair Committee must publish outcomes of reviews

If the Nature Repair Committee conducts a review under paragraph 195(h) or (o), the Nature Repair Committee must publish the outcome of the review on the Department's website.

Division 3—Membership of the Nature Repair Committee

197 Membership of the Nature Repair Committee

The Nature Repair Committee consists of the following members:

- (a) a Chair;
- (b) at least 4, and not more than 5, other members.

198 Appointment of Nature Repair Committee members

- (1) Each Nature Repair Committee member is to be appointed by the Minister by written instrument.

Note: A Nature Repair Committee member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a Nature Repair Committee member 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 of expertise:
 - (c) agriculture relevant to the functions of the Committee;
 - (d) biological or ecological science relevant to the functions of the Committee;
 - (e) economics relevant to the functions of the Committee;
 - (f) environmental markets relevant to the functions of the Committee;
 - (g) Indigenous knowledge relevant to the functions of the Committee;
 - (h) land management relevant to the functions of the Committee.
- (3) The Minister must ensure that at all times at least one Nature Repair Committee member has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in biological or ecological science relevant to the functions of the Committee.

- (4) The Minister must ensure that at all times at least one Nature Repair Committee member has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in Indigenous knowledge relevant to the functions of the Committee.
- (5) The Minister must ensure that the Chair of the Nature Repair Committee is not:
 - (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.
- (6) A Nature Repair Committee member holds office on a part-time basis.

199 Period for appointment for Nature Repair Committee members

- (1) The Chair of the Nature Repair Committee holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Chair of the Nature Repair Committee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A Nature Repair Committee member (other than the Chair) holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A Nature Repair Committee member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

200 Acting Nature Repair Committee members

Acting Chair of the Nature Repair Committee

- (1) The Minister may, by written instrument, appoint a Nature Repair Committee member to act as the Chair of the Nature Repair Committee:

Part 19 Nature Repair Committee

Division 3 Membership of the Nature Repair Committee

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- (a) during a vacancy in the office of the Chair of the Nature Repair Committee (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 Nature Repair Committee:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

Acting Nature Repair Committee member (other than the Chair)

- (2) The Minister may, by written instrument, appoint a person to act as a Nature Repair Committee member (other than the Chair of the Nature Repair Committee):
 - (a) during a vacancy in the office of a Nature Repair Committee member (other than the Chair of the Committee), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Nature Repair Committee member (other than the Chair of the Committee):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

Eligibility

- (3) A person is not eligible for appointment to act as:
 - (a) the Chair of the Nature Repair Committee; or
 - (b) a Nature Repair Committee member (other than the Chair of the Committee);unless the person is eligible for appointment as a Nature Repair Committee member.

Note 1: For eligibility for appointment as a Nature Repair Committee member, see subsection 198(2).

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

201 Procedures

- (1) The rules may prescribe the procedures to be followed at or in relation to meetings of the Nature Repair Committee, including matters relating to the following:
 - (a) the convening of meetings of the Committee;
 - (b) the number of Nature Repair Committee members who are to constitute a quorum;
 - (c) the selection of a Nature Repair Committee member to preside at meetings of the Committee in the absence of the Chair of the Committee;
 - (d) the manner in which questions arising at a meeting of the Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Nature Repair Committee if:
 - (a) without meeting, a majority of Nature Repair Committee members indicate agreement with the resolution in accordance with the method determined by the Committee under subsection (3); and
 - (b) all Nature Repair Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Nature Repair Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Nature Repair Committee:
 - (a) determines that it applies; and
 - (b) determines the method by which Nature Repair Committee members are to indicate agreement with resolutions.

202 Disclosure of interests to the Minister

A Nature Repair Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the

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member has or acquires and that conflict or could conflict with the proper performance of the member's duties.

203 Disclosure of interests to the Nature Repair Committee

- (1) A Nature Repair Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Committee must disclose the nature of the interest to a meeting of the Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Nature Repair Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Nature Repair Committee otherwise determines, the Nature Repair Committee member:
 - (a) must not be present during any deliberation of the Committee on the matter; and
 - (b) must not take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Nature Repair Committee member:
 - (a) must not be present during any deliberation of the 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 Nature Repair Committee.

204 Other paid work

A Nature Repair Committee member must not engage in any paid work that conflicts or could conflict with the proper performance of the Nature Repair Committee member's duties.

205 Remuneration

- (1) A Nature Repair 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 Nature Repair Committee member is to be paid the remuneration that is prescribed by the rules.
- (2) A Nature Repair Committee member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

206 Leave of absence

- (1) The Minister may grant leave of absence to the Chair of the Nature Repair Committee on the terms and conditions that the Minister determines.
- (2) The Chair of the Nature Repair Committee may grant leave of absence to any Nature Repair Committee member on the terms and conditions that the Chair determines.

207 Resignation

- (1) A Nature Repair Committee member may resign the member's 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.

208 Termination of appointment

- (1) The Minister may terminate the appointment of a Nature Repair Committee member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.

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- (2) The Minister may terminate the appointment of a Nature Repair 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 the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee; or
 - (c) the member engages in paid work that conflicts or could conflict with the proper performance of the member's duties (see section 204); or
 - (d) the member fails, without reasonable excuse, to comply with section 202 or 203 (which deal with the duty to disclose interests).
- (3) The Minister may terminate the appointment of the Chair of the Nature Repair Committee if the Chair is any of the following:
- (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.

209 Other terms and conditions

A Nature Repair 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.

210 Assistance to Nature Repair Committee

- (1) Any or all of the following bodies:
- (a) the Regulator;
 - (b) the Department;
 - (c) any other Department, agency or authority of the Commonwealth;

may assist the Nature Repair Committee in the performance of its functions.

- (2) The assistance provided by the Regulator may include the following:
 - (a) the provision of information;
 - (b) the provision of advice.
- (3) The assistance provided by a body mentioned in paragraph (1)(b) or (c) 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).
- (4) If an officer or employee of a body mentioned in subsection (1) assists the Nature Repair Committee, the officer or employee is taken, for the purposes of this Act, to be a person assisting the Nature Repair Committee under this section.

210A Application of the finance law

A member of the Nature Repair Committee is not an official of the Department for the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

Part 20 Review of decisions

Division 1 Introduction

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Part 20—Review of decisions

Division 1—Introduction

211 Simplified outline of this Part

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

Certain decisions of the Regulator may be reviewed by the Administrative Appeals Tribunal.

Division 2—Decisions of the Regulator

212 Reviewable decisions

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

- (a) a decision under section 15 to approve, or refuse to approve, the registration of a biodiversity project;
- (b) a decision under rules made for the purposes of section 19, 20 or 21 to vary, or refuse to vary, the registration of a registered biodiversity project;
- (c) a decision under rules made for the purposes of section 23 or 24 to cancel, or refuse to cancel, the registration of a registered biodiversity project;
- (d) a decision under rules made for the purposes of section 26, 27, 28, 29, 30, 31 or 42 to cancel the registration of a registered biodiversity project;
- (e) a decision under section 34 to extend, or not to extend, the permanence period for a registered biodiversity project;
- (f) a decision under section 70 to issue, or refuse to issue, a biodiversity certificate;
- (g) a decision under subsection 102(3) to exempt, or refuse to exempt, a registered biodiversity project from subsection 102(2);
- (h) a decision under subsection 121(9) to reimburse, or refuse to reimburse, a person for reasonable costs incurred by the person in complying with a notice under subsection 121(2);
- (i) a decision under section 141 to approve, or refuse to approve, the deposit of a biodiversity certificate with the Regulator;
- (j) a decision under section 144, 146, 147 or 147A to give a relinquishment notice;
- (k) a decision under subsection 150(2) to refuse to extend the period mentioned in subsection 150(1);
- (l) a decision under section 154 to make a biodiversity maintenance declaration;

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- (m) a decision under section 157 to vary or revoke, or to refuse to vary or revoke, a biodiversity maintenance declaration;
- (n) a decision under section 158 to revoke, or to refuse to revoke, a biodiversity maintenance declaration;
- (o) a decision under paragraph 162(1)(i) to comply with, or refuse, a request under that paragraph;
- (p) a decision under subsection 162(4) to remove, or not to remove, information from the Register;
- (q) a decision under section 163 to comply with, or refuse, a request not to set out a project area in the Register;
- (r) a decision under section 163A to comply with, or refuse, a request not to set out information in the Register;
- (s) a decision under a provision of the rules, or under a provision of another legislative instrument made under this Act, if the provision is prescribed by:
 - (i) the rules; or
 - (ii) that legislative instrument;for the purposes of this paragraph.

**213 Notice of decision and reconsideration rights to be given—
decisions made by delegates of the Regulator**

Scope

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

Notice of decision and reconsideration rights

- (2) The delegate must take such steps as are reasonable in the circumstances to give notice, in writing or otherwise, to each person whose interests are affected by the decision, of:
 - (a) the making of the decision; and
 - (b) the person's right to have the decision reconsidered under this Part.

Note: For notification of reviewable decisions made by the Regulator (rather than a delegate), see section 27A of the *Administrative Appeals Tribunal Act 1975*.

- (3) A failure to comply with this section does not affect the validity of the decision.

214 Applications for reconsideration of decisions made by delegates of the Regulator

Scope

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

Note: For review of decisions not made by a delegate of the Regulator, see subsection 217(2).

Application

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Regulator for the Regulator to reconsider the decision.
- (3) The application must:
- (a) be in a form approved in writing by the Regulator; and
 - (b) set out the reasons for the application; and
 - (c) be accompanied by the fee (if any) specified in the rules.
- (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 Regulator 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.

215 Reconsideration by the Regulator

- (1) Upon receiving such an application, the Regulator must:
- (a) reconsider the decision; and

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

216 Deadline for reconsideration

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

217 Review by the Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal to review a reviewable decision if the Regulator has affirmed or varied the decision under section 215.
- (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 Regulator.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Part 21—Miscellaneous

218 Simplified outline of this Part

This Part deals with miscellaneous matters.

219 Miscellaneous functions of the Regulator

The Regulator has the following functions:

- (a) to monitor compliance with this Act;
- (b) to promote compliance with this Act;
- (c) to conduct or coordinate education programs about this Act;
- (d) to advise the Minister on matters relating to this Act;
- (e) to advise the Nature Repair Committee on matters relating to the making, variation or revocation of methodology determinations or biodiversity assessment instruments;
- (f) to advise and assist persons (including Aboriginal persons and Torres Strait Islanders, other individuals and small businesses) in relation to their obligations under this Act;
- (g) to advise and assist prospective applicants (including Aboriginal persons and Torres Strait Islanders, other individuals and small businesses) in connection with ensuring that applications are in accordance with this Act;
- (h) to advise and assist the representatives of persons in relation to compliance by persons with this Act;
- (i) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about cooperative arrangements for matters relating to this Act;
- (j) to advise and assist in relation to the development of the market for:
 - (i) biodiversity certificates; or
 - (ii) other certificates, units or credits (however described, and whether issued under a law of the Commonwealth,

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a State or a Territory, or in some other way) that relate to biodiversity projects;

- (ja) to advise and assist persons (including Aboriginal persons and Torres Strait Islanders, other individuals and small businesses) for the purpose of supporting participation in the market for biodiversity certificates;
- (k) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act.

220 Treatment of trusts

- (1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

- (2) If the trust has a single trustee:
 - (a) an obligation that would otherwise be imposed on the trust by or under this Act is imposed on the trustee instead; and
 - (b) a contravention of a civil penalty provision of this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.

Trusts with multiple trustees

- (3) If the trust has 2 or more trustees:
 - (a) an obligation that would otherwise be imposed on the trust by or under this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and
 - (b) a contravention of a civil penalty provision of this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the contravention was committed, who:
 - (i) did the relevant act or made the relevant omission; or
 - (ii) aided, abetted, counselled or procured the relevant act or omission; or
 - (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

221 Rules may provide for voluntary accreditation of advisers etc.

- (1) The rules may make provision for and in relation to the voluntary accreditation of persons who give advice, or otherwise provide assistance, in relation to any of the following:
 - (a) the operation of this Act;
 - (b) the carrying out of biodiversity projects;
 - (c) the trading of biodiversity certificates.
- (2) Without limiting subsection (1), rules made for the purposes of that subsection may do any of the following:
 - (a) make it a condition of accreditation that a person pass a test relating to the person's knowledge of the scheme for biodiversity stewardship established by this Act;
 - (b) make it a condition of accreditation that a person be a fit and proper person to hold the accreditation;
 - (c) set fees for applications under the rules.
- (3) A fee set under paragraph (2)(c) must not be such as to amount to taxation.
- (4) Rules made for the purposes of subsection (1) must not require a person to be accredited in order to engage in an activity referred to in a paragraph of subsection (1).

222 Information previously given to the Regulator

If:

- (a) on a particular occasion, a person gave information to the Regulator under:
 - (i) this Act; or
 - (ii) the *Carbon Credits (Carbon Farming Initiative) Act 2011*, or a legislative instrument made under that Act; and
 - (b) the person is subsequently required or permitted, under this Act, to give the same information to the Regulator;
- the person is taken to have given the information to the Regulator on that later occasion.

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223 Delegation by the Minister

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

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

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

224 Delegation by the Secretary

- (1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Act to:
- (a) a person who is an SES employee, or acting SES employee, in the Department; or
 - (b) a person who is:
 - (i) an official of the Regulator; and
 - (ii) an SES employee, or acting SES employee.

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (1A) Despite subsection (1), the Secretary must not delegate any of the Secretary's functions or powers under Part 6 (purchase of biodiversity certificates by the Commonwealth) to a person who is an official of the Regulator.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

225 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.

226 Law relating to legal professional privilege not affected

This Act does not affect the law relating to legal professional privilege.

227 Arrangements with States and Territories

The Minister may enter into an arrangement with a relevant Minister of a State or Territory in relation 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 or Territory; and
- (b) arrangements for the exercise of the powers conferred by section 94 on relevant land registration officials of that State or Territory; and
- (c) arrangements for the exercise of the powers conferred by section 95 on relevant land registration officials of that State or Territory.

228 Liability for damages

None of the following:

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

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- (f) a delegate of the Regulator;
 - (g) an inspector;
 - (h) a person assisting an inspector;
 - (i) an audit team leader;
 - (j) a person assisting an audit team leader;
 - (k) a Nature Repair Committee member;
 - (l) a person assisting the Nature Repair Committee;
- 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:
- (m) in the performance or purported performance of any function;
or
 - (n) in the exercise or purported exercise of any power;
conferred by this Act.

229 Executive power of the Commonwealth

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

230 Notional payments by the Commonwealth

- (1) The purpose of this section is to ensure that amounts payable under this Act are notionally payable by the Commonwealth (or parts of the Commonwealth).
- (2) The Minister responsible for administering the *Public Governance, Performance and Accountability Act 2013* may give written directions for the purposes of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.
- (3) A direction under subsection (2) has effect, and must be complied with, despite any other law of the Commonwealth.
- (4) A direction under subsection (2) is not a legislative instrument.

231 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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) the Federal Court; or
 - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

232 Native title rights not affected

This Act does not affect the operation of the *Native Title Act 1993*.

233 Racial Discrimination Act not affected

This Act does not affect the operation of the *Racial Discrimination Act 1975*.

234 Administrative decisions under the rules

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

235 Revocation or variation of instruments

A provision of this Act that expressly authorises the revocation or variation of an instrument does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to other instruments under this Act.

Section 236

236 Review of operation of this Act etc.

- (1) The Minister must cause independent reviews of the operation of this Act to be undertaken.
- (2) A review under subsection (1) must include a review of:
 - (a) the extent to which this Act has achieved the objects of this Act; and
 - (aa) the extent to which the Regulator has contributed to the achievement of the objects of this Act by performing the Regulator's functions, and exercising the Regulator's powers, under this Act; and
 - (b) the operation of the Nature Repair Committee; and
 - (c) the process for making:
 - (i) methodology determinations; and
 - (ii) biodiversity assessment instruments; and
 - (d) the kinds of advice obtained by the Nature Repair Committee under section 196; and
 - (e) any other matters that the Minister directs, in writing, the review to consider.

Public consultation

- (3) A review under subsection (1) must make provision for public consultation.

Report

- (4) The persons undertaking a review under subsection (1) must give the Minister a written report of the review.
 - (5) A report of the review:
 - (a) must set out any directions given by the Minister under paragraph (2)(e); and
 - (b) may set out recommendations to the Commonwealth Government.
 - (6) The Minister must cause a copy of a report of the review to be:
 - (a) tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister; and
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- (b) published on the Department's website as soon as practicable after the report is given to the Minister.
- (7) If a report of the review sets out one or more recommendations to the Commonwealth Government:
- (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
 - (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

First review

- (8) The first review under subsection (1) must be completed within 5 years after the day determined by the Minister under subsection 11(2).

Note: The day determined by the Minister under subsection 11(2) is the first day on which applications may be made for the Regulator to approve the registration of a biodiversity project.

Subsequent reviews

- (9) Each subsequent review under subsection (1) must be completed within 5 years after the completion of the previous review.

When review is completed

- (10) For the purposes of subsections (8) and (9) a review is completed when the report of the review is given to the Minister under subsection (4).

Direction not a legislative instrument

- (11) A direction given under paragraph (2)(e) is not a legislative instrument.

Section 237

237 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

[Minister's second reading speech made in—
House of Representatives on 29 March 2023
Senate on 31 July 2023]

(45/23)