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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Clean Energy (Consequential
Amendments) Bill 2011**

No. , 2011

(Climate Change and Energy Efficiency)

**A Bill for an Act to deal with consequential matters
arising from the enactment of the *Clean Energy Act
2011*, and for other purposes**

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1 **A Bill for an Act to deal with consequential matters**
2 **arising from the enactment of the *Clean Energy Act***
3 **2011, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Clean Energy (Consequential*
7 *Amendments) Act 2011*.

8 **2 Commencement**

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

13

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	
3. Schedule 1, Part 2	1 July 2012.	1 July 2012
4. Schedule 2, Part 1	The later of: (a) the day after the Treasurer announces by notice in the <i>Gazette</i> that the States, the Australian Capital Territory and the Northern Territory have agreed to amendments made by the provision(s); and (b) the day section 3 of the <i>Clean Energy Act 2011</i> commences. A notice under paragraph (a) is not a legislative instrument.	
5. Schedule 2, Part 2	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	
6. Schedule 2, Part 3	1 July 2015.	1 July 2015
7. Schedule 3	The day after this Act receives the Royal Assent.	
8. Schedule 4	The later of: (a) the day this Act receives the Royal Assent; and (b) the day section 3 of the <i>Australian National Registry of Emissions Units Act 2011</i> commences.	
9. Schedule 5	The later of: (a) the day this Act receives the Royal Assent; and (b) the day section 3 of the <i>Carbon Credits</i>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>(Carbon Farming Initiative) Act 2011</i> commences.	

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

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

7 **3 Schedule(s)**

8 (1) Each Act, and each set of regulations, that is specified in a
9 Schedule to this Act is amended or repealed as set out in the
10 applicable items in the Schedule concerned, and any other item in a
11 Schedule to this Act has effect according to its terms.

12 (2) The amendment of any regulation under subsection (1) does not
13 prevent the regulation, as so amended, from being amended or
14 repealed by the Governor-General.
15

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1

2

Schedule 1—General amendments

3

Part 1—Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

4

5

6

Division 1—Amendments

7

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

8

9

1 Section 5

10

Insert:

11

carbon unit has the same meaning as in the *Clean Energy Act 2011*.

12

13

2 Subsection 6(2) (after paragraph (b) of the cell at table item 33, column headed “Provision of a designated service”)

14

15

Insert:

(baa) a carbon unit; or

16

3 Subsection 6(2) (paragraph (d) of the cell at table item 33, column headed “Provision of a designated service”)

17

18

After “derivatives,” insert “carbon units,”.

19

Australian National Registry of Emissions Units Act 2011

20

5 Section 4 (definition of *Administrator*)

21

Repeal the definition.

22

6 Section 4 (definition of *electronic notice transmitted to the Administrator*)

23

24

Repeal the definition.

25

7 Section 4

26

Insert:

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

3 **13 Section 4**

4 Insert:

5 *Regulator* means the Clean Energy Regulator.

6 **15 Section 5**

7 Omit “*Administrator*”, substitute “*Regulator*”.

8 **43 Subsection 85(1)**

9 Omit “his or her”, substitute “its”.

10 **44 Subsection 85(2)**

11 Omit “he or she”, substitute “the Regulator”.

12 **45 Subsection 85(2)**

13 Omit “his or her”, substitute “its”.

14 **46 Bulk amendments—references to the Administrator etc.**

15 The *Australian National Registry of Emissions Units Act 2011* is
16 amended as follows:

- 17 (a) by omitting “the Administrator” (wherever occurring) and
18 substituting “the Regulator”;
- 19 (b) by omitting “The Administrator” (wherever occurring) and
20 substituting “The Regulator”;
- 21 (c) by omitting “the Administrator’s” (wherever occurring) and
22 substituting “the Regulator’s”;
- 23 (d) by omitting “The Administrator’s” (wherever occurring) and
24 substituting “The Regulator’s”;
- 25 (e) by omitting “**Administrator**” (wherever occurring) and
26 substituting “**Regulator**”;
- 27 (f) by omitting “*Administrator*” (wherever occurring) and
28 substituting “*Regulator*”;
- 29 (g) by omitting “**Administrator’s**” (wherever occurring) and
30 substituting “**Regulator’s**”.

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

Australian Securities and Investments Commission Act 2001

47 After paragraph 12BAA(7)(k)

Insert:

(ka) a carbon unit;

48 Paragraph 12BAB(1)(g)

After “other than”, insert “a carbon unit,”.

49 Paragraph 127(2A)(e)

Omit “Carbon Credits Administrator”, substitute “Clean Energy Regulator”.

Carbon Credits (Carbon Farming Initiative) Act 2011

51 Section 4

Omit “Carbon Credits Administrator”, substitute “Clean Energy Regulator”.

52 Section 5 (definition of *Administrator*)

Repeal the definition.

53 Section 5 (definition of *electronic notice transmitted to the Administrator*)

Repeal the definition.

54 Section 5

Insert:

electronic notice transmitted to the Regulator has the meaning given by section 7.

55 Section 5 (paragraphs (a) to (e) of the definition of *entrusted public official*)

Repeal the paragraphs.

56 Section 5 (definition of *protected Administrator information*)

Repeal the definition.

1 **57 Section 5**

2 Insert:

3 *protected audit information* means protected information that was
4 obtained by a person in the person's capacity as:

- 5 (a) an audit team leader; or
6 (b) a person assisting an audit team leader.

7 **58 Section 5**

8 Insert:

9 *Regulator* means the Clean Energy Regulator.

10 **59 Subsection 7(1)**

11 Omit "*Administrator*", substitute "*Regulator*".

12 **61 Subsection 243(1)**

13 Omit "his or her", substitute "its".

14 **62 Subsection 243(2)**

15 Omit "her or she", substitute "the Regulator".

16 **63 Subsection 243(2)**

17 Omit "his or her", substitute "its".

18 **64 Part 25**

19 Repeal the Part.

20 **65 At the end of section 270**

21 Add:

22 Note: See also the *Clean Energy Regulator Act 2011*, which deals with the
23 use and disclosure of information by officials of the Clean Energy
24 Regulator.

25 **66 Section 274**

26 Repeal the section.

27 **67 Subsection 275(2)**

28 Omit "*Administrator*" (first occurring), substitute "*Regulator*".

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

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68 Subsection 275(2)

Omit “protected Administrator information”, substitute “protected audit information”.

69 Paragraphs 275(2)(a) to (e)

Repeal the paragraphs.

70 Subsection 276(1)

Omit “the Administrator is satisfied that particular protected Administrator information”, substitute “the Regulator is satisfied that particular protected audit information”.

71 Paragraph 276(1)(a)

Repeal the paragraph.

72 Subsection 276(2)

Repeal the subsection (not including the heading).

73 Paragraphs 276(3)(a) to (d)

Repeal the paragraphs.

74 Subsection 276(3)

Omit “by the Administrator”, substitute “by the Regulator”.

75 Subsection 276(3)

Omit “protected Administrator information”, substitute “protected audit information”.

76 Paragraph 276(4)(b)

Repeal the paragraph, substitute:
(b) protected audit information has been disclosed under subsection (3) to the body; and

77 Subsection 276(5)

Omit “Administrator”, substitute “Regulator”.

78 Subsection 276(6)

Repeal the subsection, substitute:

1 *Conditions*

2 (6) The Regulator may, by writing, impose conditions to be complied
3 with in relation to protected audit information disclosed under
4 subsection (3).

5 **79 Subsection 277(1)**

6 Omit “the Administrator is satisfied that particular protected
7 Administrator information”, substitute “the Regulator is satisfied that
8 particular protected audit information”.

9 **80 Subsection 277(2)**

10 Repeal the subsection (not including the heading).

11 **81 Paragraphs 277(3)(a) to (d)**

12 Repeal the paragraphs.

13 **82 Subsection 277(3)**

14 Omit “by the Administrator”, substitute “by the Regulator”.

15 **83 Subsection 277(3)**

16 Omit “protected Administrator information”, substitute “protected audit
17 information”.

18 **84 Paragraph 277(4)(b)**

19 Repeal the paragraph, substitute:

20 (b) protected audit information has been disclosed under
21 subsection (3) to the body corporate; and

22 **85 Paragraph 277(5)(a)**

23 Omit “Administrator”, substitute “Regulator”.

24 **86 Subsection 277(6)**

25 Repeal the subsection, substitute:

26 *Conditions*

27 (6) The Regulator may, by writing, impose conditions to be complied
28 with by the body corporate and its officers, employees and agents

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1 in relation to protected audit information disclosed to the body
2 corporate under subsection (3).

3 **87 Paragraphs 281(a) to (e)**

4 Repeal the paragraphs.

5 **88 Paragraphs 281(h) and (i)**

6 Omit “protected Administrator information”, substitute “protected audit
7 information”.

8 **88A Section 282 (heading)**

9 Repeal the heading, substitute:

10 **282 Disclosure for purposes of law enforcement—protected audit**
11 **information**

12 **89 Subsection 282(1)**

13 Omit “the Administrator is satisfied that disclosure of particular
14 protected Administrator information”, substitute “the Regulator is
15 satisfied that disclosure of particular protected audit information”.

16 **90 Subsection 282(2)**

17 Repeal the subsection (not including the heading).

18 **91 Paragraphs 282(3)(a) to (d)**

19 Repeal the paragraphs.

20 **92 Subsection 282(3)**

21 Omit “by the Administrator”, substitute “by the Regulator”.

22 **93 Subsection 282(3)**

23 Omit “protected Administrator information”, substitute “protected audit
24 information”.

25 **94 Paragraph 282(4)(b)**

26 Repeal the paragraph, substitute:

27 (b) protected audit information has been disclosed under
28 subsection (3) to the Department, agency, authority or police
29 force, as the case may be; and

1 **95 Paragraph 282(5)(a)**

2 Omit “Administrator”, substitute “Regulator”.

3 **96 Subsection 282(6)**

4 Repeal the subsection, substitute:

5 *Conditions*

- 6 (6) The Regulator may, by writing, impose conditions to be complied
7 with in relation to protected audit information disclosed under
8 subsection (3).

9 **97 Section 285**

10 Repeal the section.

11 **99 Bulk amendments—references to the Administrator etc.**

12 The *Carbon Credits (Carbon Farming Initiative) Act 2011* other than
13 the following provisions:

- 14 (a) the definition of *entrusted public official* in section 5;
15 (b) the definition of *protected Administrator information* in
16 section 5;
17 (c) Part 25;
18 (d) sections 274 to 277;
19 (e) sections 281 and 282;
20 (f) section 285;

21 is amended as follows:

- 22 (g) by omitting “the Administrator” (wherever occurring) and
23 substituting “the Regulator”;
24 (h) by omitting “The Administrator” (wherever occurring) and
25 substituting “The Regulator”;
26 (i) by omitting “the Administrator’s” (wherever occurring) and
27 substituting “the Regulator’s”;
28 (j) by omitting “The Administrator’s” (wherever occurring) and
29 substituting “The Regulator’s”;
30 (k) by omitting “**Administrator**” (wherever occurring) and
31 substituting “**Regulator**”;
32 (l) by omitting “**Administrator’s**” (wherever occurring) and
33 substituting “**Regulator’s**”.

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

Competition and Consumer Act 2010

100 After paragraph 44AAF(3)(c)

Insert:

(ca) the Clean Energy Regulator;

101 Paragraph 44AAF(3)(d)

Omit “(b) or (c)”, substitute “(b), (c) or (ca)”.

102 Paragraph 155AAA(12)(la)

Omit “Carbon Credits Administrator”, substitute “Clean Energy Regulator”.

Financial Management and Accountability Regulations 1997

104 Part 1 of Schedule 1 (after table item 132)

Insert:

133 Clean Energy Regulator, comprising: Chair

(a) the Chair and the other members of the Clean Energy Regulator; and

(b) the staff mentioned in section 36 of the *Clean Energy Regulator Act 2011*; and

(c) the persons whose services are made available to the Clean Energy Regulator under section 37 of that Act; and

(d) the consultants engaged under subsection 38(1) of that Act.

See Note B

105 Part 1 of Schedule 1 (table item 173)

Repeal the item.

National Greenhouse and Energy Reporting Act 2007

106 Section 7 (definition of *Greenhouse and Energy Data Officer*)

Repeal the definition.

1 **107 Section 7 (definition of *greenhouse and energy***
2 ***information*)**

3 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

4 **108 Section 7**

5 Insert:

6 *official of the Regulator* has the same meaning as in the *Clean*
7 *Energy Regulator Act 2011*.

8 **109 Section 7**

9 Insert:

10 *protected information* has the same meaning as in the *Clean*
11 *Energy Regulator Act 2011*.

12 **110 Section 7**

13 Insert:

14 *Regulator* means the Clean Energy Regulator.

15 **111 Paragraph 9(1)(b)**

16 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

17 **112 Paragraph 11(1)(b)**

18 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

19 **113 Paragraph 15(a)**

20 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

21 **114 Subsections 16(1), (3) and (4)**

22 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
23 substitute “Regulator”.

24 **115 Subsections 17(1), (2), (3), (3A) and (4)**

25 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
26 substitute “Regulator”.

27 **116 Subsections 18(1) and (3)**

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
2 substitute “Regulator”.

3 **117 Subsection 18(4)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

5 **118 Subsection 18(4)**

6 Omit “his or her”, substitute “the Regulator’s”.

7 **119 Subsection 18(5)**

8 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

9 **119A Section 19 (heading)**

10 Repeal the heading, substitute:

11 **19 Report to be given to the Regulator**

12 **120 Subsection 19(1)**

13 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
14 substitute “Regulator”.

15 **121 Subsections 19(6) and (9)**

16 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
17 substitute “Regulator”.

18 **122 Subsection 20(1)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

20 **123 Subsections 20(2) and (3)**

21 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

22 **124 Subsections 20(4) and (5)**

23 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
24 substitute “Regulator”.

25 **125 Subsection 21(1)**

26 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
27 substitute “Regulator”.

1 **126 Subsection 21(4) (note)**

2 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

3 **127 Subsection 21(6)**

4 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
5 substitute “Regulator”.

6 **128 Subsection 21A(1)**

7 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

8 **129 Subsection 21A(2) (note)**

9 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

10 **130 Subsection 21A(3)**

11 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
12 substitute “Regulator”.

13 **131 Paragraphs 22(1)(b) and (2)(b)**

14 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

15 **131A Section 22G (heading)**

16 Repeal the heading, substitute:

17 **22G Report to be given to the Regulator**

18 **132 Subsections 22G(1) and (2)**

19 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
20 substitute “Regulator”.

21 **133 Subsection 22G(5)**

22 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

23 **134 Paragraph 22H(1)(b)**

24 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

25 **135 Subsection 22K(2)**

26 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

27 **136 Paragraph 22K(5)(b)**

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

2 **137 Subsection 22KA(1)**

3 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
4 substitute “Regulator”.

5 **138 Subsection 22KA(2)**

6 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

7 **139 Subsection 22L(2)**

8 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

9 **140 Subsections 22L(3), (4) and (5)**

10 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
11 substitute “Regulator”.

12 **141 Subsections 22N(2) and (3)**

13 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

14 **142 Subsection 22N(4)**

15 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
16 substitute “Regulator”.

17 **143 Subsection 22P(2)**

18 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
19 substitute “Regulator”.

20 **144 After paragraph 23(1)(a)**

21 Insert:

22 (aa) the information is not protected information; and

23 **145 Paragraphs 23(2)(a) and (b)**

24 Repeal the paragraphs.

25 **145A Paragraph 23(2)(g)**

26 Omit “is disclosed under section 26”, substitute “was disclosed under
27 repealed section 26”.

28 **146 At the end of section 23**

1 Add:

2 Note: See also Part 3 of the *Clean Energy Regulator Act 2011* (secrecy
3 obligations of officials of the Regulator).

4 **147 Subsections 24(1) and (1A)**

5 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

6 **148 Subsection 24(1AD)**

7 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
8 substitute “Regulator”.

9 **149 Subsections 24(1AE), (1B) and (1C)**

10 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

11 **150 Subsection 24(1C)**

12 Omit “he or she”, substitute “the Regulator”.

13 **151 Subsection 24(1F)**

14 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

15 **152 Subsection 24(1G)**

16 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
17 substitute “Regulator”.

18 **153 Subsections 24(2) and (3)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

20 **153A Subsections 24(5) and (6)**

21 Repeal the subsections, substitute:

22 *Publication by States or Territories*

23 (5) A State or Territory, or an authority of a State or Territory, may
24 publish information disclosed to it under subsection 27(1) if the
25 publication of the information is required under a law of the State
26 or Territory.

27 (5A) A State or Territory, or an authority of a State or Territory, may
28 publish information disclosed to it under subsection 27(1) if the

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

- 1 information is in an aggregated form that does not disclose, either
2 directly or indirectly, information about a specific:
3 (a) registered corporation; or
4 (b) registered corporation's group; or
5 (c) non-corporate entity; or
6 (d) facility.

7 *Publication by other persons*

- 8 (6) A person may publish greenhouse and energy information
9 disclosed to it under Part 3 of the *Clean Energy Regulator Act*
10 *2011* if the information is in an aggregated form that does not
11 disclose, either directly or indirectly, information about a specific:
12 (a) registered corporation; or
13 (b) registered corporation's group; or
14 (c) non-corporate entity; or
15 (d) facility.

16 **154 Subsections 25(1), (2), (3) and (4)**

17 Omit "Greenhouse and Energy Data Officer", substitute "Regulator".

18 **155 Section 26**

19 Repeal the section.

20 **158 Subsections 27(1), (1A) and (2)**

21 Omit "Greenhouse and Energy Data Officer" (wherever occurring),
22 substitute "Regulator".

23 **159 Subsections 28(1), (2) and (3)**

24 Omit "Greenhouse and Energy Data Officer", substitute "Regulator".

25 **160 Subsection 31(1)**

26 Omit "Greenhouse and Energy Data Officer", substitute "Regulator".

27 **161 Subsection 39(1)**

28 Omit "Greenhouse and Energy Data Officer" (wherever occurring),
29 substitute "Regulator".

30 **162 Paragraph 40(1)(c)**

1 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
2 substitute “Regulator”.

3 **163 Subsection 42(2)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

5 **164 Subsections 45(1), (3) and (4)**

6 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

7 **165 Subsections 46(1) and (2)**

8 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
9 substitute “Regulator”.

10 **166 Division 1 of Part 6**

11 Repeal the Division.

12 **167 Division 2 of Part 6 (heading)**

13 Repeal the heading, substitute:

14 **Division 2—Decisions by the Regulator**

15 **167A Section 54 (heading)**

16 Repeal the heading, substitute:

17 **54 Regulator may declare facility**

18 **168 Subsection 54(1)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

20 **169 Paragraph 54(1)(b)**

21 Omit “his or her”, substitute “the Regulator’s”.

22 **170 Subsections 54(2), (3), (4) and (5)**

23 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

24 **171 Subsection 54(5)**

25 Omit “he or she” (wherever occurring), substitute “the Regulator”.

26 **171A Section 55 (heading)**

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1 Repeal the heading, substitute:

2 **55 Regulator may declare corporation etc. has operational control**

3 **172 Subsection 55(1)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

5 **173 Paragraph 55(1)(b)**

6 Omit “his or her”, substitute “the Regulator’s”.

7 **174 Paragraph 55(2)(d)**

8 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

9 **175 Subsection 55(3)**

10 Omit “Greenhouse Energy and Data Officer”, substitute “Regulator”.

11 **176 Subsections 55(4) and (5)**

12 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

13 **177 Subsection 55(5)**

14 Omit “he or she” (wherever occurring), substitute “the Regulator”.

15 **178 Section 56**

16 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

17 **179 Subsections 57(1) and (2)**

18 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

19 **180 Subsections 58(1) and (2)**

20 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

21 **181 Subsections 71(1), (2) and (4)**

22 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
23 substitute “Regulator”.

24 **182 Subsection 73(1)**

25 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

26 **183 Subsection 73(2)**

1 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
2 substitute “Regulator”.

3 **184 Subsection 73(5)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

5 **185 Subsection 73A(1)**

6 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

7 **186 Subsection 73A(2)**

8 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
9 substitute “Regulator”.

10 **187 Subsection 73A(5)**

11 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

12 **188 Subsections 74(1) and (2)**

13 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

14 **189 Subsections 74A(1) and (2)**

15 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

16 **190 Subsections 75A(1), (2), (3), (4) and (7)**

17 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

18 **191 Subsection 75A(7)**

19 Omit “Greenhouse and Energy Data Officer’s”, substitute
20 “Regulator’s”.

21 **192 Subsection 75A(8)**

22 Omit “Greenhouse and Energy Data Officer”, substitute “Regulator”.

23 ***Ozone Protection and Synthetic Greenhouse Gas***
24 ***Management Act 1989***

25 **194 After section 67A**

26 Insert:

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1 **67B Disclosure of information to the Clean Energy Regulator**

2 *Scope*

3 (1) This section applies to information obtained under this Act or the
4 regulations.

5 *Disclosure*

6 (2) The Minister may disclose the information to the Clean Energy
7 Regulator for the purposes of, or in connection with, the
8 performance of the functions, or the exercise of the powers, of the
9 Clean Energy Regulator.

10 *Other powers of disclosure not limited*

11 (3) This section does not, by implication, limit the Minister's powers
12 to disclose the information to a person other than the Clean Energy
13 Regulator.

14 ***Renewable Energy (Electricity) Act 2000***

15 **195 Subsection 5(1) (definition of *Office of the Renewable***
16 ***Energy Regulator*)**

17 Repeal the definition.

18 **196 Subsection 5(1)**

19 Insert:

20 *official of the Regulator* has the same meaning as in the *Clean*
21 *Energy Regulator Act 2011*.

22 **197 Subsection 5(1) (definition of *protected document*)**

23 Repeal the definition.

24 **198 Subsection 5(1) (definition of *protected information*)**

25 Repeal the definition.

26 **199 Subsection 5(1) (definition of *Regulator*)**

27 Omit "Renewable Energy Regulator (see section 142)", substitute
28 "Clean Energy Regulator".

1 **200 Subsection 5(1) (definition of *senior employee*)**

2 Omit “Office of the Renewable Energy Regulator”, substitute
3 “Regulator”.

4 **201 Subsection 5(1) (definition of *senior officer*)**

5 Repeal the definition, substitute:

6 *senior officer* of the Regulator means a person who:

7 (a) is a member of the staff of the Regulator; and

8 (b) either:

9 (i) is an SES employee or acting SES employee; or

10 (ii) holds or performs the duties of an Executive Level 2
11 position or an equivalent position.

12 **202 Subsection 5(1)**

13 Insert:

14 *staff of the Regulator* has the same meaning as in the *Clean*
15 *Energy Regulator Act 2011*.

16 **203 Subsection 30D(5)**

17 Omit “he or she”, substitute “the Regulator”.

18 **204 Subsection 107(1)**

19 Omit “an officer or employee of the Office of the Renewable Energy
20 Regulator”, substitute “a member of the staff of the Regulator”.

21 **205 Part 12 (heading)**

22 Repeal the heading, substitute:

23 **Part 12—Publication of information**

24 **206 Sections 126 to 133**

25 Repeal the sections.

26 **207 Part 14**

27 Repeal the Part.

28 **207A Subsection 156(1) (heading)**

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1 Repeal the heading, substitute:

2 *Delegation to senior officers of the Regulator*

3 **208 Subsection 156(1)**

4 Omit “Office of the Renewable Energy Regulator”, substitute
5 “Regulator”.

6 **209 Section 158**

7 Repeal the section.

8 **210 Paragraph 159(1)(b)**

9 Omit “the Regulator”, substitute “an official of the Regulator”.

10 **211 Subsection 159(2)**

11 Omit “the Regulator” (first occurring), substitute “an official of the
12 Regulator”.

13 **212 Subsections 159(3) and (4)**

14 Omit “the Regulator”, substitute “an official of the Regulator”.

15 ***Taxation Administration Act 1953***

16 **212A Subsection 355-65(7) in Schedule 1 (at the end of the**
17 **table)**

18 Add:

- 3 the Clean Energy Regulator is for the purpose of:
- (a) a *taxation officer seeking verification from the Regulator of information provided to the Commissioner under or for the purposes of the *Fuel Tax Act 2006*; or
 - (b) administering the *Clean Energy Act 2011* or the associated provisions (within the meaning of that Act).

1 **Division 2—Transitional provisions**

2 **214 Transitional—acts of the Greenhouse and Energy Data**
3 **Officer to be attributed to the Clean Energy Regulator**

4 (1) This item applies to anything done by, or in relation to, the Greenhouse
5 and Energy Data Officer under the *National Greenhouse and Energy*
6 *Reporting Act 2007*, or under regulations under that Act, before the
7 commencement of this item.

8 (2) The *National Greenhouse and Energy Reporting Act 2007* and those
9 regulations have effect, after that commencement, as if the thing had
10 been done by, or in relation to, the Clean Energy Regulator.

11 **215 Transitional—acts of the Renewable Energy Regulator to**
12 **be attributed to the Clean Energy Regulator**

13 (1) This item applies to anything done by, or in relation to, the Renewable
14 Energy Regulator under the *Renewable Energy (Electricity) Act 2000*,
15 or under regulations under that Act, before the commencement of this
16 item.

17 (2) The *Renewable Energy (Electricity) Act 2000* and those regulations
18 have effect, after that commencement, as if the thing had been done by,
19 or in relation to, the Clean Energy Regulator.

20 **215A Transitional—acts of the Carbon Credits Administrator**
21 **to be attributed to the Clean Energy Regulator**

22 (1) This item applies to anything done by, or in relation to, the Carbon
23 Credits Administrator under:
24 (a) the *Carbon Credits (Carbon Farming Initiative) Act 2011* or
25 regulations under that Act; or
26 (b) the *Australian National Registry of Emissions Units Act 2011*
27 or regulations under that Act;
28 before the commencement of this item.

29 (2) Those Acts and regulations have effect, after that commencement, as if
30 the thing had been done by, or in relation to, the Clean Energy
31 Regulator.

32 **216 Transitional—substitution of the Clean Energy Regulator**
33 **as a party in certain proceedings**

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- 1 (1) This item applies to proceedings to which the Greenhouse and Energy
2 Data Officer, the Renewable Energy Regulator or the Carbon Credits
3 Administrator was a party and that were pending in any court or tribunal
4 immediately before the commencement of this item.
- 5 (2) The Clean Energy Regulator is substituted for the Greenhouse and
6 Energy Data Officer, the Renewable Energy Regulator or the Carbon
7 Credits Administrator, as the case requires, from that commencement,
8 as a party to those proceedings.

9 **217 Transitional—transfer of records to the Clean Energy**
10 **Regulator**

- 11 (1) This item applies to any records or documents that:
- 12 (a) were in the possession of the Greenhouse and Energy Data
13 Officer, the Renewable Energy Regulator or the Carbon
14 Credits Administrator immediately before the
15 commencement of this item; and
- 16 (b) relate to the Greenhouse and Energy Data Officer, the
17 Renewable Energy Regulator, the Office of the Renewable
18 Energy Regulator or the Carbon Credits Administrator.
- 19 (2) The records and documents are to be transferred to the Clean Energy
20 Regulator after the commencement of this item.

21 **218 Transitional—transfer of Ombudsman investigations**

- 22 If:
- 23 (a) before the commencement of this item, a complaint was
24 made to the Ombudsman, or the Ombudsman began an
25 investigation, under the *Ombudsman Act 1976* in relation to
26 action taken by the Greenhouse and Energy Data Officer, the
27 Renewable Energy Regulator or the Carbon Credits
28 Administrator; and
- 29 (b) immediately before the commencement of this item, the
30 Ombudsman had not finally disposed of the matter in
31 accordance with the *Ombudsman Act 1976*;
- 32 the *Ombudsman Act 1976* applies after the commencement of this item
33 as if that action had been taken by the Clean Energy Regulator.

34 **219 Transitional—secrecy of information obtained under the**
35 ***National Greenhouse and Energy Reporting Act 2007***

1 Despite the amendments of section 23 of the *National Greenhouse and*
2 *Energy Reporting Act 2007* made by this Part, that section continues to
3 apply, in relation to information obtained before the commencement of
4 this item, as if those amendments had not been made.

5 **220 Transitional—secrecy of information obtained under the**
6 ***Renewable Energy (Electricity) Act 2000***

7 Despite the repeal of the following provisions of the *Renewable Energy*
8 *(Electricity) Act 2000* by this Part:

- 9 (a) the definition of *Office of the Renewable Energy Regulator*
10 in subsection 5(1);
11 (b) the definition of *protected document* in subsection 5(1);
12 (c) the definition of *protected information* in subsection 5(1);
13 (d) the definition of *Regulator* in subsection 5(1);
14 (e) subsection 126(1);
15 (f) sections 127 to 133;

16 those provisions continue to apply, in relation to:

- 17 (g) a protected document obtained or made by a person before
18 the commencement of this item; or
19 (h) protected information disclosed to, or obtained by, a person
20 before the commencement of this item;

21 as if:

- 22 (i) each reference in sections 129, 130, 131 and 132 of that Act
23 to the Regulator were a reference to the Clean Energy
24 Regulator; and
25 (j) the reference in section 129 to a person to whom Part 12 of
26 that Act applies were a reference to an official of the
27 Regulator; and
28 (k) those repeals had not happened.

29 **220A Transitional—secrecy of information obtained under**
30 ***the Carbon Credits (Carbon Farming Initiative) Act 2011***

31 Despite:

- 32 (a) the repeal of the following provisions of the *Carbon Credits*
33 *(Carbon Farming Initiative) Act 2011* by this Part:
34 (i) the definition of *Administrator* in section 5;
35 (ii) the definition of *protected Administrator information*
36 in section 5; and

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- 1 (b) the amendment of the following provisions of that Act by this
2 Part:
3 (i) the definition of *entrusted public official* in section 5;
4 (ii) Part 27;
- 5 those provisions continue to apply, in relation to protected information
6 obtained by a person, in the person's capacity as an entrusted public
7 official, before the commencement of this item as if:
8 (c) the repeals had not happened; and
9 (d) the amendments had not been made; and
10 (e) each reference in sections 271, 274, 275, 276, 277, 281, 282
11 and 285 of that Act to the Administrator were a reference to
12 the Clean Energy Regulator; and
13 (f) each reference in sections 271, 272, 273, 275, 278, 279, 280
14 and 284 to an entrusted public official were a reference to an
15 official of the Regulator.

16 **221 Transitional—documents signed by the Renewable**
17 **Energy Regulator**

- 18 (1) Despite the repeal of section 158 of the *Renewable Energy (Electricity)*
19 *Act 2000* by this Part, that section continues to apply, in relation to a
20 person who held the office of the Renewable Energy Regulator at any
21 time before the commencement of this item, as if that repeal had not
22 happened.
- 23 (2) Despite the amendments of section 159 of the *Renewable Energy*
24 *(Electricity) Act 2000* made by this Part, that section continues to apply,
25 in relation to documents or certificates signed by the Renewable Energy
26 Regulator before the commencement of this item, as if those
27 amendments had not been made.

28 **222 Transitional—references in instruments**

- 29 (1) For the purposes of this item, an *eligible instrument* is an instrument
30 that:
31 (a) was in force immediately before the commencement of this
32 item; and
33 (b) contains a reference to the Greenhouse and Energy Data
34 Officer, the Renewable Energy Regulator or the Carbon
35 Credits Administrator.

- 1 (2) The Minister may, by legislative instrument, declare that a specified
2 eligible instrument has effect as if each reference in the instrument to
3 the Greenhouse and Energy Data Officer, the Renewable Energy
4 Regulator or the Carbon Credits Administrator, as the case may be,
5 were a reference to the Clean Energy Regulator.

6 **223 Transitional—employees of the Clean Energy Regulator**

7 *Transferring employees*

- 8 (1) For the purposes of this item, a person is a *transferring employee* if:
9 (a) the person was an APS employee in:
10 (i) the Department; or
11 (ii) the Office of the Renewable Energy Regulator;
12 immediately before the transition time; and
13 (b) the person is covered by a determination that:
14 (i) is made under section 72 of the *Public Service Act 1999*;
15 and
16 (ii) causes the person, at the transition time, to become an
17 APS employee in the Clean Energy Regulator.
- 18 (2) If:
19 (a) a person is a transferring employee; and
20 (b) immediately before the transition time, a designated
21 agreement applied to the person's employment in the
22 Department or the Office of the Renewable Energy
23 Regulator, as the case may be;
24 then:
25 (c) the designated agreement (as in force immediately before the
26 transition time) covers the Commonwealth and the
27 transferring employee in relation to the transferring
28 employee's employment in the Clean Energy Regulator; and
29 (d) the designated agreement has effect after the transition time,
30 in relation to the transferring employee's employment in the
31 Clean Energy Regulator, as if it had been made by the Chair
32 of the Clean Energy Regulator on behalf of the
33 Commonwealth; and
34 (e) if:
35 (i) an enterprise agreement commences after the transition
36 time; and

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- 1 (ii) the enterprise agreement was made by the Chair of the
2 Clean Energy Regulator on behalf of the
3 Commonwealth; and
4 (iii) the enterprise agreement covers the Commonwealth and
5 the transferring employee in relation to the transferring
6 employee's employment in the Clean Energy Regulator;
7 paragraphs (c) and (d) cease to apply in relation to the
8 transferring employee when the enterprise agreement
9 commences.

10 (3) If:

- 11 (a) a person is a transferring employee; and
12 (b) immediately before the transition time, a determination under
13 subsection 24(1) of the *Public Service Act 1999* applied to
14 the person's employment in:
15 (i) the Department; or
16 (ii) the Office of the Renewable Energy Regulator;

17 then:

- 18 (c) the determination (to the extent to which it relates to the
19 transferring employee) has effect after the transition time, in
20 relation to the transferring employee's employment in the
21 Clean Energy Regulator, as if:
22 (i) the determination had been made by the Chair of the
23 Clean Energy Regulator; and
24 (ii) the determination were applicable to the person's
25 employment in the Clean Energy Regulator; and
26 (d) paragraph (c) does not prevent the variation or revocation of
27 the determination.

28 *New employees*

29 (4) For the purposes of this item, a person is a *new employee* if:

- 30 (a) the person is an APS employee in the Clean Energy
31 Regulator; and
32 (b) the person is not a transferring employee.

33 (5) If:

- 34 (a) a designated agreement covers the Commonwealth because
35 of subitem (2); and

- 1 (b) after the transition time, a person becomes a new employee;
2 and
3 (c) either:
4 (i) the designated agreement would have covered the
5 Commonwealth and the new employee in relation to the
6 new employee's employment in the Department if the
7 new employee had been an APS employee at the same
8 level in the Department immediately before the
9 transition time; or
10 (ii) the designated agreement would have covered the
11 Commonwealth and the new employee in relation to the
12 new employee's employment in the Office of the
13 Renewable Energy Regulator if the new employee had
14 been an APS employee at the same level in the Office of
15 the Renewable Energy Regulator immediately before
16 the transition time; and
17 (d) the Chair of the Clean Energy Regulator, by written notice
18 given to the new employee before or within 14 days after the
19 person becomes a new employee, determines that the
20 designated agreement is applicable to the new employee for
21 the purposes of this subitem from the time when the person
22 becomes a new employee;
23 then:
24 (e) the designated agreement (as in force immediately before the
25 transition time) covers the Commonwealth and the new
26 employee in relation to the new employee's employment in
27 the Clean Energy Regulator; and
28 (f) the designated agreement has effect after the transition time,
29 in relation to the new employee's employment in the Clean
30 Energy Regulator, as if it had been made by the Chair of the
31 Clean Energy Regulator on behalf of the Commonwealth;
32 and
33 (g) if:
34 (i) an enterprise agreement commences after the transition
35 time; and
36 (ii) the enterprise agreement was made by the Chair of the
37 Clean Energy Regulator on behalf of the
38 Commonwealth; and

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- 1 (iii) the enterprise agreement covers the Commonwealth and
2 the new employee in relation to the new employee's
3 employment in the Clean Energy Regulator;
4 paragraphs (e) and (f) cease to apply in relation to the new
5 employee when the enterprise agreement commences.

6 *Delegation*

- 7 (6) The Chair of the Clean Energy Regulator may, in writing, delegate the
8 power conferred by paragraph (5)(d) to:
9 (a) a member of the Clean Energy Regulator; or
10 (b) a person who is:
11 (i) a member of the staff of the Clean Energy Regulator;
12 and
13 (ii) an SES employee or acting SES employee; or
14 (c) a person who is:
15 (i) a member of the staff of the Clean Energy Regulator;
16 and
17 (ii) an APS employee who holds or performs the duties of
18 an Executive Level 2 position or an equivalent position;
19 or
20 (d) a person who is:
21 (i) an APS employee in the Department; and
22 (ii) a person assisting the Clean Energy Regulator under
23 section 37 of the *Clean Energy Regulator Act 2011*.

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

26 *Legislative instrument*

- 27 (7) A determination made under paragraph (5)(d) is not a legislative
28 instrument.

29 *Definitions*

- 30 (8) In this item:
31 ***commence***, in relation to an enterprise agreement, means begin to
32 operate.
33 ***covers*** has the same meaning as in the *Fair Work Act 2009*.
34 ***designated agreement*** means:

- 1 (a) the *Department of Climate Change Collective Agreement*
2 *2009-2011*; or
3 (b) the *Office of the Renewable Energy Regulator Enterprise*
4 *Agreement 2009-2011*; or
5 (c) an enterprise agreement.

6 *enterprise agreement* has the same meaning as in the *Fair Work Act*
7 *2009*.

8 *transition time* means the commencement of this item.

9 **224 Transitional—regulations relating to the transfer of APS**
10 **employees to the Clean Energy Regulator**

11 The Governor-General may make regulations providing for matters of a
12 transitional nature in relation to the transfer of APS employees from:

- 13 (a) the Department; or
14 (b) the Office of the Renewable Energy Regulator;
15 to the Clean Energy Regulator.

16 **225 Transitional—employees of the Climate Change**
17 **Authority**

18 *Transferring employees*

- 19 (1) For the purposes of this item, a person is a *transferring employee* if:
20 (a) the person was an APS employee in:
21 (i) the Department; or
22 (ii) the Office of the Renewable Energy Regulator;
23 immediately before the transition time; and
24 (b) the person is covered by a determination that:
25 (i) is made under section 72 of the *Public Service Act 1999*;
26 and
27 (ii) causes the person, at the transition time, to become an
28 APS employee in the Climate Change Authority.
- 29 (2) If:
30 (a) a person is a transferring employee; and
31 (b) immediately before the transition time, a designated
32 agreement applied to the person's employment in the
33 Department or the Office of the Renewable Energy
34 Regulator, as the case may be;
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- 1 then:
- 2 (c) the designated agreement (as in force immediately before the
- 3 transition time) covers the Commonwealth and the
- 4 transferring employee in relation to the transferring
- 5 employee's employment in the Climate Change Authority;
- 6 and
- 7 (d) the designated agreement has effect after the transition time,
- 8 in relation to the transferring employee's employment in the
- 9 Climate Change Authority, as if it had been made by the
- 10 Chief Executive Officer of the Climate Change Authority on
- 11 behalf of the Commonwealth; and
- 12 (e) if:
- 13 (i) an enterprise agreement commences after the transition
- 14 time; and
- 15 (ii) the enterprise agreement was made by the Chief
- 16 Executive Officer of the Climate Change Authority on
- 17 behalf of the Commonwealth; and
- 18 (iii) the enterprise agreement covers the Commonwealth and
- 19 the transferring employee in relation to the transferring
- 20 employee's employment in the Climate Change
- 21 Authority;
- 22 paragraphs (c) and (d) cease to apply in relation to the
- 23 transferring employee when the enterprise agreement
- 24 commences.
- 25 (3) If:
- 26 (a) a person is a transferring employee; and
- 27 (b) immediately before the transition time, a determination under
- 28 subsection 24(1) of the *Public Service Act 1999* applied to
- 29 the person's employment in:
- 30 (i) the Department; or
- 31 (ii) the Office of the Renewable Energy Regulator;
- 32 then:
- 33 (c) the determination (to the extent to which it relates to the
- 34 transferring employee) has effect after the transition time, in
- 35 relation to the transferring employee's employment in the
- 36 Climate Change Authority, as if:
- 37 (i) the determination had been made by the Chief
- 38 Executive Officer of the Climate Change Authority; and
-

- 1 (ii) the determination were applicable to the person's
2 employment in the Climate Change Authority; and
3 (d) paragraph (c) does not prevent the variation or revocation of
4 the determination.

5 *New employees*

- 6 (4) For the purposes of this item, a person is a *new employee* if:
7 (a) the person is an APS employee in the Climate Change
8 Authority; and
9 (b) the person is not a transferring employee.
- 10 (5) If:
11 (a) a designated agreement covers the Commonwealth because
12 of subitem (2); and
13 (b) after the transition time, a person becomes a new employee;
14 and
15 (c) either:
16 (i) the designated agreement would have covered the
17 Commonwealth and the new employee in relation to the
18 new employee's employment in the Department if the
19 new employee had been an APS employee at the same
20 level in the Department immediately before the
21 transition time; or
22 (ii) the designated agreement would have covered the
23 Commonwealth and the new employee in relation to the
24 new employee's employment in the Office of the
25 Renewable Energy Regulator if the new employee had
26 been an APS employee at the same level in the Office of
27 the Renewable Energy Regulator immediately before
28 the transition time; and
29 (d) the Chief Executive Officer of the Climate Change Authority,
30 by written notice given to the new employee before or within
31 14 days after the person becomes a new employee,
32 determines that the designated agreement is applicable to the
33 new employee for the purposes of this subitem from the time
34 when the person becomes a new employee;
- 35 then:
36 (e) the designated agreement (as in force immediately before the
37 transition time) covers the Commonwealth and the new

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- 1 employee in relation to the new employee's employment in
2 the Climate Change Authority; and
- 3 (f) the designated agreement has effect after the transition time,
4 in relation to the new employee's employment in the Climate
5 Change Authority, as if it had been made by the Chief
6 Executive Officer of the Climate Change Authority on behalf
7 of the Commonwealth; and
- 8 (g) if:
- 9 (i) an enterprise agreement commences after the transition
10 time; and
- 11 (ii) the enterprise agreement was made by the Chief
12 Executive Officer of the Climate Change Authority on
13 behalf of the Commonwealth; and
- 14 (iii) the enterprise agreement covers the Commonwealth and
15 the new employee in relation to the new employee's
16 employment in the Climate Change Authority;
- 17 paragraphs (e) and (f) cease to apply in relation to the new
18 employee when the enterprise agreement commences.

19 *Delegation*

- 20 (6) The Chief Executive Officer of the Climate Change Authority may, in
21 writing, delegate the power conferred by paragraph (5)(d) to:
- 22 (a) a person who is:
- 23 (i) a member of the staff of the Climate Change Authority;
24 and
- 25 (ii) an SES employee or acting SES employee; or
- 26 (b) a person who is:
- 27 (i) an SES employee, or acting SES employee, in the
28 Department; and
- 29 (ii) a person assisting the Climate Change Authority under
30 section 53 of the *Climate Change Authority Act 2011*; or
- 31 (c) a person who:
- 32 (i) is an APS employee in the Department; and
- 33 (ii) is a person assisting the Climate Change Authority
34 under section 53 of the *Climate Change Authority Act*
35 *2011*; and
- 36 (iii) holds or performs the duties of an Executive Level 2
37 position or an equivalent position.

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

3 *Legislative instrument*

4 (7) A determination made under paragraph (5)(d) is not a legislative
5 instrument.

6 *Definitions*

7 (8) In this item:

8 *commence*, in relation to an enterprise agreement, means begin to
9 operate.

10 *covers* has the same meaning as in the *Fair Work Act 2009*.

11 *designated agreement* means:

12 (a) the *Department of Climate Change Collective Agreement*
13 *2009-2011*; or

14 (b) the *Office of the Renewable Energy Regulator Enterprise*
15 *Agreement 2009-2011*; or

16 (c) an enterprise agreement.

17 *enterprise agreement* has the same meaning as in the *Fair Work Act*
18 *2009*.

19 *transition time* means the start of 1 July 2012.

20 **226 Transitional—regulations relating to the transfer of APS**
21 **employees to the Climate Change Authority**

22 The Governor-General may make regulations providing for matters of a
23 transitional nature in relation to the transfer of APS employees from:

24 (a) the Department; or

25 (b) the Office of the Renewable Energy Regulator;

26 to the Climate Change Authority.

27 **227 Separate agreements relating to employment**

28 (1) If either or both of the following conditions are satisfied:

29 (a) under either or both of subitems 223(2) and (5), a designated
30 agreement covers the Commonwealth and one or more
31 employees in relation to their employment in the Clean
32 Energy Regulator;

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-
- 1 (b) under either or both of subitems 225(2) and (5), a designated
2 agreement covers the Commonwealth and one or more
3 employees in relation to their employment in the Climate
4 Change Authority;
- 5 the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and*
6 *Consequential Amendments) Act 2009* have effect as if the following
7 were separate agreements:
- 8 (c) the designated agreement, in so far as it has the coverage
9 mentioned in paragraph (a);
- 10 (d) the designated agreement, in so far as it has the coverage
11 mentioned in paragraph (b);
- 12 (e) the designated agreement, in so far as it has neither the
13 coverage mentioned in paragraph (a) nor the coverage
14 mentioned in paragraph (b).

15 **Definitions**

16 (2) In this item:

17 ***covers*** has the same meaning as in the *Fair Work Act 2009*.

18 ***designated agreement*** means:

- 19 (a) the *Department of Climate Change Collective Agreement*
20 *2009-2011*; or
- 21 (b) the *Office of the Renewable Energy Regulator Enterprise*
22 *Agreement 2009-2011*; or
- 23 (c) an enterprise agreement.

24 ***enterprise agreement*** has the same meaning as in the *Fair Work Act*
25 *2009*.

26 **228 Transitional—regulations**

27 The Governor-General may make regulations in relation to transitional
28 matters arising out of the amendments made by this Part.
29

1

2 **Part 2—Amendments commencing on 1 July 2012**

3 **Division 1—Amendments**

4 *Australian National Registry of Emissions Units Act 2011*

5 **229 Section 3**

6 Omit:

7

- Entries may be made in Registry accounts for:
 - (a) Australian carbon credit units; and
 - (b) Kyoto units; and
 - (c) prescribed international units.

8

9

10

11

substitute:

12

- Entries may be made in Registry accounts for:
 - (a) carbon units; and
 - (b) Australian carbon credit units; and
 - (c) Kyoto units; and
 - (d) prescribed international units.

13

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17 **230 Section 4**

18

Insert:

19

carbon unit has the same meaning as in the *Clean Energy Act 2011*.

20

21 **231 Section 4**

22

Insert:

1 *fixed charge year* has the same meaning as in the *Clean Energy*
2 *Act 2011*.

3 **232 Section 4 (definition of *hold*)**

4 Repeal the definition, substitute:

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

7 **233 Section 4**

8 Insert:

9 *Information Database* has the same meaning as in the *Clean*
10 *Energy Act 2011*.

11 **234 Section 4 (definition of *issue*)**

12 Repeal the definition, substitute:

13 *issue*:

14 (a) in relation to a carbon unit—has the same meaning as in the
15 *Clean Energy Act 2011*; or

16 (b) in relation to an Australian carbon credit unit—has the same
17 meaning as in the *Carbon Credits (Carbon Farming*
18 *Initiative) Act 2011*.

19 **235 Section 4 (before paragraph (a) of the definition of**
20 ***registered holder*)**

21 Insert:

22 (aa) a carbon unit; or

23 **236 Section 4**

24 Insert:

25 *vintage year* has the same meaning as in the *Clean Energy Act*
26 *2011*.

27 **237 Paragraph 9(4)(a)**

28 Omit “Australian carbon credit units”, substitute “carbon units,
29 Australian carbon credit units and prescribed international units”.

30 **238 Paragraph 11(5)(a)**

1 After “any”, insert “carbon units or”.

2 **239 After section 14**

3 Insert:

4 **14A Units in certain accounts cannot be surrendered**

5 (1) The regulations may provide that, if there is an entry for a Kyoto
6 unit in a specified Commonwealth Registry account, the unit
7 cannot be surrendered under the *Clean Energy Act 2011*.

8 (2) Regulations made for the purposes of subsection (1) have effect
9 despite any other provision of the *Clean Energy Act 2011*.

10 **240 After paragraph 15(2)(a)**

11 Insert:

12 (aa) there are no entries for any carbon units in the account; and

13 **241 After subsection 16(2)**

14 Insert:

15 *Cancellation or transfer of units*

16 (2A) The regulations may provide that, if immediately before the
17 Regulator closes a Registry account under regulations made for the
18 purposes of subsection (1), there is an entry for a carbon unit in the
19 account, the unit is cancelled.

20 **241A Subsection 16(3) (heading)**

21 Repeal the heading.

22 **242 Before subsection 17(1)**

23 Insert:

24 *Carbon units*

25 (1A) An entry for a carbon unit in a Registry account may be made in
26 accordance with the *Clean Energy Act 2011*.

27 **242A Before subsection 19(4)**

28 Insert:

1 (3B) The Regulator must not exercise the power conferred by
2 subsection (1) of this section in a manner contrary to section 103A
3 of the *Clean Energy Act 2011*.

4 **242B Before subsection 22(5)**

5 Insert:

6 (4B) The court must not make an order that is contrary to section 103A
7 of the *Clean Energy Act 2011*.

8 **243 Before subparagraph 26(3)(a)(i)**

9 Insert:

10 (ia) carbon units; or

11 **244 Before paragraph 28A(1)(a)**

12 Insert:

13 (aa) carbon units; or

14 **245 After paragraph 28A(4)(a)**

15 Insert:

16 (aa) anything in the *Clean Energy Act 2011*; or

17 **246 Before paragraph 28B(1)(a)**

18 Insert:

19 (aa) carbon units; or

20 **247 After paragraph 28B(11)(a)**

21 Insert:

22 (aa) anything in the *Clean Energy Act 2011*; or

23 **248 Subsection 28B(11) (at the end of the note)**

24 Add:

25 ; and (e) subsection 109(2) of the *Clean Energy Act 2011*.

26 **249 After paragraph 28C(17)(a)**

27 Insert:

28 (aa) anything in the *Clean Energy Act 2011*; or

29 **250 Subparagraph 28D(5)(a)(ii)**

1 After “issue any”, insert “carbon units or”.

2 **251 Paragraph 28D(5)(b)**

3 Repeal the paragraph, substitute:

4 (b) none of the following notices have effect:

5 (i) a notice to surrender eligible emissions units under
6 section 122 of the *Clean Energy Act 2011*;

7 (ii) a notice to relinquish carbon units under section 210 of
8 the *Clean Energy Act 2011*;

9 (iii) a notice to relinquish Australian carbon credit units
10 under section 175 of the *Carbon Credits (Carbon*
11 *Farming Initiative) Act 2011*.

12 **252 After paragraph 28D(16)(a)**

13 Insert:

14 (aa) anything in the *Clean Energy Act 2011*; or

15 **253 Section 58**

16 Repeal the section, substitute:

17 **58 Simplified outline**

18 The following is a simplified outline of this Part:

- | |
|--|
| <p>19 • The Regulator must publish certain information about:</p> <p>20 (a) the holders of Registry accounts; and</p> <p>21 (b) carbon units; and</p> <p>22 (c) Kyoto units; and</p> <p>23 (d) prescribed international units.</p> |
|--|

24 **254 After section 61**

25 Insert:

1 **61A Information about number of voluntarily cancelled carbon**
2 **units**

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

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

8 **61B Information about number of voluntarily cancelled Australian**
9 **carbon credit units**

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

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

15 **255 At the end of Part 5**

16 Add:

17 **63A Number of voluntarily cancelled units to be entered in the**
18 **Information Database**

19 *Scope*

- 20 (1) This section applies if there is an entry for a person in the
21 Information Database in relation to an eligible financial year
22 (within the meaning of the *Clean Energy Act 2011*).

23 *Carbon units*

- 24 (2) As soon as practicable after one or more carbon units held by the
25 person are cancelled under section 64A, the Regulator must enter
26 in the Information Database the total number of carbon units
27 cancelled.

28 *Australian carbon credit units*

- 29 (3) As soon as practicable after one or more Australian carbon credit
30 units held by the person are cancelled under section 64B, the

1 Regulator must enter in the Information Database the total number
2 of Australian carbon credit units cancelled.

3 *Kyoto units*

4 (4) As soon as practicable after one or more Kyoto units held by the
5 person are transferred under section 65 to a voluntary cancellation
6 account, the Regulator must enter in the Information Database the
7 total number of Kyoto units transferred.

8 *Prescribed international units*

9 (5) As soon as practicable after one or more prescribed international
10 units held by the person are cancelled under section 66, the
11 Regulator must enter in the Information Database the total number
12 of prescribed international units cancelled.

13 **256 Section 64**

14 Repeal the section, substitute:

15 **64 Simplified outline**

16 The following is a simplified outline of this Part:

- | |
|---|
| <p>17 • If a person is the registered holder of one or more carbon
18 units, the person may request the Regulator to cancel any or
19 all of those units. However, this rule does not apply to a unit
20 that was issued for a fixed charge and has a vintage year that
21 is a fixed charge year.</p> <p>22 • If a person is the registered holder of one or more Australian
23 carbon credit units, the person may request the Regulator to
24 cancel any or all of those units.</p> <p>25 • If a person is the registered holder of one or more Kyoto units,
26 the person may request the Regulator to transfer to a voluntary
27 cancellation account any or all of those units.</p> <p>28 • If a person is the registered holder of one or more prescribed
29 international units, the person may request the Regulator to
30 cancel any or all of those units.</p> |
|---|

1 **64A Voluntary cancellation of carbon units**

2 (1) If a person is the registered holder of one or more carbon units, the
3 person may, by electronic notice transmitted to the Regulator,
4 request the Regulator to cancel any or all of those units.

5 (2) A notice under subsection (1) must:

6 (a) specify the carbon unit or units that are to be cancelled; and

7 (b) specify the account number or account numbers of the
8 person's Registry account, or the person's Registry accounts,
9 in which there is an entry or entries for the carbon unit or
10 units that are to be cancelled.

11 (3) A person is not entitled to request the Regulator to cancel a carbon
12 unit that:

13 (a) was issued in accordance with section 100 of the *Clean*
14 *Energy Act 2011*; or

15 (b) has a vintage year that is a fixed charge year.

16 (4) If the Regulator receives a notice under subsection (1) in relation to
17 a carbon unit:

18 (a) the unit is cancelled; and

19 (b) the Regulator must remove the entry for the unit from the
20 person's Registry account in which there is an entry for the
21 unit.

22 (5) The Registry must set out a record of each notice under
23 subsection (1).

24 **64B Voluntary cancellation of Australian carbon credit units**

25 (1) If a person is the registered holder of one or more Australian
26 carbon credit units, the person may, by electronic notice
27 transmitted to the Regulator, request the Regulator to cancel any or
28 all of those units.

29 (2) A notice under subsection (1) must:

30 (a) specify the Australian carbon credit unit or units that are to
31 be cancelled; and

32 (b) specify the account number or account numbers of the
33 person's Registry account, or the person's Registry accounts,

- 1 in which there is an entry or entries for the Australian carbon
2 credit unit or units that are to be cancelled.
- 3 (3) If the Regulator receives a notice under subsection (1) in relation to
4 an Australian carbon credit unit:
- 5 (a) the unit is cancelled; and
6 (b) the Regulator must remove the entry for the unit from the
7 person's Registry account in which there is an entry for the
8 unit; and
9 (c) if the unit is a Kyoto Australian carbon credit unit:
- 10 (i) the Minister must, by written notice given to the
11 Regulator, direct the Regulator to transfer a Kyoto unit
12 from a Commonwealth holding account to a voluntary
13 cancellation account before the end of the true-up period
14 for the relevant commitment period; and
15 (ii) the Regulator must comply with a direction under
16 subparagraph (i).
- 17 (4) The Registry must set out a record of each notice under
18 subsection (1).

19 ***Australian Securities and Investments Commission Act 2001***

20 **256A At the end of subsection 127(2A)**

21 Add:

22 ; (f) the Climate Change Authority.

23 ***Carbon Credits (Carbon Farming Initiative) Act 2011***

24 **257 Section 163**

25 Repeal the section.

26 **258 Part 14**

27 Repeal the Part.

28 **258A Section 306**

29 Repeal the section, substitute:

1 **306 Periodic reviews of operation of this Act etc.**

- 2 (1) The Climate Change Authority must conduct reviews of the
3 operation of:
4 (a) this Act; and
5 (b) the regulations; and
6 (c) other instruments made under this Act.

7 *Public consultation*

- 8 (2) A review under subsection (1) must make provision for public
9 consultation.

10 *Report*

- 11 (3) The Climate Change Authority must:
12 (a) give the Minister a report of the review; and
13 (b) as soon as practicable after giving the report to the Minister,
14 publish the report on the Climate Change Authority's
15 website.
- 16 (4) The Minister must cause copies of a report under subsection (3) to
17 be tabled in each House of the Parliament within 15 sitting days of
18 that House after the review is completed.

19 *First review*

- 20 (5) The first review under subsection (1) must be completed before the
21 end of 31 December 2014.

22 *Subsequent reviews*

- 23 (6) Each subsequent review under subsection (1) must be completed
24 within 3 years after the deadline for completion of the previous
25 review.
- 26 (7) For the purposes of subsections (4), (5) and (6), a review is
27 completed when the report of the review is given to the Minister
28 under subsection (3).

29 *Recommendations*

- 30 (8) A report of a review under subsection (1) may set out
31 recommendations to the Commonwealth Government.

- 1 (9) In formulating a recommendation that the Commonwealth
2 Government should take particular action, the Climate Change
3 Authority must analyse the costs and benefits of that action.
- 4 (10) Subsection (9) does not prevent the Climate Change Authority
5 from taking other matters into account in formulating a
6 recommendation.
- 7 (11) If a report of a review under subsection (1) sets out one or more
8 recommendations to the Commonwealth Government, the report
9 must set out the Climate Change Authority's reasons for those
10 recommendations.

11 *Government response to recommendations*

- 12 (12) If a report of a review under subsection (1) sets out one or more
13 recommendations to the Commonwealth Government:
14 (a) as soon as practicable after receiving the report, the Minister
15 must cause to be prepared a statement setting out the
16 Commonwealth Government's response to each of the
17 recommendations; and
18 (b) within 6 months after receiving the report, the Minister must
19 cause copies of the statement to be tabled in each House of
20 the Parliament.
- 21 (13) The Commonwealth Government's response to the
22 recommendations may have regard to the views of the following:
23 (a) the Climate Change Authority;
24 (b) the Clean Energy Regulator;
25 (c) such other persons as the Minister considers relevant.

26 ***Competition and Consumer Act 2010***

27 **258B Before paragraph 44AAF(3)(d)**

28 Insert:

- 29 (cb) the Climate Change Authority;

30 **258C Paragraph 44AAF(3)(d)**

31 Omit "(c) or (ca)", substitute "(c), (ca) or (cb)".

32 **258D After paragraph 155AAA(12)(la)**

See Note B

1 ***National Greenhouse and Energy Reporting Act 2007***

2 **261A Section 3 (heading)**

3 Repeal the heading, substitute:

4 **3 Objects**

5 **262 Section 3**

6 Before “The”, insert “(1)”.

7 **263 Section 3**

8 Before “object”, insert “first”.

9 **264 Paragraph 3(a)**

10 Repeal the paragraph.

11 **265 At the end of section 3**

12 Add:

13 (2) The second object of this Act is to underpin the *Clean Energy Act*
14 *2011* by imposing various registration, reporting and
15 record-keeping requirements.

16 **266 Section 4**

17 Before “This Act”, insert “(1)”.

18 **267 Section 4**

19 After “This Act”, insert “(except to the extent to which it underpins the
20 *Clean Energy Act 2011*)”.

21 **268 At the end of section 4**

22 Add:

23 (2) To the extent to which this Act underpins the *Clean Energy Act*
24 *2011*, this Act relies on the same legislative powers that support the
25 *Clean Energy Act 2011*.

1 **269 Section 5**

2 Before “This Act”, insert “(1)”.

3 **270 Subparagraph 5(a)(i)**

4 Repeal the subparagraph.

5 **271 Paragraph 5(b)**

6 Omit “this section”, substitute “this subsection”.

7 **272 At the end of section 5**

8 Add:

- 9 (2) This Act is intended to apply to the exclusion of a law of a State or
10 Territory, or a part of such a law:
- 11 (a) that provides for the reporting or disclosure of information
12 related to greenhouse gas emissions; and
 - 13 (b) that the regulations provide is a law, or part of a law, to
14 which this subsection applies;
- 15 so far as the law, or part of the law, would otherwise apply in
16 relation to a person other than:
- 17 (c) a local governing body; or
 - 18 (d) an authority of a State or Territory.

19 **273 After section 5**

20 Insert:

21 **5A Crown to be bound**

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

27 **274 Section 6**

28 Repeal the section, substitute:

1 **6 Extension to external Territories**

2 This Act extends to every external Territory.

3 **6A Extension to exclusive economic zone and continental shelf**

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

7 **6B Extension to Joint Petroleum Development Area**

8 This Act extends to the Joint Petroleum Development Area.

9 **6C Application to foreign ships**

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

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

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

17 **275 Section 7**

18 Insert:

19 *activity* includes:

- 20 (a) a condition; or
21 (b) a circumstance; or
22 (c) a state of affairs;

23 relating to:

- 24 (d) solid waste; or
25 (e) carbon capture and storage; or
26 (f) other storage; or
27 (g) stockpiling; or
28 (h) any other matter or thing.

29 **276 Section 7**

30 Insert:

1 ***approved by the Regulator*** means approved by the Regulator, in
2 writing, for the purposes of the provision in which the term occurs.

3 Note: For variation and revocation, see subsection 33(3) of the *Acts*
4 *Interpretation Act 1901*.

5 **277 Section 7**

6 Insert:

7 ***carbon capture and storage*** means:

- 8 (a) the storage of a greenhouse gas substance in a part of a
9 geological formation; or
10 (b) the injection of a greenhouse gas substance into a part of a
11 geological formation for the purposes of such storage; or
12 (c) the capture, compression, processing, offloading,
13 transportation or piped conveyance of a greenhouse gas
14 substance, where the compression, processing, offloading,
15 transportation or piped conveyance is for the purposes of
16 such storage.

17 An expression used in this definition has the same meaning as in
18 the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
19 For this purpose, assume that each reference in the definition of
20 ***greenhouse gas substance*** in section 7 of that Act to a prescribed
21 greenhouse gas were a reference to a greenhouse gas (within the
22 meaning of this Act).

23 **278 Section 7 (definition of *carbon dioxide equivalence*)**

24 Repeal the definition, substitute:

25 ***carbon dioxide equivalence***:

- 26 (a) of an amount of greenhouse gas—means the amount of the
27 gas multiplied by a value specified in the regulations in
28 relation to that kind of greenhouse gas; or
29 (b) of an amount of potential greenhouse gas emissions
30 embodied in an amount of natural gas—has the meaning
31 given by section 7C.

32 **280 Section 7**

33 Insert:

34 ***designated generation facility*** means a facility that is:

- 1 (a) attributable to the industry sector mentioned in item 54 of
2 Schedule 2 to the *National Greenhouse and Energy*
3 *Reporting Regulations 2008* (which deals with electricity
4 generation); and
5 (b) not a vertically integrated production process (within the
6 meaning of those regulations).

7 **281 Section 7**

8 Insert:

9 *eligible financial year* has the same meaning as in the *Clean*
10 *Energy Act 2011*.

11 **282 Section 7 (definition of *emission*)**

12 Repeal the definition, substitute:

13 *emission* of greenhouse gas means:

- 14 (a) a scope 1 emission of greenhouse gas; or
15 (b) a scope 2 emission of greenhouse gas.

16 **283 Section 7**

17 Insert:

18 *emissions number* has the same meaning as in the *Clean Energy*
19 *Act 2011*.

20 **284 Section 7**

21 Insert:

22 *executive officer* of a body corporate means:

- 23 (a) a director of the body corporate; or
24 (b) the chief executive officer (however described) of the body
25 corporate; or
26 (c) the chief financial officer (however described) of the body
27 corporate; or
28 (d) the secretary of the body corporate.

29 **285 Section 7**

30 Insert:

1 *financial control liability transfer certificate* means a certificate
2 issued under section 87 of the *Clean Energy Act 2011*.

3 **286 Section 7**

4 Insert:

5 *fixed charge year* has the same meaning as in the *Clean Energy*
6 *Act 2011*.

7 **287 Section 7**

8 Insert:

9 *foreign country* has the same meaning as in the *Clean Energy Act*
10 *2011*.

11 **288 Section 7**

12 Insert:

13 *foreign person* means any of the following:

- 14 (a) an individual who is not ordinarily resident in Australia;
15 (b) a body corporate that:
16 (i) is incorporated outside Australia; or
17 (ii) is an authority of a foreign country;
18 (c) a corporation sole that:
19 (i) is incorporated outside Australia; or
20 (ii) is an authority of a foreign country;
21 (d) a body politic of a foreign country;
22 (e) a trust, where the trustee, or a majority of the trustees, are
23 covered by any or all of the above paragraphs.

24 **289 Section 7 (definition of *greenhouse and energy audit*)**

25 Omit “74A”, substitute “74C”.

26 **290 Section 7 (definition of *greenhouse gas*)**

27 Repeal the definition, substitute:

28 *greenhouse gas* has the meaning given by section 7A.

29 **291 Section 7 (paragraph (b) of the definition of *greenhouse***
30 ***gas project*)**

1 Omit “regulations;”, substitute “regulations.”.

2 **292 Section 7 (definition of *greenhouse gas project*)**

3 Omit all the words from and including “but” to the end of the definition.

4 **293 Section 7 (definition of *group*)**

5 Omit “subsection 8(1)”, substitute “section 8”.

6 **294 Section 7 (definition of *innocent passage*)**

7 Repeal the definition.

8 **295 Section 7**

9 Insert:

10 *interim emissions number* has the same meaning as in the *Clean*
11 *Energy Act 2011*.

12 **296 Section 7**

13 Insert:

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

16 **297 Section 7 (definition of *joint venture*)**

17 Repeal the definition, substitute:

18 *joint venture* means an unincorporated enterprise carried on by 2
19 or more persons in common otherwise than in partnership.

20 **298 Section 7**

21 Insert:

22 *liable entity* has the same meaning as in the *Clean Energy Act*
23 *2011*.

24 **299 Section 7**

25 Insert:

26 *local governing body* means a local governing body established by
27 or under a law of a State or Territory.

1 **300 Section 7 (definition of *member*)**

2 Before “has”, insert “, in relation to a group,”.

3 **301 Section 7**

4 Insert:

5 *natural gas* has the meaning given by the regulations.

6 **303 Section 7**

7 Insert:

8 *non-group entity* means a person who is not a member of a
9 controlling corporation’s group.

10 **304 Section 7 (definition of *oil or gas extraction activity*)**

11 Repeal the definition.

12 **305 Section 7**

13 Insert:

14 *operation*, in relation to a facility, includes the subsistence of the
15 facility.

16 **307 Section 7 (definition of *operational control*)**

17 Omit “11”, substitute “11, 11A, 11B or 11C”.

18 **308 Section 7**

19 Insert:

20 *person* means any of the following:

- 21 (a) an individual;
- 22 (b) a body corporate;
- 23 (c) a trust;
- 24 (d) a corporation sole;
- 25 (e) a body politic;
- 26 (f) a local governing body.

27 **309 Section 7**

28 Insert:

1 *potential greenhouse gas emissions* embodied in an amount of
2 natural gas has the meaning given by section 7B.

3 **310 Section 7**

4 Insert:

5 *provisional emissions number* has the same meaning as in the
6 *Clean Energy Act 2011*.

7 **312 Section 7**

8 Insert:

9 *Register* means the National Greenhouse and Energy Register
10 maintained under section 16.

11 **313 Section 7 (definition of *registered corporation*)**

12 Omit “Division 3 of Part 2”, substitute “this Act”.

13 **314 Section 7**

14 Insert:

15 *registered person* means a person registered under this Act.

16 **315 Section 7**

17 Insert:

18 *scope 1 emission* of greenhouse gas has the meaning given by
19 section 10.

20 **316 Section 7**

21 Insert:

22 *scope 2 emission* of greenhouse gas has the meaning given by
23 section 10.

24 **319 Section 7**

25 Insert:

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

28 **320 Section 7**

1 Insert:

2 *trustee* has the same meaning as in the *Income Tax Assessment Act*
3 1997.

4 **321 Section 7**

5 Insert:

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

8 **322 Section 7**

9 Insert:

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

13 Note: The text of the Convention is set out in Australian Treaty Series 1994
14 No. 31 ([1994] ATS 31). In 2011, the text of an international
15 agreement in the Australian Treaty Series was accessible through the
16 Australian Treaties Library on the AustLII website
17 (www.austlii.edu.au).

18 **323 After section 7**

19 Insert:

20 **7A Greenhouse gas**

21 (1) For the purposes of this Act and the *Clean Energy Act 2011*, each
22 of the following is a **greenhouse gas**:

- 23 (a) carbon dioxide;
24 (b) methane;
25 (c) nitrous oxide;
26 (d) sulfur hexafluoride;
27 (e) a hydrofluorocarbon of a kind specified in the table in
28 subsection (2);
29 (f) a perfluorocarbon of a kind specified in the table in
30 subsection (3);
31 (g) a prescribed gas.

Table 1—Hydrofluorocarbons

(2) Table 1 is as follows:

Hydrofluorocarbons		
Item	Hydrofluorocarbon	Chemical formula
1	HFC-23	CHF ₃
2	HFC-32	CH ₂ F ₂
3	HFC-41	CH ₃ F
4	HFC-43-10mee	C ₅ H ₂ F ₁₀
5	HFC-125	C ₂ HF ₅
6	HFC-134	C ₂ H ₂ F ₄ (CHF ₂ CHF ₂)
7	HFC-134a	C ₂ H ₂ F ₄ (CH ₂ FCF ₃)
8	HFC-143	C ₂ H ₃ F ₃ (CHF ₂ CH ₂ F)
9	HFC-143a	C ₂ H ₃ F ₃ (CF ₃ CH ₃)
10	HFC-152a	C ₂ H ₄ F ₂ (CH ₃ CHF ₂)
11	HFC-227ea	C ₃ HF ₇
12	HFC-236fa	C ₃ H ₂ F ₆
13	HFC-245ca	C ₃ H ₃ F ₅

Table 2—Perfluorocarbons

(3) Table 2 is as follows:

Perfluorocarbons		
Item	Perfluorocarbon	Chemical formula
1	Perfluoromethane (tetrafluoromethane)	CF ₄
2	Perfluoroethane (hexafluoroethane)	C ₂ F ₆
3	Perfluoropropane	C ₃ F ₈
4	Perfluorobutane	C ₄ F ₁₀
5	Perfluorocyclobutane	c-C ₄ F ₈
6	Perfluoropentane	C ₅ F ₁₂
7	Perfluorohexane	C ₆ F ₁₄

1 **7B Potential greenhouse gas emissions embodied in an amount of**
2 **natural gas**

- 3 (1) For the purposes of this Act and the *Clean Energy Act 2011*, the
4 ***potential greenhouse gas emissions*** embodied in an amount of
5 natural gas is:
6 (a) the amount of the greenhouse gas; or
7 (b) the amounts of the greenhouse gases;
8 that would be released into the atmosphere as a result of the
9 combustion of the amount of the natural gas.

10 *Default method*

- 11 (2) The Minister may determine that the amount of greenhouse gas
12 that would be released into the atmosphere as a result of the
13 combustion of an amount of natural gas is taken, for the purposes
14 of:
15 (a) this Act (other than subsections (3) and (4) of this section);
16 and
17 (b) the *Clean Energy Act 2011*;
18 to be the amount of the natural gas multiplied by a value specified
19 in the determination.

20 *Prescribed alternative method*

- 21 (3) However, if:
22 (a) a report relating to an eligible financial year was given by a
23 person under section 22A; and
24 (b) the report was given before the end of 4 months after the end
25 of the eligible financial year; and
26 (c) ascertaining the potential greenhouse gas emissions
27 embodied in an amount of natural gas is relevant to working
28 out a provisional emissions number of the person for the
29 eligible financial year; and
30 (d) the report contained a statement to the effect that the person
31 has made a choice to use the prescribed alternative method to
32 ascertain the potential greenhouse gas emissions; and
33 (e) the prescribed alternative method was complied with in
34 ascertaining the potential greenhouse gas emissions;
35 then, for the purposes of this Act and the *Clean Energy Act 2011*:

- 1 (f) the potential greenhouse gas emissions are to be ascertained
2 in accordance with the prescribed alternative method; and
3 (g) a determination under subsection (2) does not apply in
4 ascertaining the potential greenhouse gas emissions.

- 5 (4) For the purposes of this section, the *prescribed alternative method*
6 is a method that:
7 (a) is for ascertaining the potential greenhouse gas emissions
8 embodied in an amount of natural gas; and
9 (b) is specified in a determination made by the Minister; and
10 (c) involves testing one or more samples of the natural gas.

11 *Combustion*

- 12 (5) The Minister may determine that, for the purposes of this section, it
13 is to be assumed that the *combustion* of an amount of natural gas
14 takes place in the circumstances specified in the determination.

15 *Determination*

- 16 (6) A determination made under subsection (2), (4) or (5) is a
17 legislative instrument.

18 **7C Carbon dioxide equivalence of potential greenhouse gas**
19 **emissions embodied in an amount of natural gas**

20 *Scope*

- 21 (1) This section applies if the potential greenhouse gas emissions
22 embodied in an amount of natural gas consist of:
23 (a) an amount of a greenhouse gas; or
24 (b) amounts of one or more greenhouse gases.

25 *Carbon dioxide equivalence*

- 26 (2) For the purposes of this Act and the *Clean Energy Act 2011*, the
27 *carbon dioxide equivalence* of the potential greenhouse gas
28 emissions is the total of the carbon dioxide equivalence of that
29 amount of greenhouse gas or those amounts of greenhouse gases.

30 **324 Subsection 8(1)**

1 Omit “A controlling”, substitute “For the purposes of this Act and the
2 *Clean Energy Act 2011*, a controlling”.

3 **325 Paragraph 8(1)(b)**

4 Omit “(if any);”, substitute “(if any).”.

5 **326 Paragraphs 8(1)(c) and (d)**

6 Repeal the paragraphs.

7 **327 Subsections 8(4), (5) and (6)**

8 Repeal the subsections, substitute:

9 (4) To avoid doubt, a controlling corporation’s *group* may consist of
10 the controlling corporation alone.

11 **328 Subsection 9(1)**

12 Omit “A *facility* is”, substitute “For the purposes of this Act and the
13 *Clean Energy Act 2011*, a *facility* is”.

14 **329 Subsection 9(1)**

15 Omit “the production of” (first occurring).

16 **330 Paragraph 9(1)(b)**

17 Omit “54;”, substitute “54 or 54A.”.

18 **331 Subsection 9(1)**

19 Omit all the words from and including “but” to the end of the
20 subsection.

21 **332 Subsection 9(3)**

22 Repeal the subsection.

23 **333 Subsection 10(1)**

24 After “References”, insert “in this Act or the *Clean Energy Act 2011*”.

25 **334 Paragraph 10(1)(a)**

26 Repeal the paragraph, substitute:

27 (a) *scope 1 emission* of greenhouse gas;

28 (aa) *scope 2 emission* of greenhouse gas;

1 **336 Subsection 10(2)**

2 Omit “paragraph (1)(a) may specify a meaning of emissions”, substitute
3 “paragraph (1)(aa) may specify a meaning of scope 2 emission”.

4 **337 Subsection 10(3)**

5 Omit “emissions,” (wherever occurring), substitute “scope 1 emissions,
6 scope 2 emissions,”.

7 **338 Subsection 10(3)**

8 After “this Act”, insert “and the *Clean Energy Act 2011*”.

9 **339 Paragraph 10(3)(a)**

10 Repeal the paragraph, substitute:

11 (a) in the case of scope 1 emissions—different methods or
12 criteria for emissions from different sources; and

13 **339A Section 11 (heading)**

14 Repeal the heading, substitute:

15 **11 Operational control—basic rule**

16 **340 Subsection 11(1)**

17 Omit “A controlling corporation or another member of the corporation’s
18 group”, substitute “For the purposes of this Act and the *Clean Energy*
19 *Act 2011*, a person”.

20 **341 Paragraph 11(1)(a)**

21 Omit “it”, substitute “the person”.

22 **342 Paragraph 11(1)(b)**

23 Omit “corporation or member”, substitute “person”.

24 **343 At the end of paragraph 11(1)(b)**

25 Add “or 55A”.

26 **344 Subsection 11(2)**

27 After “apply”, insert “in relation to a facility”.

28 **345 At the end of subsection 11(2)**

1 Add “in relation to the facility”.

2 **346 Subsection 11(3)**

3 After “this Act”, insert “and the *Clean Energy Act 2011*”.

4 **347 Subsection 11(3)**

5 Omit “such corporation or member”, substitute “person”.

6 **348 Subsection 11(4)**

7 Repeal the subsection, substitute:

8 (4) This section has effect subject to sections 11A, 11B and 11C.

9 **349 At the end of Part 1**

10 Add:

11 **11A Operational control—person with greatest authority**

12 *Scope*

- 13 (1) This section applies if the following conditions are satisfied in
14 relation to a period that is included in, or consists of, an eligible
15 financial year:
- 16 (a) 2 or more persons could satisfy paragraph 11(1)(a) in relation
17 to a facility throughout the period;
 - 18 (b) a particular person has the greatest authority to introduce and
19 implement the policies mentioned in subparagraphs
20 11(1)(a)(i) and (iii) in relation to the facility throughout the
21 period;
 - 22 (c) no declaration under section 55 or 55A applies in relation to
23 the facility at any time during the period.

24 *Operational control*

- 25 (2) The person mentioned in paragraph (1)(b) is taken, for the
26 purposes of this Act and the *Clean Energy Act 2011*, to have
27 ***operational control*** over the facility throughout the period.

1 **11B Operational control—nominated person**

2 *Scope*

- 3 (1) This section applies if the following conditions are satisfied in
4 relation to a period that is included in, or consists of, an eligible
5 financial year:
- 6 (a) 2 or more persons could satisfy paragraph 11(1)(a) in relation
7 to a facility throughout the period;
 - 8 (b) no particular person has the greatest authority to introduce
9 and implement the policies mentioned in subparagraphs
10 11(1)(a)(i) and (iii) in relation to the facility throughout the
11 period;
 - 12 (c) no declaration under section 55 or 55A applies in relation to
13 the facility at any time during the period.

14 *Nomination*

- 15 (2) Those persons must, before the end of 31 August next following
16 the eligible financial year, jointly nominate one of them to be the
17 nominated person in relation to the facility for the period.

18 Civil penalty: 1,000 penalty units.

- 19 (3) A nomination must:
- 20 (a) be in writing; and
 - 21 (b) be in a form approved by the Regulator; and
 - 22 (c) be accompanied by such information as is specified in the
23 regulations.
- 24 (4) If:
- 25 (a) any of those persons is a foreign person; and
 - 26 (b) any of those persons is not a foreign person;
- 27 a foreign person cannot be nominated.

28 *Operational control—nomination made*

- 29 (5) If a nomination is made and the facility is a facility of a joint
30 venture, the nominated person is taken, for the purposes of this
31 Act, to have **operational control** over the facility throughout the
32 period.

1 (6) If a nomination is made and the facility is not a facility of a joint
2 venture, the nominated person is taken, for the purposes of this Act
3 and the *Clean Energy Act 2011*, to have **operational control** over
4 the facility throughout the period.

5 *Operational control—nomination not made*

6 (7) If no nomination is made and the facility is a facility of a joint
7 venture, each of the persons mentioned in paragraph (1)(a) is taken,
8 for the purposes of this Act, to have **operational control** over the
9 facility throughout the period.

10 (8) If no nomination is made and the facility is not a facility of a joint
11 venture:

12 (a) each of the persons mentioned in paragraph (1)(a) is taken,
13 for the purposes of this Act and the *Clean Energy Act 2011*,
14 to have **operational control** over the facility throughout the
15 period; and

16 (b) if there is a provisional emissions number of:

17 (i) such a person; or

18 (ii) if such a person is a member of a controlling
19 corporation's group—the controlling corporation;

20 for the eligible financial year in relation to greenhouse gases
21 emitted from the operation of the facility during the period—
22 for the purposes of this Act and the *Clean Energy Act 2011*,
23 that provisional emissions number is taken to be the number
24 worked out using the formula set out in subsection (9).

25 (9) The formula is:

26
$$\frac{\text{Unadjusted provisional emissions number}}{\text{Total number of persons mentioned in paragraph (1)(a)}}$$

27 where:

28 **unadjusted provisional emissions number** means the number that,
29 apart from paragraph (8)(b), would be the provisional emissions
30 number of the person or the controlling corporation, as the case
31 may be, for the eligible financial year in relation to greenhouse
32 gases emitted from the operation of the facility during the period.

1 *Exception*

- 2 (10) A person is not required to comply with subsection (2) if the
3 question of who has operational control of the facility is not
4 relevant (whether directly or indirectly) to a requirement under:
5 (a) this Act; or
6 (b) the *Clean Energy Act 2011*.

7 **11C Operational control—trust with multiple trustees**

8 *Scope*

- 9 (1) This section applies if the following conditions are satisfied in
10 relation to a period that is included in, or consists of, an eligible
11 financial year:
12 (a) because of section 11, 11A or 11B, a trust has operational
13 control over a facility throughout the period;
14 (b) throughout the period, there are 2 or more trustees of the
15 trust;
16 (c) no declaration under section 55 or 55A applies in relation to
17 the facility at any time during the period.

18 *Nomination*

- 19 (2) Those trustees must, before the end of 31 August next following
20 the eligible financial year, jointly nominate one of them to be the
21 nominated trustee in relation to the facility for the period.

22 Civil penalty: 1,000 penalty units.

- 23 (3) A nomination must:
24 (a) be in writing; and
25 (b) be in a form approved by the Regulator; and
26 (c) be accompanied by such information as is specified in the
27 regulations.
- 28 (4) If:
29 (a) any of those trustees is a foreign person; and
30 (b) any of those trustees is not a foreign person;
31 a foreign person cannot be nominated.

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Operational control

- (5) If a nomination is made, the nominated trustee is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to have **operational control** over the facility throughout the period.
- (6) If no nomination is made:
- (a) each of those trustees is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to have **operational control** over the facility throughout the period; and
 - (b) if there is a provisional emissions number of such a trustee for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period— for the purposes of this Act and the *Clean Energy Act 2011*, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (7).
- (7) The formula is:

$$\frac{\text{Unadjusted provisional emissions number}}{\text{Total number of trustees mentioned in paragraph (1)(a)}}$$

where:

unadjusted provisional emissions number means the number that, apart from paragraph (6)(b), would be the provisional emissions number of the trustee for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period.

Exception

- (8) A trustee is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:
- (a) this Act; or
 - (b) the *Clean Energy Act 2011*.

350 Before section 12

Insert:

1 **Subdivision A—Application by a controlling corporation**

2 **351 After subsection 13(1)**

3 Insert:

4 (1A) Subsection (1) does not apply in relation to:

- 5 (a) greenhouse gas emissions; or
- 6 (b) energy production; or
- 7 (c) energy consumption;

8 unless the Minister has, under subsection 10(3), determined:

- 9 (d) methods by which the amounts of the emissions, production
10 or consumption, as the case may be, are to be measured; or
- 11 (e) criteria for methods by which the amounts of emissions,
12 production or consumption, as the case may be, are to be
13 measured.

14 **351A At the end of section 13**

15 Add:

16 *Financial control liability transfer certificate*

- 17 (4) For the purposes of this section, if a person was the holder of a
18 financial control liability transfer certificate in relation to a facility
19 on a particular day in an eligible financial year, the facility is taken
20 not to have been under the operational control of a member of a
21 controlling corporation's group on that day.

22 **352 At the end of Division 1 of Part 2**

23 Add:

24 **Subdivision B—Application by a liable entity**

25 **15A Application by a liable entity**

- 26 (1) If a person is or was a liable entity for an eligible financial year
27 (the *current eligible financial year*), the person must apply, in
28 accordance with this section, to be registered under this Act.

29 Civil penalty:

- 30 (a) for an individual—2,000 penalty units; or
- 31 (b) otherwise—10,000 penalty units.

1 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
2 provide false or misleading information or documents to the Regulator
3 in purported compliance with this Act.

4 Note 2: Under section 30, a person may be liable for an additional civil
5 penalty for each day that the person fails to apply in accordance with
6 subsection (1) of this section.

7 (2) However, a person is not required to make an application under
8 subsection (1) if the person is registered under this Act at the end
9 of the current eligible financial year.

10 (3) An application under subsection (1) must be made by 31 August in
11 the eligible financial year next following the current eligible
12 financial year.

13 (4) An application under subsection (1) must:
14 (a) be made to the Regulator; and
15 (b) be in a form approved by the Regulator; and
16 (c) set out the information specified by the regulations for the
17 purposes of this paragraph.

18 **15AA Application by liable entity with interim emissions number**
19 **etc.—fixed charge year**

20 (1) If, as at the start of 1 April in a fixed charge year (the *current fixed*
21 *charge year*):

22 (a) either:

23 (i) a person is a liable entity for the current fixed charge
24 year; or

25 (ii) it may reasonably be expected that the person will be a
26 liable entity for the current fixed charge year; and

27 (b) either:

28 (i) the person has an interim emissions number for the
29 current fixed charge year; or

30 (ii) it may reasonably be expected that the person will have
31 an interim emissions number for the current fixed
32 charge year;

33 the person must apply, in accordance with this section, to be
34 registered under this Act.

35 Civil penalty:

36 (a) for an individual—2,000 penalty units; or

- 1 (b) otherwise—10,000 penalty units.
- 2 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
3 provide false or misleading information or documents to the Regulator
4 in purported compliance with this Act.
- 5 Note 2: Under section 30, a person may be liable for an additional civil
6 penalty for each day that the person fails to apply in accordance with
7 subsection (1) of this section.
- 8 (2) However, a person is not required to make an application under
9 subsection (1) if the person is registered under this Act at the start
10 of 1 April in the current fixed charge year.
- 11 (3) An application under subsection (1) must be made by 1 May in the
12 current fixed charge year.
- 13 (4) An application under subsection (1) must:
14 (a) be made to the Regulator; and
15 (b) be in a form approved by the Regulator; and
16 (c) set out the information specified by the regulations for the
17 purposes of this paragraph.

18 **353 Division 2 of Part 2**

19 Repeal the Division, substitute:

20 **Division 2—National Greenhouse and Energy Register**

21 **16 National Greenhouse and Energy Register**

- 22 (1) The Regulator is to maintain a register, to be known as the
23 National Greenhouse and Energy Register, that sets out:
24 (a) the name of each person registered under this Act; and
25 (b) any other matters, specified in the regulations, that relate to
26 the following:
27 (i) information included in the application for registration;
28 (ii) whether the person has complied with provisions of this
29 Act;
30 (iii) information included in a report given by the person
31 under this Act;
32 (iv) information that is published under section 24;
33 (v) the results of a greenhouse and energy audit carried out
34 in relation to the person.

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- 1 (2) The National Greenhouse and Energy Register may be maintained
2 by electronic means.
- 3 (3) The National Greenhouse and Energy Register may be made
4 available for inspection in any way the Regulator thinks
5 appropriate.
- 6 (4) The Regulator must ensure that the National Greenhouse and
7 Energy Register is up-to-date.
- 8 (5) The National Greenhouse and Energy Register is not a legislative
9 instrument.
- 10 (6) Before the end of 28 February next following each financial year,
11 the Regulator must publish on its website the name of each person
12 registered under this Act at any time during the financial year.
- 13 (7) Subsection (6) does not limit subsection (3).

14 **354 Division 3 of Part 2 (heading)**

15 Repeal the heading, substitute:

16 **Division 3—Registration of controlling corporations**

17 **355 Section 18**

18 Repeal the section.

19 **356 At the end of Part 2**

20 Add:

21 **Division 4—Registration of other persons**

22 **18A Registration of other persons**

- 23 (1) The Regulator must register a person under this Act if the person
24 has applied for registration under section 15A or 15AA.
- 25 (2) The Regulator must notify the person, in writing, of the
26 Regulator's decision on the application.
- 27 (3) The person is registered under this Act when the Regulator has
28 entered the name of the person on the Register.

1 **Division 5—Deregistration**

2 **18B Deregistration**

3 *Deregistration on application*

- 4 (1) A registered person may apply to the Regulator to be deregistered.
- 5 (2) An application must:
- 6 (a) be in writing; and
- 7 (b) be in a form approved by the Regulator; and
- 8 (c) set out such information as is specified in the regulations.
- 9 (3) The Regulator must remove the person's name from the Register if
- 10 the Regulator is satisfied that:
- 11 (a) in a case where the person is the controlling corporation of a
- 12 group—the group is not likely to meet any of the thresholds
- 13 under section 13 for:
- 14 (i) the financial year in which the application is made; and
- 15 (ii) the next 2 financial years; and
- 16 (b) the person:
- 17 (i) is not a liable entity for the financial year in which the
- 18 application is made; and
- 19 (ii) is not likely to be a liable entity for any of the next 2
- 20 financial years; and
- 21 (c) the person does not hold a reporting transfer certificate; and
- 22 (d) the person has complied with the person's obligations under
- 23 this Act.
- 24 (4) The Regulator must notify the person, in writing, of the
- 25 Regulator's decision on the application.

26 *Deregistration on the Regulator's own initiative*

- 27 (5) The Regulator may remove a person's name from the Register if
- 28 the Regulator is satisfied that the person has ceased to exist.

29 *When registration ceases*

- 30 (6) A person ceases to be registered under this Act when the Regulator
- 31 has removed the person's name from the Register.

1 **357 Part 3 (heading)**

2 Repeal the heading, substitute:

3 **Part 3—Reporting obligations of registered**
4 **corporations etc.**

5 **358 Subsection 19(1)**

6 Omit “registered corporation”, substitute “corporation registered under
7 Division 3 of Part 2”.

8 **359 At the end of subsection 19(1)**

9 Add:

10 Note 4: Reports under this section and section 22A may be set out in the same
11 document—see subsection 22A(4).

12 **360 After subsection 19(1)**

13 Insert:

14 (1A) Subsection (1) does not apply to:

- 15 (a) greenhouse gas emissions; or
16 (b) energy production; or
17 (c) energy consumption;

18 unless the Minister has, under subsection 10(3), determined:

- 19 (d) methods by which the amounts of the emissions, production
20 or consumption, as the case may be, are to be measured; or
21 (e) criteria for methods by which the amounts of emissions,
22 production or consumption, as the case may be, are to be
23 measured.

24 Note: Paragraph (6)(b) requires that a report under subsection (1) must be
25 based on methods, or methods which meet criteria, determined under
26 subsection 10(3).

27 **361 Subsections 19(4) and (5)**

28 Repeal the subsections, substitute:

- 29 (4) If a person other than the corporation is the holder of a financial
30 control liability transfer certificate in relation to a facility
31 throughout the whole or a part of an eligible financial year, a report
32 under subsection (1) need not relate to the:
-

- 1 (a) greenhouse gas emissions; and
2 (b) energy production; and
3 (c) energy consumption;
4 from the operation of the facility during the whole, or the part, as
5 the case may be, of the eligible financial year.

6 **362 Paragraph 19(6)(c)**

7 Omit “include any”, substitute “set out the”.

8 **363 At the end of section 19**

9 Add:

- 10 (10) This section does not apply to a facility that was under the
11 operational control of a member of the corporation’s group during
12 the whole or a part of a financial year if the member is required to
13 provide a report under section 22X about the facility in respect of
14 the year.

15 **364 Paragraphs 22(1)(a) and (b)**

16 After “this Act”, insert “(other than Part 3A or 3D)”.

17 **365 Paragraphs 22(2)(a) and (b)**

18 After “this Act”, insert “(other than Part 3A or 3D)”.

19 **366 Subsection 22(3)**

20 Omit “7 years”, substitute “5 years”.

21 **367 After Part 3**

22 Insert:

23 **Part 3A—Reporting obligations of liable entities**
24 **etc.**
25

26 **22A Report to be given to Regulator—general**

- 27 (1) If a person was a liable entity for an eligible financial year, the
28 person must, in accordance with this section, provide a report to
29 the Regulator relating to:

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- 1 (a) the calculation of the person’s provisional emissions numbers
2 for the eligible financial year; and
3 (b) if a provisional emissions number of the person for the
4 eligible financial year is attributable to scope 1 emissions of
5 greenhouse gas—those emissions; and
6 (c) if a provisional emissions number of the person for the
7 eligible financial year is attributable to potential greenhouse
8 gas emissions embodied in an amount of natural gas—those
9 potential greenhouse gas emissions; and
10 (d) the calculation of the person’s emissions number for the
11 eligible financial year.

12 Civil penalty:

- 13 (a) for an individual—2,000 penalty units; or
14 (b) otherwise—10,000 penalty units.

15 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
16 provide false or misleading information or documents to the Regulator
17 in purported compliance with this Act.

18 Note 2: Under section 30, a person may be liable for an additional civil
19 penalty for each day after the end of the period mentioned in
20 paragraph (2)(c) of this section for which the person fails to provide a
21 report in accordance with this section.

22 (2) A report under this section must:

- 23 (a) be given in a manner and form approved by the Regulator;
24 and
25 (b) set out the information specified by the regulations for the
26 purposes of this paragraph; and
27 (c) be given to the Regulator before the end of 4 months after the
28 end of the eligible financial year.

29 (3) Regulations made for the purposes of paragraph (2)(b) may specify
30 different requirements for different circumstances.

31 (4) Reports under this section and section 19 may be set out in the
32 same document.

33 Note: Reports under this section and section 22E may be set out in the same
34 document—see subsection 22E(7).

35 **22AA Report to be given to Regulator—fixed charge year**

36 (1) If:

- 1 (a) a person is a liable entity for a fixed charge year; and
2 (b) the person has an interim emissions number for the fixed
3 charge year;
4 the person must, in accordance with this section, provide a report
5 to the Regulator relating to:
6 (c) the calculation of the person's interim emissions numbers for
7 the fixed charge year; and
8 (d) if an interim emissions number of the person for the fixed
9 charge year is attributable to scope 1 emissions of greenhouse
10 gas—those emissions; and
11 (e) if an interim emissions number of the person for the fixed
12 charge year is attributable to potential greenhouse gas
13 emissions embodied in an amount of natural gas—those
14 potential greenhouse gas emissions.

15 **Civil penalty:**

- 16 (a) for an individual—2,000 penalty units; or
17 (b) otherwise—10,000 penalty units.

18 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
19 provide false or misleading information or documents to the Regulator
20 in purported compliance with this Act.

21 Note 2: Under section 30, a person may be liable for an additional civil
22 penalty for each day after the end of the period mentioned in
23 paragraph (2)(c) of this section for which the person fails to provide a
24 report in accordance with this section.

- 25 (2) A report under this section must:
26 (a) be given in a manner and form approved by the Regulator;
27 and
28 (b) set out the information specified by the regulations for the
29 purposes of this paragraph; and
30 (c) be given to the Regulator before the end of 15 June in the
31 eligible financial year.
32 (3) Regulations made for the purposes of paragraph (2)(b) may specify
33 different requirements for different circumstances.

34 **22B Records to be kept—general**

- 35 (1) A person who is or was a liable entity for an eligible financial year
36 must keep records of the person's activities that:
37 (a) allow the person to report accurately under section 22A; and
-

- 1 (b) enable the Regulator to ascertain whether the person has
2 complied with the person's obligations under section 22A;
3 and
4 (c) comply with the requirements of subsection (2) and the
5 regulations made for the purposes of subsection (3).

6 Civil penalty:

- 7 (a) for an individual—2,000 penalty units; or
8 (b) otherwise—10,000 penalty units.

9 (2) The person must retain the records for 5 years from the end of the
10 financial year in which the activities take place.

11 (3) The regulations may specify requirements relating to:

- 12 (a) the kinds of records; and
13 (b) the form of records;

14 that must be kept under subsection (1).

15 **22C Records to be kept—fixed charge year**

16 (1) A person who is or was a liable entity for a fixed charge year must
17 keep records of the person's activities that:

18 (a) allow the person to report accurately under section 22AA;
19 and

20 (b) enable the Regulator to ascertain whether the person has
21 complied with the person's obligations under section 22AA;
22 and

23 (c) comply with the requirements of subsection (2) and the
24 regulations made for the purposes of subsection (3).

25 Civil penalty:

- 26 (a) for an individual—2,000 penalty units; or
27 (b) otherwise—10,000 penalty units.

28 (2) The person must retain the records for 5 years from the end of the
29 fixed charge year in which the activities take place.

30 (3) The regulations may specify requirements relating to:

- 31 (a) the kinds of records; and
32 (b) the form of records;

33 that must be kept under subsection (1).

1 **Part 3D—Reporting obligations of holders of**
2 **liability transfer certificates**
3

4 **22E Report to be given to Regulator**

5 (1) If a person was the holder of a financial control liability transfer
6 certificate in relation to a facility during the whole or a part of an
7 eligible financial year, the person must, in accordance with this
8 section, provide a report to the Regulator relating to the:

- 9 (a) greenhouse gas emissions; and
10 (b) energy production; and
11 (c) energy consumption;

12 from the operation of the facility during the whole, or the part, as
13 the case may be, of that eligible financial year.

14 Civil penalty:

- 15 (a) for an individual—2,000 penalty units; or
16 (b) otherwise—10,000 penalty units.

17 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
18 provide false or misleading information or documents to the Regulator
19 in purported compliance with this Act.

20 Note 2: Under section 30, a person may be liable for an additional civil
21 penalty for each day after the end of the period mentioned in
22 paragraph (2)(d) for which the person fails to provide a report in
23 accordance with this section.

24 (2) A report under this section must:

- 25 (a) be given in a manner and form approved by the Regulator;
26 and
27 (b) be based on:
28 (i) methods determined by the Minister under subsection
29 10(3); or
30 (ii) methods which meet criteria determined by the Minister
31 under that subsection;

32 where the use of those methods satisfies any conditions
33 specified in the determination under that subsection; and

- 34 (c) set out the information specified by the regulations for the
35 purposes of this paragraph; and

- 1 (d) be given to the Regulator before the end of 4 months after the
2 end of the eligible financial year.
- 3 (3) Regulations made for the purposes of paragraph (2)(c) may specify
4 different requirements for different circumstances.
- 5 (4) In particular, and without limiting subsection (3), the regulations
6 may specify different requirements for persons who:
7 (a) do not meet any threshold; or
8 (b) do not meet specified thresholds;
9 for an eligible financial year to which a report relates.
- 10 (5) Regulations made for the purposes of paragraph (2)(c) may also
11 specify information that a State or Territory has requested the
12 Regulator to collect.
- 13 (6) The regulations may provide that a person is not required to
14 provide a report under subsection (1) for an eligible financial year
15 in relation to a facility if the facility does not meet a specified
16 threshold for the eligible financial year.
- 17 (7) Reports under this section and section 22A may be set out in the
18 same document.

19 **22F Records to be kept**

- 20 (1) A person who is or was required to provide a report under
21 section 22E for an eligible financial year must keep records of the
22 person's activities that:
23 (a) allow the person to report accurately under section 22E; and
24 (b) enable the Regulator to ascertain whether the person has
25 complied with the person's obligations under section 22E;
26 and
27 (c) comply with the requirements of subsection (2) and the
28 regulations made for the purposes of subsection (3).
- 29 Civil penalty:
30 (a) for an individual—2,000 penalty units; or
31 (b) otherwise—10,000 penalty units.
- 32 (2) The person must retain the records for 5 years from the end of the
33 financial year in which the activities take place.

- 1 (3) The regulations may specify requirements relating to:
2 (a) the kinds of records; and
3 (b) the form of records;
4 that must be kept under subsection (1).

5 **368 After subsection 22G(1)**

6 Insert:

- 7 (1A) Subsection (1) does not apply to:
8 (a) greenhouse gas emissions; or
9 (b) energy production; or
10 (c) energy consumption;
11 unless the Minister has, under subsection 10(3), determined:
12 (d) methods by which the amounts of the emissions, production
13 or consumption, as the case may be, are to be measured; or
14 (e) criteria for methods by which the amounts of emissions,
15 production or consumption, as the case may be, are to be
16 measured.

17 Note: Paragraph (2)(b) requires that a report under this section must be
18 based on methods, or methods which meet criteria, determined under
19 subsection 10(3).

20 **368A Subsection 22H(2)**

21 Omit “7 years”, substitute “5 years”.

22 **369 After Part 3E**

23 Insert:

24 **Part 3F—Reporting obligations transferred to**
25 **member of corporate group**
26

27 **22X Reporting obligations transferred to member of corporate**
28 **group**

29 *Scope*

- 30 (1) This section applies if:
31 (a) either:

- 1 (i) a facility is under the operational control of a member
2 (the *responsible member*) of a controlling corporation's
3 group during the whole or a part of a financial year; or
4 (ii) during the whole or a part of a financial year, a member
5 (the *responsible member*) of a controlling corporation's
6 group is the holder of a liability transfer certificate that
7 was issued under section 83 of the *Clean Energy Act*
8 *2011* in relation to a facility; and
9 (b) the controlling corporation and the responsible member have
10 agreed to transfer reporting obligations for the facility to the
11 responsible member; and
12 (c) before the end of the financial year, the controlling
13 corporation and the responsible member have jointly notified
14 the Regulator, in writing, of:
15 (i) the agreement; and
16 (ii) the facility to which the agreement relates.

17 *Obligation to report*

- 18 (2) The responsible member must, in accordance with this section and
19 in respect of the financial year, provide a report to the Regulator
20 relating to the:
21 (a) greenhouse gas emissions; and
22 (b) energy production; and
23 (c) energy consumption;
24 from the operation of the facility during the whole, or the part, as
25 the case may be, of the financial year.

26 Civil penalty: 2,000 penalty units.

27 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
28 provide false or misleading information or documents to the Regulator
29 in purported compliance with this Act.

30 Note 2: Under section 30, a responsible member may be liable for an
31 additional civil penalty for each day after the end of the period
32 mentioned in paragraph (4)(d) for which the responsible member fails
33 to provide a report in accordance with this section.

- 34 (3) Subsection (1) does not apply to:
35 (a) greenhouse gas emissions; or
36 (b) energy production; or
37 (c) energy consumption;

1 unless the Minister has, under subsection 10(3), determined:

2 (d) methods by which the amounts of the emissions, production
3 or consumption, as the case may be, are to be measured; or

4 (e) criteria for methods by which the amounts of emissions,
5 production or consumption, as the case may be, are to be
6 measured.

7 Note: Paragraph (4)(b) requires that a report under this section must be
8 based on methods, or methods which meet criteria, determined under
9 subsection 10(3).

10 (4) A report under this section must:

11 (a) be given in a manner and form approved by the Regulator;
12 and

13 (b) be based on:

14 (i) methods determined by the Minister under subsection
15 10(3); or

16 (ii) methods which meet criteria determined by the Minister
17 under that subsection;

18 where the use of those methods satisfies any conditions
19 specified in the determination under that subsection; and

20 (c) include any information specified by the regulations for the
21 purposes of this paragraph; and

22 (d) be given to the Regulator before the end of 4 months after the
23 end of each financial year.

24 (5) Regulations made for the purposes of paragraph (4)(c) may specify
25 different requirements for different circumstances.

26 (6) Regulations made for the purposes of paragraph (4)(c) may also
27 specify information that a State or Territory has requested the
28 Regulator to collect.

29 **22XA Records to be kept**

30 (1) A person who is or was required to provide a report under
31 section 22X for a financial year must keep records of the person's
32 activities that:

33 (a) allow the person to report accurately under section 22X; and

34 (b) enable the Regulator to ascertain whether the person has
35 complied with the person's obligations under section 22X;
36 and

1 (c) comply with the requirements of subsection (2) and the
2 regulations made for the purposes of subsection (3).

3 Civil penalty: 1,000 penalty units.

4 (2) The person must retain the records for 5 years from the end of the
5 financial year in which the activities take place.

6 (3) The regulations may specify requirements relating to:

7 (a) the kinds of records; and

8 (b) the form of records;

9 that must be kept under subsection (1).

10 **370 Subsection 23(1) (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

13 **371 Subsections 24(1) and (1A)**

14 Repeal the subsections (not including the heading), substitute:

15 (1) The Regulator must, by 28 February in a financial year, publish the
16 following on its website in relation to a registered corporation's
17 group:

18 (a) totals of greenhouse gas emissions that are scope 1 emissions
19 reported under Part 3 or 3F in relation to the corporation's
20 group for the previous financial year;

21 (b) totals of greenhouse gas emissions that are scope 2 emissions
22 reported under Part 3 or 3F in relation to the corporation's
23 group for the previous financial year;

24 (c) the totals of energy consumption for the corporation's group:

25 (i) reported under Part 3 or 3F in relation to the

26 corporation's group for the previous financial year; and

27 (ii) adjusted in accordance with the regulations.

28 (1A) In addition to publishing information for the corporation's group in
29 accordance with subsection (1), the Regulator may also publish on
30 its website:

31 (a) totals of greenhouse gas emissions that are scope 1 emissions
32 for:

33 (i) each member of the corporation's group; or

- 1 (ii) each business unit in relation to the corporation's group;
2 reported under Part 3 or 3F in relation to the corporation's
3 group for the previous financial year; and
4 (b) totals of greenhouse gas emissions that are scope 2 emissions
5 for:
6 (i) each member of the corporation's group; or
7 (ii) each business unit in relation to the corporation's group;
8 reported under Part 3 or 3F in relation to the corporation's
9 group for the previous financial year; and
10 (c) the totals of energy consumption for each member of the
11 corporation's group, or each business unit in relation to the
12 corporation's group:
13 (i) reported under Part 3 or 3F in relation to the
14 corporation's group for the previous financial year; and
15 (ii) adjusted in accordance with the regulations; and
16 (d) the methods mentioned in paragraph 19(6)(b) or 22X(4)(b)
17 that were used to measure:
18 (i) the totals for the corporation's group referred to in
19 paragraphs (1)(a) and (b); and
20 (ii) the totals of energy consumption reported under Part 3
21 or 3F in relation to the corporation's group for the
22 previous financial year; and
23 (e) the rating given to each of those methods under the
24 determination under subsection 10(3).
25 This subsection is subject to subsection 25(3).

26 **375 After subsection 24(1A)**

27 Insert:

- 28 (1AA) If a person gives the Regulator a report under section 22A in
29 relation to an eligible financial year, the Regulator must publish on
30 its website, by 28 February next following the eligible financial
31 year:
32 (a) the total of the numbers specified in the report as the person's
33 provisional emissions numbers for the eligible financial year;
34 and
35 (b) if any of those provisional emissions numbers are attributable
36 to scope 1 emissions of greenhouse gas—the total of those
37 provisional emissions numbers; and

1 (c) if any of those provisional emissions numbers are attributable
2 to potential greenhouse gas emissions embodied in an
3 amount of natural gas—the total of those provisional
4 emissions numbers.

5 **375A Subsection 24(1AD)**

6 Omit “a corporation”, substitute “a person”.

7 **375B Subsection 24(1AD)**

8 After “section”, insert “22E or”.

9 **376 Subsection 24(1AD)**

10 Omit “a website”, substitute “its website”.

11 **377 Subsection 24(1AE)**

12 Omit “the website”, substitute “its website”.

13 **377A Paragraph 24(1AE)(a)**

14 After “paragraph”, insert “22E(2)(b) or”.

15 **378 After subsection 24(1AE)**

16 Insert:

17 (1AF) If the amount of greenhouse gas emitted, and the amount of energy
18 produced, from the operation of a designated generation facility
19 during a financial year is set out in a report under this Act for the
20 financial year, the Regulator must publish those amounts on its
21 website by 28 February next following the financial year.

22 (1AG) If the amounts of greenhouse gases emitted from the operation of 2
23 or more designated generation facilities during a financial year are
24 set out in a report under this Act for the financial year, the
25 Regulator must publish the total of those amounts on its website by
26 28 February next following the financial year.

27 (1AH) If the amounts of energy produced from the operation of 2 or more
28 designated generation facilities during a financial year are set out
29 in a report under this Act for the financial year, the Regulator must
30 publish the total of those amounts on its website by 28 February
31 next following the financial year.

1 **379 Subsection 24(1C)**

2 Omit “a website the fact that the totals”, substitute “its website the fact
3 that the totals or adjusted totals”.

4 **379A Subsection 24(1G)**

5 Omit “a website”, substitute “its website”.

6 **380 After subsection 24(1G)**

7 Insert:

8 (1H) The Regulator must not publish information mentioned in
9 subsection (1AD) that is reported by a person under section 22E or
10 22G for a financial year in relation to a facility unless the operation
11 of the facility during the financial year causes:

- 12 (a) emissions of greenhouse gases that have a carbon dioxide
13 equivalence of 25 kilotonnes or more; or
14 (b) production of energy of 100 terajoules or more; or
15 (c) consumption of energy of 100 terajoules or more.

16 (1J) If the person was the holder of the relevant reporting transfer
17 certificate or financial control liability transfer certificate in
18 relation to the facility for a number of, but not all, days in the
19 financial year (the *control days*), paragraphs (1H)(a), (b) and (c)
20 have effect as though each amount mentioned in the relevant
21 paragraph were replaced by the amount worked out using the
22 following formula:

23 Amount that would otherwise apply $\times \frac{\text{Number of control days}}{\text{Number of days in the year}}$

24 (1K) Subsection (1H) does not apply to:

- 25 (a) greenhouse gas emissions; or
26 (b) energy production; or
27 (c) energy consumption;

28 unless the Minister has, under subsection 10(3), determined:

- 29 (d) methods by which the amounts of the emissions, production
30 or consumption, as the case may be, are to be measured; or
31 (e) criteria for methods by which the amounts of emissions,
32 production or consumption, as the case may be, are to be
33 measured.

1 **381 Subsections 24(2) and (3)**

2 Omit “a website”, substitute “its website”.

3 **384 Subsection 25(1)**

4 Omit “or” (first occurring).

5 **385 Subsection 25(1)**

6 After “section 20,”, insert “or a person required to provide a report
7 under section 22A, 22AA, 22E or 22X”.

8 **386 At the end of section 25**

9 Add:

10 (5) This section does not apply to information required to be published
11 under subsection 24(1AF).

12 **387 Subsection 30(2) (civil penalty)**

13 Repeal the civil penalty, substitute:

14 Civil penalty: 100 penalty units per day.

15 **388 After subsection 30(2)**

16 Insert:

17 (2A) If, under section 15A, 15AA, 22A, 22AA, 22E, 22X, 74AA or
18 74B, an act or thing is required to be done within a particular
19 period, or before a particular time, and a person fails to comply
20 with that requirement, the person is liable for a civil penalty for
21 each day that the person fails to comply.

22 Civil penalty:

23 (a) for an individual—20 penalty units per day; or

24 (b) otherwise—100 penalty units per day.

25 **389 Subsection 31(4)**

26 Omit “must have regard”, substitute “may have regard”.

27 **390 At the end of subsection 31(4)**

28 Add:

- 1 ; and (e) the extent to which the person has co-operated with the
2 authorities; and
3 (f) if the person is a body corporate:
4 (i) the level of the employees, officers or agents of the
5 body corporate involved in the contravention; and
6 (ii) whether the body corporate exercised due diligence to
7 avoid the contravention; and
8 (iii) whether the body corporate had a corporate culture
9 conducive to compliance.

10 **391 Division 4 of Part 5 (heading)**

11 Repeal the heading, substitute:

12 **Division 4—Liability of executive officers of bodies**
13 **corporate**

14 **391A Section 47 (heading)**

15 Repeal the heading, substitute:

16 **47 Civil penalties for executive officers of bodies corporate**

17 **392 Paragraph 47(1)(a)**

18 Omit “corporation”, substitute “body corporate”.

19 **393 Paragraph 47(1)(b)**

20 Omit “chief”.

21 **394 Paragraphs 47(1)(b) and (c)**

22 Omit “corporation”, substitute “body corporate”.

23 **395 After subsection 47(1)**

24 Insert:

- 25 (1A) For the purposes of subsection (1), the officer is *reckless* as to
26 whether the contravention would occur if:
27 (a) the officer is aware of a substantial risk that the contravention
28 would occur; and
29 (b) having regard to the circumstances known to the officer, it is
30 unjustifiable to take the risk.

- 1 (1B) For the purposes of subsection (1), the officer is *negligent* as to
2 whether the contravention would occur if the officer’s conduct
3 involves:
4 (a) such a great falling short of the standard of care that a
5 reasonable person would exercise in the circumstances; and
6 (b) such a high risk that the contravention would occur; and
7 that the conduct merits the imposition of a pecuniary penalty.

8 **396 Subsection 47(3)**

9 Omit “corporation”, substitute “body corporate”.

10 **396A Section 48 (heading)**

11 Repeal the heading, substitute:

12 **48 Did an executive officer take reasonable steps to prevent**
13 **contravention?**

14 **397 Subsection 48(1)**

15 Omit “a chief”, substitute “an”.

16 **398 Subsection 48(1)**

17 Omit “corporation” (first occurring), substitute “body corporate”.

18 **399 Subparagraph 48(1)(a)(i)**

19 Omit “corporation”, substitute “body corporate”.

20 **400 Subparagraph 48(1)(a)(i)**

21 Omit “corporation’s”, substitute “body corporate’s”.

22 **401 Subparagraph 48(1)(a)(ii)**

23 Omit “corporation”, substitute “body corporate”.

24 **402 Subparagraph 48(1)(a)(iii)**

25 Omit “corporation’s”, substitute “body corporate’s”.

26 **403 Paragraph 48(1)(b)**

27 Omit “that the corporation was contravening this Act or the
28 regulations”, substitute “of the contravention”.

1 **403A Section 54 (heading)**

2 Repeal the heading, substitute:

3 **54 Regulator may declare facility—group**

4 **404 Subsection 54(5)**

5 Omit “corporation, joint venture or partnership”, substitute “person”.

6 **405 After section 54**

7 Insert:

8 **54A Regulator may declare facility—non-group entity**

- 9 (1) The Regulator may declare that an activity or series of activities
10 (including ancillary activities) are a facility:
11 (a) on application by a non-group entity; or
12 (b) on the Regulator’s own initiative.
- 13 (2) An application must:
14 (a) identify the facility for which a declaration is sought; and
15 (b) include any other information required by the regulations;
16 and
17 (c) be given in a manner and form approved by the Regulator.
- 18 (3) In considering making a declaration that an activity or series of
19 activities are a facility, the Regulator must have regard to:
20 (a) the matters dealt with in regulations made for the purposes of
21 paragraph 9(1)(a); and
22 (b) the need for each facility to be distinct from, and not overlap
23 with, activities that constitute other facilities.
- 24 (4) The Regulator must notify, in writing, an applicant under
25 paragraph (1)(a) of a decision under subsection (1) to declare a
26 facility or to refuse the application.
- 27 (5) If the Regulator makes a declaration under paragraph (1)(b), the
28 Regulator must notify, in writing, the person that has, or that the
29 Regulator reasonably believes has, operational control of the
30 facility to which the declaration relates.

31 **406 After subsection 55(3)**

1 Insert:

2 (3A) The Regulator must not declare that a controlling corporation or
3 another member of the corporation's group has operational control
4 of a facility unless the Regulator is satisfied that the corporation or
5 member has substantial authority to introduce and implement either
6 or both of the following for the facility:

- 7 (a) operating policies;
8 (b) environmental policies.

9 (3B) The Regulator must not declare that a member of a controlling
10 corporation's group (other than the controlling corporation) has
11 operational control of a facility on application made by the member
12 unless the controlling corporation has given written consent to the
13 making of the declaration.

14 **407 At the end of Division 2 of Part 6**

15 Add:

16 **55A Regulator may declare non-group entity has operational control**

17 (1) The Regulator may declare that a non-group entity has operational
18 control of a facility:

- 19 (a) on application by the non-group entity; or
20 (b) on the Regulator's own initiative.

21 (2) An application must:

- 22 (a) identify the facility for which a declaration of operational
23 control is sought; and
24 (b) include any other information required by the regulations;
25 and
26 (c) be given in a manner and form approved by the Regulator.

27 (3) In considering making a declaration that a non-group entity has
28 operational control of a facility, the Regulator must have regard to
29 the matters dealt with in paragraph 11(1)(a) and regulations made
30 for the purposes of that paragraph.

31 (4) The Regulator must not declare that a non-group entity has
32 operational control of a facility unless the Regulator is satisfied
33 that the non-group entity has substantial authority to introduce and
34 implement either or both of the following for the facility:

- 1 (a) operating policies;
2 (b) environmental policies.

3 (5) The Regulator must notify, in writing, an applicant under
4 paragraph (1)(a) of a decision under subsection (1) to declare the
5 non-group entity to have operational control of the facility or to
6 refuse the application.

7 (6) If the Regulator makes a declaration under paragraph (1)(b), the
8 Regulator must notify, in writing, the non-group entity which the
9 Regulator has declared to have operational control of the facility to
10 which the declaration relates.

11 **408 After paragraph 56(a)**

12 Insert:

13 (aa) not register a person under section 18A;

14 **409 Paragraph 56(b)**

15 Omit “corporation under section 18”, substitute “person under
16 section 18B”.

17 **410 After paragraph 56(g)**

18 Insert:

19 (ga) refuse an application under section 54A;

20 (gb) declare a facility under paragraph 54A(1)(b);

21 **411 At the end of section 56**

22 Add:

23 ; (k) refuse an application under section 55A;

24 (l) declare that a non-group entity has operational control of a
25 facility under paragraph 55A(1)(b).

26 **412 Subsection 61(3) (penalty)**

27 Repeal the penalty, substitute:

28 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

29 **413 Subsection 69(2) (penalty)**

30 Repeal the penalty, substitute:

1 Penalty: 30 penalty units.

2 **414 Before section 75**

3 Insert:

4 **74AA Audit of persons providing reports under section 22A**

5 (1) This section applies if:

- 6 (a) a person is required to provide a report under section 22A for
7 an eligible financial year; and
8 (b) the person's emissions number for the eligible financial year
9 exceeds the number specified in the regulations in relation to
10 the eligible financial year.

11 (2) The person must:

- 12 (a) appoint as an audit team leader a registered greenhouse and
13 energy auditor of the person's choice; and
14 (b) arrange for the audit team leader to carry out an audit of:
15 (i) the section 22A report; and
16 (ii) such other matters (if any) relating to the section 22A
17 report as are specified in the regulations; and
18 (iii) the person's compliance with section 22B in relation to
19 the eligible financial year; and
20 (c) arrange for the audit team leader to give the person a written
21 report setting out the results of the audit; and
22 (d) give the Regulator a copy of the audit report:
23 (i) on the day on which the section 22A report is provided
24 to the Regulator; and
25 (ii) in the manner specified in the regulations.

26 Civil penalty:

- 27 (a) for an individual—200 penalty units; or
28 (b) otherwise—1,000 penalty units.

29 Note: Under section 30, a person may be liable for an additional civil
30 penalty for each day after the day mentioned in paragraph (d) for
31 which the person fails to provide an audit report in accordance with
32 this section.

33 (3) The regulations may specify:

- 34 (a) the type of audit to be carried out; and
35 (b) the matters to be covered by the audit; and
-

1 (c) the form of the audit report and the kinds of details it is to
2 contain.

3 (4) The person must provide the audit team leader and any audit team
4 members with all reasonable facilities and assistance necessary for
5 the effective exercise of the audit team leader's duties under this
6 Act.

7 Civil penalty:

8 (a) for an individual—50 penalty units; or

9 (b) otherwise—250 penalty units.

10 **74B Audits of certain entities—compliance**

11 (1) For the purposes of this section, a person is a *relevant person* if:

12 (a) the following subparagraphs apply:

13 (i) the person is a non-group entity;

14 (ii) the Regulator has reasonable grounds to suspect that the
15 person has contravened, is contravening, or is proposing
16 to contravene, this Act or the regulations; or

17 (b) the following subparagraphs apply:

18 (i) the person is the responsible member mentioned in
19 subsection 22X(1);

20 (ii) the person is not a registered corporation;

21 (iii) the Regulator has reasonable grounds to suspect that the
22 person has contravened, is contravening, or is proposing
23 to contravene, this Act or the regulations.

24 (2) The Regulator may, by written notice given to a relevant person,
25 require the relevant person to:

26 (a) appoint as an audit team leader:

27 (i) a registered greenhouse and energy auditor of the
28 relevant person's choice; or

29 (ii) if the Regulator specifies a registered greenhouse and
30 energy auditor in the notice—that auditor; or

31 (iii) if the Regulator specifies more than one registered
32 greenhouse and energy auditor in the notice—any one
33 of those auditors; and

34 (b) arrange for the audit team leader to carry out an audit on one
35 or more aspects of the relevant person's compliance with this
36 Act or the regulations; and

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- 1 (c) arrange for the audit team leader to give the relevant person a
2 written report setting out the results of the audit; and
3 (d) give the Regulator a copy of the audit report on or before the
4 day specified in the notice.

- 5 (3) The notice must specify:
6 (a) the type of audit to be carried out; and
7 (b) the matters to be covered by the audit; and
8 (c) the form of the audit report and the kinds of details it is to
9 contain.

- 10 (4) The relevant person must provide the audit team leader and any
11 audit team members with all reasonable facilities and assistance
12 necessary for the effective exercise of the audit team leader's
13 duties under this Act.

14 Civil penalty:

- 15 (a) for an individual—50 penalty units; or
16 (b) otherwise—250 penalty units.

- 17 (5) If the Regulator gives the relevant person written notice under
18 subsection (2), the relevant person must comply with the
19 requirements of the notice.

20 Civil penalty:

- 21 (a) for an individual—200 penalty units; or
22 (b) otherwise—1,000 penalty units.

23 Note: Under section 30, a relevant person may be liable for an additional
24 civil penalty for each day after the day mentioned in paragraph (2)(d)
25 for which the relevant person fails to provide an audit report in
26 accordance with this section.

27 **74C Audits of certain entities—other**

- 28 (1) For the purposes of this section, a person is a *relevant person* if:
29 (a) the person is a non-group entity; or
30 (b) the person:
31 (i) is the responsible member mentioned in subsection
32 22X(1); and
33 (ii) is not a registered corporation.

- 1 (2) The Regulator may appoint a registered greenhouse and energy
2 auditor as an audit team leader to carry out an audit of a relevant
3 person's compliance with one or more aspects of this Act or the
4 regulations.
- 5 (3) The Regulator must give written notice to the relevant person of a
6 decision to appoint an audit team leader under subsection (2). The
7 notice must:
- 8 (a) specify the audit team leader; and
9 (b) specify the period within which the audit is to be undertaken;
10 and
11 (c) specify the type of audit to be carried out; and
12 (d) specify the matters to be covered by the audit; and
13 (e) be given to the relevant person at a reasonable time before
14 the audit is to be undertaken.
- 15 (4) The relevant person must provide the audit team leader and any
16 audit team members with all reasonable facilities and assistance
17 necessary for the effective exercise of the audit team leader's
18 duties under this Act.
- 19 Civil penalty:
- 20 (a) for an individual—50 penalty units; or
21 (b) otherwise—250 penalty units.
- 22 (5) If a relevant person is given a notice under subsection (3), the
23 relevant person must arrange for the audit team leader to carry out
24 the audit.
- 25 Civil penalty:
- 26 (a) for an individual—200 penalty units; or
27 (b) otherwise—1,000 penalty units.

28 **415 Subsection 75A(7)**

29 Omit "signed", substitute "written".

30 **415A After section 76**

31 Insert:

1 **76A Periodic reviews of operation of this Act etc.**

- 2 (1) The Climate Change Authority must conduct reviews of the
3 operation of:
4 (a) this Act; and
5 (b) legislative instruments under this Act.

6 *Public consultation*

- 7 (2) A review under subsection (1) must make provision for public
8 consultation.

9 *Report*

- 10 (3) The Climate Change Authority must:
11 (a) give the Minister a report of the review; and
12 (b) as soon as practicable after giving the report to the Minister,
13 publish the report on the Climate Change Authority's
14 website.
- 15 (4) The Minister must cause copies of a report under subsection (3) to
16 be tabled in each House of the Parliament within 15 sitting days of
17 that House after the review is completed.

18 *First review*

- 19 (5) The first review under subsection (1) must be completed during the
20 period:
21 (a) beginning at the start of 30 June 2016; and
22 (b) ending at the end of 31 December 2018.

23 *Subsequent reviews*

- 24 (6) Each subsequent review under subsection (1) must be completed
25 within 5 years after the deadline for completion of the previous
26 review.
- 27 (7) For the purposes of subsections (4), (5) and (6), a review is
28 completed when the report of the review is given to the Minister
29 under subsection (3).

1

Recommendations

2

(8) A report of a review under subsection (1) may set out recommendations to the Commonwealth Government.

3

4

(9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

5

6

7

(10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

8

9

10

(11) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

11

12

13

14

Government response to recommendations

15

(12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:

16

17

(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

18

19

20

21

(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.

22

23

24

(13) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

25

26

27

(a) the Climate Change Authority;

28

(b) the Regulator;

(c) such other persons as the Minister considers relevant.

29

76B Special reviews of operation of this Act etc.

30

Scope

31

(1) This section applies if:

32

(a) the Minister, by written instrument given to the Chair of the Climate Change Authority, requests the Climate Change

33

1 Authority to conduct a review under this section of such
2 matters as are specified in the instrument; and
3 (b) the matters specified in the instrument are covered by
4 subsection (4).

5 *Review*

6 (2) The Climate Change Authority must conduct a review of those
7 matters.

8 *Consultation*

9 (3) In conducting a review, the Climate Change Authority must make
10 provision for public consultation.

11 *Covered matters*

12 (4) This subsection covers the operation of:
13 (a) this Act; and
14 (b) legislative instruments under this Act.

15 *Report*

16 (5) The Climate Change Authority must:
17 (a) give the Minister a report of the review; and
18 (b) as soon as practicable after giving the report to the Minister,
19 publish the report on the Climate Change Authority's
20 website.

21 (6) The Minister must cause copies of a report under subsection (5) to
22 be tabled in each House of the Parliament within 15 sitting days of
23 that House after the completion of the preparation of the report.

24 *Recommendations*

25 (7) A report of a review under subsection (2) may set out
26 recommendations to the Commonwealth Government.
27 (8) In formulating a recommendation that the Commonwealth
28 Government should take particular action, the Climate Change
29 Authority must analyse the costs and benefits of that action.

1 (9) Subsection (8) does not prevent the Climate Change Authority
2 from taking other matters into account in formulating a
3 recommendation.

4 (10) If a report of a review under subsection (2) sets out one or more
5 recommendations to the Commonwealth Government, the report
6 must set out the Climate Change Authority's reasons for those
7 recommendations.

8 *Government response to recommendations*

9 (11) If a report of a review under subsection (2) sets out one or more
10 recommendations to the Commonwealth Government:
11 (a) as soon as practicable after receiving the report, the Minister
12 must cause to be prepared a statement setting out the
13 Commonwealth Government's response to each of the
14 recommendations; and
15 (b) within 6 months after receiving the report, the Minister must
16 cause copies of the statement to be tabled in each House of
17 the Parliament.

18 (12) The Commonwealth Government's response to the
19 recommendations may have regard to the views of the following:
20 (a) the Climate Change Authority;
21 (b) the Regulator;
22 (c) such other persons as the Minister considers relevant.

23 ***Ozone Protection and Synthetic Greenhouse Gas***
24 ***Management Act 1989***

25 **415B Paragraph 3(d)**

26 After "Climate Change", insert "and the Kyoto Protocol".

27 **416 Subsection 7(1)**

28 Omit "(1)" (first occurring).

29 **416A Subsection 7(1) (definition of *licence*)**

30 Omit "or a used substances licence", substitute ", a used substances
31 licence or an ODS/SGG equipment licence".

32 **416B Subsection 7(1)**

1 Insert:

2 ***Kyoto Protocol*** means the Kyoto Protocol to the United Nations
3 Framework Convention on Climate Change, done at Kyoto on
4 11 December 1997, as amended and in force for Australia from
5 time to time.

6 Note: The text of the Kyoto Protocol is set out in Australian Treaty Series
7 2008 No. 2 ([2008] ATS 2). In 2011, the text of an international
8 agreement in the Australian Treaty Series was accessible through the
9 Australian Treaties Library on the AustLII website
10 (www.austlii.edu.au).

11 **417 Subsection 7(1)**

12 Insert:

13 ***ODS equipment*** has the meaning given by section 8C.

14 **418 Subsection 7(1)**

15 Insert:

16 ***ODS/SGG equipment licence*** means an ODS/SGG equipment
17 licence under section 13A.

18 **419 Subsection 7(1) (definition of *pre-charged equipment*)**

19 Repeal the definition.

20 **420 Subsection 7(1) (definition of *pre-charged equipment***
21 ***licence*)**

22 Repeal the definition.

23 **420A Subsection 7(1) (paragraph (b) of the definition of**
24 ***recycled or used HCFCs*)**

25 Omit “after undergoing a cleaning process”, substitute “or destroyed”.

26 **420B Subsection 7(1) (paragraph (b) of the definition of**
27 ***recycled or used methyl bromide*)**

28 Omit “after undergoing a cleaning process”, substitute “or destroyed”.

29 **420C Subsection 7(1) (paragraph (b) of the definition of**
30 ***recycled stage-1 or stage-2 scheduled substances*)**

31 Omit “after undergoing a cleaning process”, substitute “or destroyed”.

1 **421 Subsection 7(1) (definition of *SGG* or *synthetic***
2 ***greenhouse gas*)**

3 Omit “or a PFC”, substitute “, a PFC or sulfur hexafluoride”.

4 **421A Subsection 7(1)**

5 Insert:

6 *SGG equipment* has the meaning given by section 8D.

7 **422 Subsection 7(1)**

8 Insert:

9 *sulfur hexafluoride* means the substance referred to in Part XI of
10 Schedule 1, whether existing alone or in a mixture.

11 **423 After section 8B**

12 Insert:

13 **8C ODS equipment**

14 For the purposes of this Act, *ODS equipment* means
15 air-conditioning equipment, or refrigeration equipment, that
16 contains a substance that is an HCFC or, but for section 9, would
17 be an HCFC.

18 **8D SGG equipment**

- 19 (1) For the purposes of this Act, *SGG equipment* means:
20 (a) equipment, or a product, that contains a substance that is an
21 HFC or a PFC; or
22 (b) equipment, or a product, that contains a substance that is
23 sulfur hexafluoride;
24 but does not include:
25 (c) equipment, or a product, prescribed by the regulations; or
26 (d) equipment, or a product, specified in a legislative instrument
27 made by the Minister.
- 28 (2) Unless sooner revoked, a legislative instrument made under
29 paragraph (1)(d) ceases to be in force 12 months after it is
30 registered under the *Legislative Instruments Act 2003*.

1 **424A Section 9 (heading)**

2 Repeal the heading, substitute:

3 **9 Scheduled substances (other than SGGs) in manufactured**
4 **products**

5 **424B Subsection 9(1)**

6 After “Schedule 1”, insert “(other than a substance referred to in
7 Part IX, X or XI of that Schedule)”.

8 **425 Subsection 13(6A)**

9 Repeal the subsection, substitute:

10 (6A) A person must not import ODS equipment or SGG equipment
11 unless:

12 (a) the person holds an ODS/SGG equipment licence; or

13 (b) the following conditions are satisfied:

14 (i) the equipment is kept by the person, or by a member of
15 the person’s household, wholly or principally for private
16 or domestic use;

17 (ii) the equipment is prescribed by the regulations or
18 specified in a legislative instrument made by the
19 Minister;

20 (iii) if the equipment is prescribed by regulations made for
21 the purposes of subparagraph (ii)—the conditions (if
22 any) prescribed by the regulations;

23 (iv) if the equipment is specified in an instrument made by
24 the Minister under subparagraph (ii)—the conditions (if
25 any) specified in a legislative instrument made by the
26 Minister.

27 (6B) Unless sooner revoked, a legislative instrument made by the
28 Minister under subparagraph (6A)(b)(ii) or (iv) ceases to be in
29 force 12 months after it is registered under the *Legislative*
30 *Instruments Act 2003*.

31 **426 Subsection 13(9) (note 2)**

32 Omit “subsection 65AC(4)”, substitute “subsections 65AC(4) and
33 (4A)”.

1 **427 Paragraph 13A(1)(d)**

2 Omit “a pre-charged equipment licence”, substitute “an ODS/SGG
3 equipment licence”.

4 **428 Subsection 13A(5)**

5 Repeal the subsection, substitute:

6 (5) An ODS/SGG equipment licence allows the licensee to import
7 ODS equipment or SGG equipment.

8 **429 Subsection 16(3)**

9 Omit “a pre-charged equipment licence”, substitute “an ODS/SGG
10 equipment licence”.

11 **430 Subsection 19(4)**

12 Omit “A pre-charged equipment licence”, substitute “An ODS/SGG
13 equipment licence”.

14 **431 Subsection 19A(2)**

15 Omit “a pre-charged equipment licence”, substitute “an ODS/SGG
16 equipment licence”.

17 **431A Section 46 (heading)**

18 Repeal the heading, substitute:

19 **46 Quarterly reports by manufacturers, importers and exporters of**
20 **scheduled substances (other than SGGs and substances in**
21 **ODS equipment or SGG equipment)**

22 **432 Paragraph 46(1A)(b)**

23 Omit “pre-charged equipment”, substitute: “ODS equipment or SGG
24 equipment”.

25 **433 Subsection 46(1B)**

26 Repeal the subsection.

27 **434 Subsection 46(1BA)**

28 Repeal the subsection.

1 **435 Subsection 46(1C)**

2 Repeal the subsection.

3 **436 Subsection 46(2AA)**

4 Repeal the subsection.

5 **437 Subsection 46(2A)**

6 Omit “or (2AA)”.

7 **438 Subsection 46(2B)**

8 Omit “or (2AA)”.

9 **439 Subsection 46(2D)**

10 Repeal the subsection.

11 **440 Subsection 46(2E)**

12 Omit “Subsections (2C) and (2D) are *civil penalty provisions*”,
13 substitute “Subsection (2C) is a *civil penalty provision*”.

14 **441 Subsection 46(2F)**

15 Omit “Subsections (2C) and (2D) do not”, substitute “Subsection (2C)
16 does not”.

17 **442 After section 46**

18 Insert:

19 **46A Quarterly reports by manufacturers, importers and exporters**
20 **of SGGs, ODS equipment or SGG equipment**

21 *Manufacturer*

22 (1) If:

23 (a) a person manufactures an SGG during:

24 (i) the quarter beginning on 1 July 2012; or

25 (ii) a later quarter; and

26 (b) the manufacture is not in circumstances prescribed by
27 regulations made for the purposes of paragraph 13(1A)(b);
28 the person must, before the 15th day after the end of the quarter,
29 give the Minister a report in accordance with the regulations.

1 *Importer*

- 2 (2) If:
3 (a) a person imports an SGG during:
4 (i) the quarter beginning on 1 July 2012; or
5 (ii) a later quarter; and
6 (b) the import is not in circumstances prescribed by regulations
7 made for the purposes of paragraph 13(1A)(b); and
8 (c) the SGG is not contained in ODS equipment or SGG
9 equipment;
10 the person must, before the 15th day after the end of the quarter,
11 give the Minister a report in accordance with the regulations.

- 12 (3) If:
13 (a) a person imports ODS equipment or SGG equipment during:
14 (i) the quarter beginning on 1 July 2012; or
15 (ii) a later quarter; and
16 (b) the import is not covered by paragraph 13(6A)(b);
17 the person must, before the 15th day after the end of the quarter,
18 give the Minister a report in accordance with the regulations.

19 *Exporter*

- 20 (4) If:
21 (a) a person exports an SGG during:
22 (i) the quarter beginning on 1 July 2012; or
23 (ii) a later quarter; and
24 (b) the export is not in circumstances prescribed by regulations
25 made for the purposes of paragraph 13(1A)(b);
26 the person must, before the 15th day after the end of the quarter,
27 give the Minister a report in accordance with the regulations.

28 *Offence*

- 29 (5) A person commits an offence if:
30 (a) the person is subject to a requirement under subsection (1),
31 (2), (3) or (4); and
32 (b) the person omits to do an act; and
33 (c) the omission breaches the requirement.

1 Penalty: 60 penalty units.

2 (6) An offence under subsection (5) is an offence of strict liability.

3 Note: For strict liability, see section 6.1 of the *Criminal Code*.

4 (7) Subsections (1), (2), (3) and (4) are *civil penalty provisions*.

5 Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches
6 of civil penalty provisions.

7 Note 2: For maximum penalty, see subsection 65AC(4).

8 **442A Subparagraph 65AA(1)(a)(vii)**

9 Omit “46; or”, substitute “46;”.

10 **442B At the end of paragraph 65AA(1)(a)**

11 Add:

12 (viii) section 46A; or

13 **443 Subsection 65AC(4)**

14 After “subsection”, insert “13(1A) or (6A) or”.

15 **444 After subsection 65AC(4)**

16 Insert:

17 (4A) The pecuniary penalty payable by a person in respect of a
18 contravention of subsection 13(1A) or (6A) must not exceed:

19 (a) if the person is not a body corporate—2,000 penalty units; or

20 (b) if the person is a body corporate—10,000 penalty units.

21 **445 Before paragraph 65C(1)(a)**

22 Insert:

23 (aa) amounts equal to the prescribed rate component of an amount
24 of levy received by the Commonwealth under section 3A of
25 the *Ozone Protection and Synthetic Greenhouse Gas (Import*
26 *Levy) Act 1995*;

27 (ab) amounts equal to the prescribed rate component of an amount
28 of levy received by the Commonwealth under section 4A of
29 the *Ozone Protection and Synthetic Greenhouse Gas (Import*
30 *Levy) Act 1995*;

31 (ac) amounts equal to the prescribed rate component of an amount
32 of levy received by the Commonwealth under section 3A of

1 the *Ozone Protection and Synthetic Greenhouse Gas*
2 (*Manufacture Levy*) Act 1995;

3 **446 Subparagraph 65C(1)(a)(i)**

4 Before “the”, insert “section 4 or 4B of”.

5 **447 Subparagraph 65C(1)(a)(ii)**

6 Before “the”, insert “section 4 of”.

7 **447A Paragraph 65C(1)(b)**

8 Omit “licence”.

9 **448 At the end of section 65C**

10 Add:

11 *Prescribed rate component*

- 12 (4) For the purposes of paragraph (1)(aa), the ***prescribed rate***
13 ***component*** of an amount of levy is so much of that amount as is
14 equal to the amount worked out using the following formula:

15
$$\begin{array}{l} \text{Number of} \\ \text{tonnes} \\ \text{of the SGG} \end{array} \times \text{Prescribed rate}$$

16 where:

17 ***number of tonnes of the SGG*** means the number of tonnes of the
18 SGG to which the levy relates.

19 ***prescribed rate*** means the applicable rate prescribed by the
20 regulations made for the purposes of the definition of ***prescribed***
21 ***rate*** in subsection 3A(7) of the *Ozone Protection and Synthetic*
22 *Greenhouse Gas (Import Levy) Act 1995*.

- 23 (5) For the purposes of paragraph (1)(ab), the ***prescribed rate***
24 ***component*** of an amount of levy is so much of that amount as is
25 equal to the amount worked out using the following formula:

26
$$\begin{array}{l} \text{Number of} \\ \text{tonnes} \\ \text{of the SGG} \\ \text{contained in the} \\ \text{equipment} \end{array} \times \text{Prescribed rate}$$

27 where:

1 *number of tonnes of the SGG contained in the equipment* means
2 the number of tonnes of the SGG contained in the equipment to
3 which the levy relates.

4 *prescribed rate* means the applicable rate prescribed by the
5 regulations made for the purposes of the definition of *prescribed*
6 *rate* in subsection 4A(5) of the *Ozone Protection and Synthetic*
7 *Greenhouse Gas (Import Levy) Act 1995*.

8 (6) For the purposes of paragraph (1)(ac), the *prescribed rate*
9 *component* of an amount of levy is so much of that amount as is
10 equal to the amount worked out using the following formula:

11 Number of
 tonnes × Prescribed rate
 of the SGG

12 where:

13 *number of tonnes of the SGG* means the number of tonnes of the
14 SGG to which the levy relates.

15 *prescribed rate* means the rate prescribed by the regulations made
16 for the purposes of the definition of *prescribed rate* in subsection
17 3A(5) of the *Ozone Protection and Synthetic Greenhouse Gas*
18 *(Manufacture Levy) Act 1995*.

19 **449 Subsection 69(1)**

20 Repeal the subsection, substitute:

- 21 (1) A licence levy is due and payable:
- 22 (a) at the end of 60 days after the end of the quarter to which the
23 levy relates; or
- 24 (b) if the Minister allows the licensee concerned a longer
25 period—at the end of that longer period.

26 **450 After section 69**

27 Insert:

28 **69AA Remission and refund of import levy—SGGs**

29 *Export by licensee*

30 (1) If:

- 1 (a) levy is imposed by section 3A of the *Ozone Protection and*
2 *Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect
3 of the import of an SGG by a licensee; and
4 (b) the Minister is satisfied that the licensee exported the SGG
5 within 12 months (or such longer period as is prescribed by
6 the regulations) after the import; and
7 (c) the licensee applies to the Minister, in accordance with the
8 regulations, for remission or refund of the whole or a part of
9 the carbon charge component of the amount of the levy; and
10 (d) the application is accompanied by such information (if any)
11 as is specified in the regulations; and
12 (e) the application is accompanied by such documents (if any) as
13 are specified in the regulations; and
14 (f) the licensee is not exempt from the carbon charge component
15 of the amount of the levy (see section 3A of the *Ozone*
16 *Protection and Synthetic Greenhouse Gas (Import Levy) Act*
17 *1995*);
18 the Minister must, on behalf of the Commonwealth, remit or refund
19 the whole or a part of the carbon charge component of the amount
20 of the levy.
- 21 (2) For the purposes of subsection (1), the ***carbon charge component***
22 of an amount of levy is so much of that amount as is equal to the
23 amount worked out using the following formula:
- $$24 \frac{\text{Number of tonnes of the carbon dioxide equivalence of the SGG}}{\times} \text{Applicable charge}$$
- 25 where:
- 26 ***applicable charge*** means the charge that was the applicable charge
27 for the purposes of the application of subsection 3A(7) of the
28 *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act*
29 *1995* to the levy.
- 30 ***carbon dioxide equivalence*** has the same meaning as in the *Ozone*
31 *Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.
- 32 (3) The regulations may provide for verification by statutory
33 declaration of statements in applications under subsection (1).

Export by purchaser

1
2 (4) If:

3 (a) levy is imposed by section 3A of the *Ozone Protection and*
4 *Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect
5 of the import of an SGG by a licensee; and

6 (b) the Minister is satisfied that:

7 (i) the licensee sold the SGG to another person; and

8 (ii) the other person exported the SGG within 12 months (or
9 such longer period as is prescribed by the regulations)
10 after the import of the SGG; and

11 (c) the licensee applies to the Minister, in accordance with the
12 regulations, for remission or refund of the whole or a part of
13 the carbon charge component of the amount of the levy; and

14 (d) the application is accompanied by such information (if any)
15 as is specified in the regulations; and

16 (e) the application is accompanied by such documents (if any) as
17 are specified in the regulations; and

18 (f) the licensee is not exempt from the carbon charge component
19 of the amount of the levy (see section 3A of the *Ozone*
20 *Protection and Synthetic Greenhouse Gas (Import Levy) Act*
21 *1995*);

22 the Minister must, on behalf of the Commonwealth, remit or refund
23 the whole or a part of the carbon charge component of the amount
24 of the levy.

25 (5) For the purposes of subsection (4), the ***carbon charge component***
26 of an amount of levy is so much of that amount as is equal to the
27 amount worked out using the following formula:

28
$$\frac{\text{Number of tonnes of the carbon dioxide equivalence of the SGG}}{\text{of the carbon dioxide equivalence of the SGG}} \times \frac{\text{Applicable charge}}{\text{charge}}$$

29 where:

30 ***applicable charge*** means the charge that was the applicable charge
31 for the purposes of the application of subsection 3A(7) of the
32 *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act*
33 *1995* to the levy.

1 *carbon dioxide equivalence* has the same meaning as in the *Ozone*
2 *Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

3 (6) The regulations may provide for verification by statutory
4 declaration of statements in applications under subsection (4).

5 *Assignment of right to receive refund*

6 (7) The regulations may authorise a licensee to assign a right to
7 receive a refund under this section.

8 **69AB Remission and refund of import levy—SGG equipment**

9 *Export by licensee*

10 (1) If:

11 (a) levy is imposed by section 4A of the *Ozone Protection and*
12 *Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect
13 of the import of SGG equipment by a licensee; and

14 (b) the Minister is satisfied that the licensee exported the
15 equipment within 12 months (or such longer period as is
16 prescribed by the regulations) after the import; and

17 (c) the licensee applies to the Minister, in accordance with the
18 regulations, for remission or refund of the whole or a part of
19 the carbon charge component of the amount of the levy; and

20 (d) the application is accompanied by such information (if any)
21 as is specified in the regulations; and

22 (e) the application is accompanied by such documents (if any) as
23 are specified in the regulations;

24 the Minister must, on behalf of the Commonwealth, remit or refund
25 the whole or a part of the carbon charge component of the amount
26 of the levy.

27 (2) For the purposes of subsection (1), the *carbon charge component*
28 of an amount of levy is so much of that amount as is equal to the
29 amount worked out using the following formula:

30
$$\begin{array}{l} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \\ \text{contained in the} \\ \text{equipment} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{charge} \end{array}$$

1 where:

2 ***applicable charge*** means the charge that was the applicable charge
3 for the purposes of the application of subsection 4A(5) of the
4 *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act*
5 *1995* to the levy.

6 ***carbon dioxide equivalence*** has the same meaning as in the *Ozone*
7 *Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

8 (3) For the purposes of subsection (2), disregard an SGG that is used,
9 or for use, for a purpose prescribed by regulations made for the
10 purposes of subsection 4A(7) of the *Ozone Protection and*
11 *Synthetic Greenhouse Gas (Import Levy) Act 1995*.

12 (4) The regulations may provide for verification by statutory
13 declaration of statements in applications under subsection (1).

14 *Export by purchaser*

15 (5) If:

16 (a) levy is imposed by section 4A of the *Ozone Protection and*
17 *Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect
18 of the import of SGG equipment by a licensee; and

19 (b) the Minister is satisfied that:

20 (i) the licensee sold the equipment to another person; and

21 (ii) the other person exported the equipment within 12
22 months (or such longer period as is prescribed by the
23 regulations) after the import of the equipment; and

24 (c) the licensee applies to the Minister, in accordance with the
25 regulations, for remission or refund of the whole or a part of
26 the carbon charge component of the amount of the levy; and

27 (d) the application is accompanied by such information (if any)
28 as is specified in the regulations; and

29 (e) the application is accompanied by such documents (if any) as
30 are specified in the regulations;

31 the Minister must, on behalf of the Commonwealth, remit or refund
32 the whole or a part of the carbon charge component of the amount
33 of the levy.

- 1 (6) For the purposes of subsection (5), the **carbon charge component**
2 of an amount of levy is so much of that amount as is equal to the
3 amount worked out using the following formula:

$$4 \quad \begin{array}{l} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \\ \text{contained in the} \\ \text{equipment} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{charge} \end{array}$$

5 where:

6 **applicable charge** means the charge that was the applicable charge
7 for the purposes of the application of subsection 4A(5) of the
8 *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act*
9 *1995* to the levy.

10 **carbon dioxide equivalence** has the same meaning as in the *Ozone*
11 *Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

- 12 (7) For the purposes of subsection (6), disregard an SGG that is used,
13 or for use, for a purpose prescribed by regulations made for the
14 purposes of subsection 4A(7) of the *Ozone Protection and*
15 *Synthetic Greenhouse Gas (Import Levy) Act 1995*.

- 16 (8) The regulations may provide for verification by statutory
17 declaration of statements in applications under subsection (5).

18 *Assignment of right to receive refund*

- 19 (9) The regulations may authorise a licensee to assign a right to
20 receive a refund under this section.

21 **69AC Remission and refund of manufacture levy—SGGs**

22 *Export by licensee*

- 23 (1) If:
24 (a) levy is imposed by section 3A of the *Ozone Protection and*
25 *Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* in
26 respect of the manufacture of an SGG by a licensee; and
27 (b) the Minister is satisfied that the licensee exported the SGG
28 within 12 months (or such longer period as is prescribed by
29 the regulations) after the manufacture; and

- 1 (c) the licensee applies to the Minister, in accordance with the
2 regulations, for remission or refund of the whole or a part of
3 the carbon charge component of the amount of the levy; and
4 (d) the application is accompanied by such information (if any)
5 as is specified in the regulations; and
6 (e) the application is accompanied by such documents (if any) as
7 are specified in the regulations; and
8 (f) the licensee is not exempt from the carbon charge component
9 of the amount of the levy (see section 3A of the *Ozone*
10 *Protection and Synthetic Greenhouse Gas (Manufacture*
11 *Levy) Act 1995*);

12 the Minister must, on behalf of the Commonwealth, remit or refund
13 the whole or a part of the carbon charge component of the amount
14 of the levy.

- 15 (2) For the purposes of subsection (1), the ***carbon charge component***
16 of an amount of levy is so much of that amount as is equal to the
17 amount worked out using the following formula:

$$18 \quad \begin{array}{l} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{charge} \end{array}$$

19 where:

20 ***applicable charge*** means the charge that was the applicable charge
21 for the purposes of the application of subsection 3A(5) of the
22 *Ozone Protection and Synthetic Greenhouse Gas (Manufacture*
23 *Levy) Act 1995* to the levy.

24 ***carbon dioxide equivalence*** has the same meaning as in the *Ozone*
25 *Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act*
26 *1995*.

- 27 (3) The regulations may provide for verification by statutory
28 declaration of statements in applications under subsection (1).

29 *Export by purchaser*

- 30 (4) If:
31 (a) levy is imposed by section 3A of the *Ozone Protection and*
32 *Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* in
33 respect of the manufacture of an SGG by a licensee; and
-

- 1 (b) the Minister is satisfied that:
2 (i) the licensee sold the SGG to another person; and
3 (ii) the other person exported the SGG within 12 months (or
4 such longer period as is prescribed by the regulations)
5 after the manufacture of the SGG; and
6 (c) the licensee applies to the Minister, in accordance with the
7 regulations, for remission or refund of the whole or a part of
8 the carbon charge component of the amount of the levy; and
9 (d) the application is accompanied by such information (if any)
10 as is specified in the regulations; and
11 (e) the application is accompanied by such documents (if any) as
12 are specified in the regulations; and
13 (f) the licensee is not exempt from the carbon charge component
14 of the amount of the levy (see section 3A of the *Ozone*
15 *Protection and Synthetic Greenhouse Gas (Manufacture*
16 *Levy) Act 1995*);
17 the Minister must, on behalf of the Commonwealth, remit or refund
18 the whole or a part of the carbon charge component of the amount
19 of the levy.
- 20 (5) For the purposes of subsection (4), the ***carbon charge component***
21 of an amount of levy is so much of that amount as is equal to the
22 amount worked out using the following formula:
- $$23 \frac{\text{Number of tonnes of the carbon dioxide equivalence of the SGG}}{\text{of the carbon dioxide equivalence of the SGG}} \times \text{Applicable charge}$$
- 24 where:
- 25 ***applicable charge*** means the charge that was the applicable charge
26 for the purposes of the application of subsection 3A(5) of the
27 *Ozone Protection and Synthetic Greenhouse Gas (Manufacture*
28 *Levy) Act 1995* to the levy.
- 29 ***carbon dioxide equivalence*** has the same meaning as in the *Ozone*
30 *Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act*
31 *1995*.
- 32 (6) The regulations may provide for verification by statutory
33 declaration of statements in applications under subsection (4).

1 *Assignment of right to receive refund*

2 (7) The regulations may authorise a licensee to assign a right to
3 receive a refund under this section.

4 **450A Section 69B**

5 Omit “and the Framework Convention on Climate Change” (wherever
6 occurring), substitute “, the Framework Convention on Climate Change
7 and the Kyoto Protocol”.

8 **451 At the end of Schedule 1**

9 Add:

10 **Part XI—Sulfur hexafluoride**

11

Substance
Sulfur hexafluoride (SF ₆)

12

13 ***Renewable Energy (Electricity) Act 2000***

14 **451A Section 162**

15 Repeal the section, substitute:

16 **162 Periodic reviews of operation of renewable energy legislation**

- 17 (1) The Climate Change Authority must conduct reviews of the
18 following:
- 19 (a) the operation of this Act and the scheme constituted by this
20 Act;
 - 21 (b) the operation of the regulations;
 - 22 (c) the operation of the *Renewable Energy (Electricity)*
23 *(Large-scale Generation Shortfall Charge) Act 2000*;
 - 24 (d) the operation of the *Renewable Energy (Electricity)*
25 *(Small-scale Technology Shortfall Charge) Act 2010*;
 - 26 (e) the diversity of renewable energy access to the scheme
27 constituted by this Act, to be considered with reference to a
28 cost benefit analysis of the environmental and economic
29 impact of that access.

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Public consultation

- (2) In conducting a review, the Climate Change Authority must make provision for public consultation.

Report

- (3) The Climate Change Authority must:
- (a) give the Minister a report of the review; and
 - (b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.
- (4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

- (5) The first review under subsection (1) must be completed before the end of 31 December 2012.

Subsequent reviews

- (6) Each subsequent review under subsection (1) must be completed within 2 years after the deadline for completion of the previous review.
- (7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

Recommendations

- (8) A report of a review under subsection (1) may set out recommendations to the Commonwealth Government.
- (9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.
- (10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

1 (11) A recommendation must not be inconsistent with the objects of this
2 Act.

3 (12) If a report of a review under subsection (1) sets out one or more
4 recommendations to the Commonwealth Government, the report
5 must set out the Climate Change Authority's reasons for those
6 recommendations.

7 *Government response to recommendations*

8 (13) If a report of a review under subsection (1) sets out one or more
9 recommendations to the Commonwealth Government:

10 (a) as soon as practicable after receiving the report, the Minister
11 must cause to be prepared a statement setting out the
12 Commonwealth Government's response to each of the
13 recommendations; and

14 (b) within 6 months after receiving the report, the Minister must
15 cause copies of the statement to be tabled in each House of
16 the Parliament.

17 (14) The Commonwealth Government's response to the
18 recommendations may have regard to the views of the following:

19 (a) the Climate Change Authority;

20 (b) the Regulator;

21 (c) such other persons as the Minister considers relevant.

22 **Division 2—Application and transitional provisions**

23 **452 Application—registration and reports under the *National***
24 ***Greenhouse and Energy Reporting Act 2007***

25 (1) Despite the repeal of section 18 of the *National Greenhouse and Energy*
26 *Reporting Act 2007* by this Part, that section continues to apply after the
27 commencement of this item, in relation to an application for
28 deregistration that was made before the commencement of this item, as
29 if that repeal had not happened.

30 (2) Despite the amendment of paragraph 56(b) of the *National Greenhouse*
31 *and Energy Reporting Act 2007* made by this Part, that paragraph
32 continues to apply after the commencement of this item, in relation to a
33 decision under section 18 of that Act, as if that amendment had not been
34 made.

- 1 (3) The amendments of the *National Greenhouse and Energy Reporting Act*
2 *2007* made by this Part, in so far as they are relevant to determining
3 whether a controlling corporation's group meets a threshold under
4 section 13 of that Act for a financial year, apply in relation to a
5 threshold for:
6 (a) the financial year beginning on 1 July 2012; or
7 (b) a later financial year.
- 8 (4) The amendments of the *National Greenhouse and Energy Reporting Act*
9 *2007* made by this Part, in so far as they relate to reports under
10 section 19 of that Act, apply in relation to reports for:
11 (a) the financial year beginning on 1 July 2012; or
12 (b) a later financial year.
- 13 (5) The amendments of the *National Greenhouse and Energy Reporting Act*
14 *2007* made by this Part, in so far as they relate to reports under
15 section 22G of that Act, apply in relation to reports for:
16 (a) the financial year beginning on 1 July 2012; or
17 (b) a later financial year.

18 **453 Application—civil penalty orders under the *National***
19 ***Greenhouse and Energy Reporting Act 2007***

20 The amendments of section 31 of the *National Greenhouse and Energy*
21 *Reporting Act 2007* made by this Part apply in relation to proceedings
22 instituted after the commencement of this item.

23 **454 Application—liability of executive officers under the**
24 ***National Greenhouse and Energy Reporting Act 2007***

25 The amendments of sections 47 and 48 of the *National Greenhouse and*
26 *Energy Reporting Act 2007* made by this Part apply in relation to a
27 contravention of a civil penalty provision that occurs after the
28 commencement of this item.

29 **455 Transitional—continuation of Register**

30 The National Greenhouse and Energy Register maintained under
31 section 16 of the *National Greenhouse and Energy Reporting Act 2007*
32 after the commencement of this item is, for all purposes, a continuation
33 of the Register kept under section 16 of that Act immediately before the
34 commencement of this item.

1 **456 Application—section 13 of the *Ozone Protection and***
2 ***Synthetic Greenhouse Gas Management Act 1989***

3 The amendments of section 13 of the *Ozone Protection and Synthetic*
4 *Greenhouse Gas Management Act 1989* made by this Part apply in
5 relation to imports that occur after the commencement of this item.

6 **457 Application—civil penalty orders under the *Ozone***
7 ***Protection and Synthetic Greenhouse Gas Management***
8 ***Act 1989***

9 The amendments of section 65AC of the *Ozone Protection and*
10 *Synthetic Greenhouse Gas Management Act 1989* made by this Part
11 apply to contraventions of civil penalty provisions that occur after the
12 commencement of this item.

13 **458 Application—section 69 of the *Ozone Protection and***
14 ***Synthetic Greenhouse Gas Management Act 1989***

15 (1) Subsection 69(1) of the *Ozone Protection and Synthetic Greenhouse*
16 *Gas Management Act 1989* as amended by this Part applies in relation
17 to levy for a quarter that begins at or after the commencement of this
18 item.

19 (2) Despite the repeal of subsection 69(1) of the *Ozone Protection and*
20 *Synthetic Greenhouse Gas Management Act 1989* by this Part, that
21 subsection continues to apply, in relation to levy for a quarter ending
22 before the commencement of this item, as if that repeal had not
23 happened.

24 **459 Transitional—pre-charged equipment licences under the**
25 ***Ozone Protection and Synthetic Greenhouse Gas***
26 ***Management Act 1989***

27 *Scope*

28 (1) This item applies to a pre-charged equipment licence that was in force
29 under the *Ozone Protection and Synthetic Greenhouse Gas*
30 *Management Act 1989* immediately before the commencement of this
31 item.

1 *Effect*

- 2 (2) The pre-charged equipment licence has effect, after the commencement
3 of this item, as if it were an ODS/SGG equipment licence in force under
4 the *Ozone Protection and Synthetic Greenhouse Gas Management Act*
5 *1989* as amended by this Act.

6 **460 Transitional—reports under the *Ozone Protection and***
7 ***Synthetic Greenhouse Gas Management Act 1989* for**
8 **pre-commencement quarters**

9 Despite the amendments of section 46 of the *Ozone Protection and*
10 *Synthetic Greenhouse Gas Management Act 1989* made by this Part,
11 that section continues to apply, in relation to a quarter ending before the
12 commencement of this item, as if those amendments had not been
13 made.

14 **461 Transitional—regulations**

15 The Governor-General may make regulations in relation to transitional
16 matters arising out of the amendments made by this Part.
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Schedule 2—Taxation amendments

Part 1—Amendments relating to GST

A New Tax System (Goods and Services Tax) Act 1999

1 At the end of Division 38

Add:

Subdivision 38-S—Eligible emissions units

38-590 Eligible emissions units

A supply of an *eligible emissions unit is *GST-free*.

2 Section 195-1

Insert:

eligible emissions unit has the same meaning as in the *Clean Energy Act 2011*.

1

2

**Part 2—Amendments commencing at the same time
as section 3 of the Clean Energy Act 2011
commences**

3

4

5

Income Tax Assessment Act 1936

6

3 Subsection 136AB(2)

7

Omit “section 70-20”, substitute “sections 70-20, 420-20 and 420-30”.

8

Income Tax Assessment Act 1997

9

4 Section 10-5 (after table item headed “recoupment”)

10

Insert:

registered emissions units

disposal of..... 420-25
disposal for a non-commercial purpose..... 420-40
difference between opening and closing value of..... 420-45

11

5 Section 12-5 (after table item headed “children’s income”)

12

Insert:

clean energy

unit shortfall charge..... 26-18

13

**6 Section 12-5 (after table item headed “regional
headquarters (RHQs)”)**

14

15

Insert:

registered emissions units

expenditure incurred in becoming the holder of..... 420-15
expenditure incurred in ceasing to hold..... 420-42
excess of opening over closing value of..... 420-45

16

7 Subsection 20-30(1) (after table item 1.27)

17

Insert:

18

1.27A 420-15 registered emissions unit

Schedule 2 Taxation amendments

Part 2 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1

2 **8 After section 26-17**

3 Insert:

4 **26-18 Unit shortfall charge—clean energy**

5 You cannot deduct under this Act unit shortfall charge (within the
6 meaning of the *Clean Energy Act 2011*).

7 **9 Section 67-23 (after table item 23)**

8 Insert:

24 conservation tillage the *tax offset available under
Subdivision 385-J

9 **10 At the end of Subdivision 70-A**

10 Add:

11 **70-12 Registered emissions units**

12 A *registered emissions unit is not *trading stock.

13 **11 At the end of section 70-30 (before the note)**

14 Add:

- 15 (6) Subsection (1) does not apply if:
16 (a) you start holding an item as *trading stock; and
17 (b) immediately before you started holding the item as trading
18 stock, you *held the item as a *registered emissions unit.

19 **12 Section 70-110**

20 Before “If you stop”, insert “(1)”.

21 **13 At the end of section 70-110 (after example 2, before the
22 note)**

23 Add:

- 24 (2) This section does not apply if:
25 (a) you stop holding an item as *trading stock; and

1 (b) immediately after you stopped holding the item as trading
2 stock, you start to *hold the item as a *registered emissions
3 unit.

4 **14 Section 104-5 (before table item relating to CGT event K2)**

5 Insert:

K1 As the result of an incoming international transfer of a *carbon unit, an *international emissions unit or an *Australian carbon credit unit from your foreign account or your nominee's foreign account, you start to hold the unit as a registered emissions unit	when you start to hold the unit as a registered emissions unit	market value of unit <i>less</i> its cost base	reduced cost base of unit <i>less</i> its market value
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[See
section 104-205]

6 **15 Before section 104-210**

7 Insert:

8 **104-205 Incoming international transfer of emissions unit: CGT**
9 **event K1**

10 (1) **CGT event K1** happens if:

11 (a) any of the following conditions is satisfied:

12 (i) a *carbon unit is transferred from your foreign account
13 (within the meaning of the *Clean Energy Act 2011*) to
14 your Registry account (within the meaning of the
15 *Australian National Registry of Emissions Units Act*
16 *2011*) or your nominee's Registry account (within the
17 meaning of the *Australian National Registry of*
18 *Emissions Units Act 2011*);

Schedule 2 Taxation amendments

Part 2 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

-
- 1 (ii) a *carbon unit is transferred from your nominee's
2 foreign account (within the meaning of the *Clean*
3 *Energy Act 2011*) to your Registry account (within the
4 meaning of the *Australian National Registry of*
5 *Emissions Units Act 2011*) or your nominee's Registry
6 account (within the meaning of the *Australian National*
7 *Registry of Emissions Units Act 2011*);
- 8 (iii) an *international emissions unit is transferred from your
9 foreign account (within the meaning of the *Australian*
10 *National Registry of Emissions Units Act 2011*) to your
11 Registry account (within the meaning of that Act) or
12 your nominee's Registry account (within the meaning of
13 that Act);
- 14 (iv) an *international emissions unit is transferred from your
15 nominee's foreign account (within the meaning of the
16 *Australian National Registry of Emissions Units Act*
17 *2011*) to your Registry account (within the meaning of
18 that Act) or your nominee's Registry account (within
19 the meaning of that Act);
- 20 (v) an *Australian carbon credit unit is transferred from
21 your foreign account (within the meaning of the *Carbon*
22 *Credits (Carbon Farming Initiative) Act 2011*) to your
23 Registry account (within the meaning of the *Australian*
24 *National Registry of Emissions Units Act 2011*) or your
25 nominee's Registry account (within the meaning of the
26 *Australian National Registry of Emissions Units Act*
27 *2011*);
- 28 (vi) an *Australian carbon credit unit is transferred from
29 your nominee's foreign account (within the meaning of
30 the *Carbon Credits (Carbon Farming Initiative) Act*
31 *2011*) to your Registry account (within the meaning of
32 the *Australian National Registry of Emissions Units Act*
33 *2011*) or your nominee's Registry account (within the
34 meaning of the *Australian National Registry of*
35 *Emissions Units Act 2011*); and
- 36 (b) as a result of the transfer, you start to *hold the unit as a
37 *registered emissions unit; and
- 38 (c) just before the transfer, the unit was neither your *trading
39 stock nor your *revenue asset.

1 (2) The time of the event is when you start to *hold the unit as a
2 *registered emissions unit.

3 (3) You make a *capital gain* if the unit's *market value (just before
4 you started to *hold the unit as a *registered emissions unit) is *more*
5 than its *cost base. You make a *capital loss* if that market value is
6 *less* than its *reduced cost base.

7 **15A Section 109-60 (table item 11)**

8 Omit "70-110(b)", substitute "70-110(1)(b)".

9 **15B Section 112-97 (table item 1)**

10 Omit "70-110(b)", substitute "70-110(1)(b)".

11 **16 Section 112-97 (after table item 18)**

12 Insert:

18A	You cease to hold a registered emissions unit as the result of an outgoing international transfer of an *international emissions unit	First element of cost base and reduced cost base	Section 420-35
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13 **17 After section 118-13**

14 Insert:

15 **118-15 Registered emissions units**

16 (1) A *capital gain or *capital loss you make from a *registered
17 emissions unit is disregarded.

18 (2) A *capital gain or *capital loss you make from a right to receive a
19 *free carbon unit is disregarded.

20 (3) A *capital gain or *capital loss you make from a right to receive an
21 *Australian carbon credit unit is disregarded.

22 **18 Subsection 122-25(2) (paragraph (d) of the cell at table**
23 **item 1, column headed "This Subdivision does not**
24 **apply to:")**

Schedule 2 Taxation amendments

Part 2 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

1 Omit “creation”, substitute “creation; or”.

2 **19 Subsection 122-25(2) (at the end of the cell at table item 1,**
3 **column headed “This Subdivision does not apply to:”)**

4 Add:

- (e) an asset that becomes a *registered
emissions unit *held by the company
just after the *disposal or creation

5 **20 Subsection 122-25(2) (paragraph (c) of the cell at table**
6 **item 2, column headed “This Subdivision does not**
7 **apply to:”)**

8 Omit “disposed of it”, substitute “disposed of it); or”.

9 **21 Subsection 122-25(2) (at the end of the cell at table item 2,**
10 **column headed “This Subdivision does not apply to:”)**

11 Add:

- (d) an asset that becomes a *registered
emissions unit *held by the company
just after the *disposal or creation
(unless it was a registered emissions
unit held by you when you disposed of
it)

12 **22 At the end of subsection 122-25(3)**

13 Add:

14 ; or (d) a *registered emissions unit.

15 **23 At the end of section 124-75**

16 Add:

- 17 (6) The other asset cannot become a *registered emissions unit *held
18 by you just after you *acquire it.

19 **23A At the end of subsection 124-80(2)**

20 Add “nor can it be a *registered emissions unit”.

21 **24 Subsection 126-50(2)**

22 Omit all the words after “not”, substitute:

- 1 be:
- 2 (a) *trading stock of the recipient company just after the time of
- 3 the trigger event; or
- 4 (b) a *registered emissions unit *held by the recipient company
- 5 just after the time of the trigger event.

6 **25 After subsection 126-50(3)**

7 Insert:

8 (3A) If:

- 9 (a) the roll-over asset is an option referred to in Division 134;
- 10 and
- 11 (b) the recipient company *acquires another *CGT asset by
- 12 exercising the option;
- 13 the other asset cannot become a *registered emissions unit *held by
- 14 the recipient company just after the recipient company acquired it.

15 **26 At the end of Subdivision 230-H**

16 Add:

17 **230-481 Registered emissions units**

18 A *registered emissions unit is exempt from this Division.

19 **27 At the end of Division 385**

20 Add:

21 **Subdivision 385-J—Refundable tax offset for conservation**

22 **tillage**

23 **385-175 Refundable tax offset for conservation tillage**

- 24 (1) You are entitled to a *tax offset under this section (the
- 25 *conservation tillage offset*) for an income year in respect of a
- 26 *depreciating asset if:
- 27 (a) the asset is an *eligible no-till seeder; and
- 28 (b) the income year is:
- 29 (i) the 2012-13 income year; or
- 30 (ii) the 2013-14 income year; or
- 31 (iii) the 2014-15 income year; and

Schedule 2 Taxation amendments

Part 2 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

- 1 (c) at a particular time during the income year, you:
2 (i) start to use the asset to carry on a *primary production
3 business (without previously having the asset *installed
4 ready for use); or
5 (ii) have the asset installed ready for use to carry on a
6 primary production business; and
7 (d) at the time mentioned in paragraph (c), you *hold the asset;
8 and
9 (e) the time mentioned in paragraph (c) is not:
10 (i) before 1 July 2012; or
11 (ii) after 30 June 2015; and
12 (f) the *Agriculture Secretary has issued a Research
13 Participation Certificate to you under section 385-190 for the
14 income year; and
15 (g) you claim the offset in your *income tax return for the
16 income year.

17 Note: The conservation tillage offset is a refundable tax offset: see
18 section 67-23.

- 19 (2) You are not entitled to the conservation tillage offset if the
20 *depreciating asset has, at any time before the time mentioned in
21 paragraph (1)(c), been used, or *installed ready for use, by:
22 (a) you; or
23 (b) any other entity.

24 **385-180 Amount of the conservation tillage offset**

25 The amount of the conservation tillage offset is 15% of the *cost of
26 the *depreciating asset.

27 **385-185 Application for Research Participation Certificate**

28 *Application*

- 29 (1) An entity may apply to the *Agriculture Secretary for the issue of a
30 Research Participation Certificate to the entity for an income year
31 under section 385-190.

32 *Form of application*

- 33 (2) The application must:
-

- 1 (a) be in writing; and
2 (b) be in a form approved, in writing, by the *Agriculture
3 Secretary.

4 **385-190 Issue of Research Participation Certificate**

- 5 (1) The *Agriculture Secretary must issue a written certificate to an
6 entity for an income year if:
7 (a) the entity has made an application under section 385-185 in
8 relation to the income year; and
9 (b) the Agriculture Secretary is satisfied that the entity has, at
10 any time during the income year, completed a conservation
11 tillage survey; and
12 (c) the time mentioned in paragraph (b) is not:
13 (i) before 1 July 2012; or
14 (ii) after 30 June 2015.
- 15 (2) A certificate under this section is to be known as a ***Research***
16 ***Participation Certificate***.
- 17 (3) For the purposes of this section, a ***conservation tillage survey*** is a
18 survey:
19 (a) conducted by the *Agriculture Secretary; and
20 (b) that relates to:
21 (i) farming practices; and
22 (ii) climate change.
- 23 (4) For the purposes of this section, an entity ***completes*** a conservation
24 tillage survey if the entity:
25 (a) fills up and supplies, in accordance with the instructions set
26 out in the relevant survey form, the information specified in
27 the survey form; and
28 (b) gives the filled-up survey form to a person specified in the
29 instructions.

30 **385-195 Notice of refusal to issue Research Participation Certificate**

- 31 If:
32 (a) an entity makes an application under section 385-185 for the
33 issue of a Research Participation Certificate to the entity for
34 an income year; and

Schedule 2 Taxation amendments

Part 2 Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

- 1 (b) the *Agriculture Secretary decides not to issue a Research
2 Participation Certificate under section 385-190 to the
3 applicant for the income year;
4 the Agriculture Secretary must give the applicant written notice of
5 the decision (including reasons for the decision).

6 **385-200 Revocation of Research Participation Certificate**

- 7 (1) The *Agriculture Secretary may revoke a Research Participation
8 Certificate issued to an entity under section 385-190 if the
9 Agriculture Secretary is satisfied that the issue of the certificate
10 was obtained by fraud or serious misrepresentation.
- 11 (2) If the *Agriculture Secretary revokes a Research Participation
12 Certificate under subsection (1), the Agriculture Secretary must
13 give the entity to whom the certificate was issued written notice of
14 the revocation (including reasons for the decision to revoke the
15 certificate).
- 16 (3) If a certificate is revoked under subsection (1), it is taken, for the
17 purposes of this Subdivision, never to have been issued.
- 18 Note: This means that if an assessment of an entity's income tax is issued on
19 the basis that the entity is entitled to a conservation tillage offset and
20 the Research Participation Certificate is then revoked, the assessment
21 will be amended to take account of the fact that the entity was never
22 entitled to conservation tillage offset: see section 385-220.
- 23 (4) Subsection (3) does not apply for the purposes of:
24 (a) the operation of this section or section 385-210; or
25 (b) a review by a court or the *AAT of the decision to revoke the
26 Research Participation Certificate.

27 **385-205 Notification relating to Research Participation Certificate**

- 28 (1) The *Agriculture Secretary must:
29 (a) give the Commissioner written notice of the issue of a
30 Research Participation Certificate to an entity; and
31 (b) do so within 30 days after issuing the certificate.
- 32 (2) The *Agriculture Secretary must:
33 (a) give the Commissioner written notice of the revocation of a
34 Research Participation Certificate issued to an entity; and
35 (b) do so within 30 days after revoking the certificate.
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- 1 (3) A notice under subsection (1) or (2) must specify:
2 (a) the income year to which the Research Participation
3 Certificate relates; and
4 (b) the date of issue of the Research Participation Certificate; and
5 (c) the name of the entity; and
6 (d) if the entity has an *ABN—the ABN; and
7 (e) such other matters (if any) as the *Agriculture Secretary
8 considers should be reported to the Commissioner.
- 9 (4) A notice under subsection (1) or (2) must be accompanied by a
10 copy of the Research Participation Certificate concerned.

11 **385-210 Notice of decision or determination**

- 12 (1) This section applies to a notice of a decision given under
13 section 385-195 (refusal to issue a Research Participation
14 Certificate) or 385-200 (revocation of a Research Participation
15 Certificate).
- 16 (2) The notice of the decision or determination is to include the
17 statements set out in subsections (3) and (4).
- 18 (3) There must be a statement to the effect that, subject to the
19 *Administrative Appeals Tribunal Act 1975*, an application may be
20 made to the *AAT, by (or on behalf of) any entity whose interests
21 are affected by the decision or determination, for review of the
22 decision or determination.
- 23 (4) There must also be a statement to the effect that a request may be
24 made under section 28 of the *Administrative Appeals Tribunal Act*
25 *1975* by (or on behalf of) such an entity for a statement:
26 (a) setting out the findings on material questions of fact; and
27 (b) referring to the evidence or other material on which those
28 findings were based; and
29 (c) giving the reasons for the decision or determination;
30 except where subsection 28(4) of that Act applies.
- 31 (5) If the *Agriculture Secretary fails to comply with subsection (3) or
32 (4), that failure does not affect the validity of the decision or
33 determination.

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385-215 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:

- (a) a decision made by the *Agriculture Secretary to refuse an application for a Research Participation Certificate under section 385-190; or
- (b) a decision made by the Agriculture Secretary under section 385-200 to revoke a Research Participation Certificate.

385-220 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Subdivision for an income year if:

- (a) a Research Participation Certificate issued to an entity for an income year is revoked under section 385-200 after the time the entity lodged its *income tax return for the income year; and
- (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the Research Participation Certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

385-225 Evidentiary certificate

- (1) If requested to do so by the Commissioner, the *Agriculture Secretary may, by writing, certify that a specified asset is an *eligible no-till seeder.
- (2) In any proceedings arising out of this Subdivision, a certificate under subsection (1) is prima facie evidence of the matter certified.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly given.

385-230 Delegation by Agriculture Secretary

The *Agriculture Secretary may, by writing, delegate any or all of his or her functions and powers under this Subdivision to an SES

1 employee, or acting SES employee, in the *Agriculture
2 Department.

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

5 **385-235 Eligible no-till seeder**

6 An *eligible no-till seeder* is a no-till seeder (comprising the
7 combination of cart and tool) that is:

- 8 (a) a tine machine fitted with minimum tillage points designed to
9 achieve minimum soil disturbance and less than full cut-out;
10 or
11 (b) a disc opener with single, double or triple disc blades
12 designed to achieve minimum soil disturbance and less than
13 full cut-out; or
14 (c) a disc/tine hybrid machine fitted with:
15 (i) single, double or triple disc blades designed to achieve
16 minimum soil disturbance and less than full cut-out; and
17 (ii) minimum tillage points designed to achieve minimum
18 soil disturbance and less than full cut-out; or
19 (d) a disc/blade hybrid machine fitted with:
20 (i) single, double or triple disc blades designed to achieve
21 minimum soil disturbance and less than full cut-out; and
22 (ii) blades designed to achieve minimum soil disturbance
23 and less than full cut-out.

24 For the purposes of paragraph (a) and subparagraph (c)(ii), each of
25 the following points are taken to be minimum tillage points
26 designed to achieve minimum soil disturbance and less than full
27 cut-out:

- 28 (e) narrow points;
29 (f) knife points;
30 (g) inverted “T” points.

31 **28 After Part 3-45**

32 Insert:

1 **Part 3-50—Climate change**

2 **Division 420—Registered emissions units**

3 **Table of Subdivisions**

4		Guide to Division 420
5	420-A	Registered emissions units
6	420-B	Acquiring registered emissions units
7	420-C	Disposing of registered emissions units etc.
8	420-D	Accounting for registered emissions units you hold at the start
9		or end of the income year
10	420-E	Exclusivity of Division

11 **Guide to Division 420**

12 **420-1 What this Division is about**

13 This Division deals with amounts you can deduct, and amounts
14 included in your assessable income, because of these situations:

- 15 • you acquire a registered emissions unit;
- 16 • you hold a registered emissions unit at the start or the end of
17 the income year;
- 18 • you dispose of a registered emissions unit.

19 **Table of sections**

20	420-5	The 4 key features of tax accounting for registered emissions units
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21 **420-5 The 4 key features of tax accounting for registered emissions**
22 **units**

23 The purpose of income tax accounting for registered emissions
24 units is to produce the same tax treatment, irrespective of your
25 purpose in acquiring or holding the registered emissions units.

26 There are 4 key features:

- 1 (1) You bring your gross expenditure and gross proceeds to account,
2 not your net profits and losses on disposal of a registered emissions
3 unit.
- 4 (2) The gross expenditure is deductible.
- 5 (3) The gross proceeds are assessable income.
- 6 (4) You must bring to account any difference between the value of
7 your registered emissions units held at the start and at the end of
8 the income year. This is done in such a way that:
- 9 (a) any increase in value is included in assessable income; and
10 (b) any decrease in value is a deduction.

11 **Subdivision 420-A—Registered emissions units**

12 **Table of sections**

13	420-10	Meaning of <i>registered emissions unit</i>
14	420-12	Meaning of <i>hold</i> a registered emissions unit

15 **420-10 Meaning of *registered emissions unit***

16 *A registered emissions unit is:*

17 (a) a *carbon unit; or
18 (b) a *Kyoto unit; or
19 (c) a *prescribed international unit; or
20 (d) an *Australian carbon credit unit;
21 for which there is an entry in a Registry account (within the
22 meaning of the *Australian National Registry of Emissions Units*
23 *Act 2011*).

24 **420-12 Meaning of *hold* a registered emissions unit**

- 25 (1) You *hold* a *registered emissions unit if you are the entity in whose
26 Registry account (within the meaning of the *Australian National*
27 *Registry of Emissions Units Act 2011*) there is an entry for the unit.
- 28 (2) However, if the entity (the *nominee entity*) in whose Registry
29 account (within the meaning of the *Australian National Registry of*
30 *Emissions Units Act 2011*) there is an entry for a *registered
31 emissions unit holds the unit as nominee for another entity:

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- 1 (a) the other entity is taken to *hold* the unit; and
2 (b) the nominee entity is taken not to hold the unit.

3 **Subdivision 420-B—Acquiring registered emissions units**

4 **Table of sections**

5	420-15	What you can deduct
6	420-20	Non-arm's length transactions and transactions with associates
7	420-21	Incoming international transfers of emissions units
8	420-22	Becoming taxable in Australia on the proceeds of sale of registered
9		emissions units

10 **420-15 What you can deduct**

- 11 (1) You can deduct expenditure to the extent that you incur it in
12 becoming the *holder of a *registered emissions unit.

13 Note: A carbon unit is an example of a registered emissions unit. You can
14 become the holder of a carbon unit as a result of the unit being issued
15 to you under the *Clean Energy Act 2011* or as a result of your
16 acquisition of the unit from another entity.

17 *Timing*

- 18 (2) You deduct the expenditure in the income year in which you start
19 to *hold the *registered emissions unit.

20 *Free carbon units*

- 21 (3) You cannot deduct under this section expenditure you incur in
22 becoming the *holder of a *carbon unit issued to you in accordance
23 with:

- 24 (a) the Jobs and Competitiveness Program (within the meaning
25 of the *Clean Energy Act 2011*); or
26 (b) Part 8 (coal-fired electricity generation) of that Act.

27 *Australian carbon credit units*

- 28 (4) You cannot deduct under this section expenditure you incur in
29 becoming the *holder of an *Australian carbon credit unit issued to
30 you in accordance with the *Carbon Credits (Carbon Farming
31 Initiative) Act 2011* unless you incur the expenditure in preparing
32 or lodging:

- 1 (a) an application for a certificate of entitlement (within the
2 meaning of that Act); or
3 (b) an offsets report (within the meaning of that Act).

4 *No deduction if sale proceeds would not be assessable*

- 5 (5) You cannot deduct under this section expenditure you incur in
6 becoming the *holder of a *registered emissions unit if, assuming
7 that you had sold the unit to someone else immediately after you
8 started to *hold the unit, the proceeds of the sale would not have
9 been included in your assessable income under section 420-25.

10 Note: Under the *International Tax Agreements Act 1953*, for some foreign
11 residents, the proceeds of the sale of a registered emissions unit are
12 not assessable income in Australia.

13 **420-20 Non-arm's length transactions and transactions with**
14 **associates**

15 (1) If:

- 16 (a) an entity becomes the *holder of a *registered emissions unit;
17 and
18 (b) either:
19 (i) the entity and the previous holder of the unit did not
20 deal with each other at arm's length; or
21 (ii) the previous holder is the entity's *associate; and
22 (c) the entity did not pay or give consideration equal to the
23 *market value of the unit for becoming the holder of the unit;
24 the entity is treated as if:
25 (d) the entity had incurred expenditure in becoming the holder of
26 the unit; and
27 (e) the amount of the expenditure were equal to that market
28 value.

29 (2) This section does not apply if a *registered emissions unit *held by
30 an individual just before the individual's death:

- 31 (a) devolves to the individual's *legal personal representative; or
32 (b) *passes to a beneficiary in the individual's estate.

33 (3) This section does not apply to:

- 34 (a) the issue of a *carbon unit under the *Clean Energy Act 2011*;
35 or
-

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1 (b) the issue of an *Australian carbon credit unit under the
2 *Carbon Credits (Carbon Farming Initiative) Act 2011*.

3 Note: In the application of Division 13 of Part III of the *Income Tax*
4 *Assessment Act 1936* (about international transfer-pricing
5 arrangements), this section is disregarded—see subsection 136AB(2)
6 of the *Income Tax Assessment Act 1936*.

7 **420-21 Incoming international transfers of emissions units**

8 *Unit held as trading stock or as a revenue asset*

9 (1) If:

10 (a) any of the following conditions is satisfied:

11 (i) a *carbon unit is transferred from your foreign account
12 (within the meaning of the *Clean Energy Act 2011*) to
13 your Registry account (within the meaning of the
14 *Australian National Registry of Emissions Units Act*
15 *2011*) or your nominee's Registry account (within the
16 meaning of the *Australian National Registry of*
17 *Emissions Units Act 2011*);

18 (ii) a carbon unit is transferred from your nominee's foreign
19 account (within the meaning of the *Clean Energy Act*
20 *2011*) to your Registry account (within the meaning of
21 the *Australian National Registry of Emissions Units Act*
22 *2011*) or your nominee's Registry account (within the
23 meaning of the *Australian National Registry of*
24 *Emissions Units Act 2011*);

25 (iii) an *international emissions unit is transferred from your
26 foreign account (within the meaning of the *Australian*
27 *National Registry of Emissions Units Act 2011*) to your
28 Registry account (within the meaning of that Act) or
29 your nominee's Registry account (within the meaning of
30 that Act);

31 (iv) an international emissions unit is transferred from your
32 nominee's foreign account (within the meaning of the
33 *Australian National Registry of Emissions Units Act*
34 *2011*) to your Registry account (within the meaning of
35 that Act) or your nominee's Registry account (within
36 the meaning of that Act);

37 (v) an *Australian carbon credit unit is transferred from
38 your foreign account (within the meaning of the *Carbon*

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-
- 1 (i) a *carbon unit is transferred from your foreign account
2 (within the meaning of the *Clean Energy Act 2011*) to
3 your Registry account (within the meaning of the
4 *Australian National Registry of Emissions Units Act*
5 *2011*) or your nominee's Registry account (within the
6 meaning of the *Australian National Registry of*
7 *Emissions Units Act 2011*);
- 8 (ii) a carbon unit is transferred from your nominee's foreign
9 account (within the meaning of the *Clean Energy Act*
10 *2011*) to your Registry account (within the meaning of
11 the *Australian National Registry of Emissions Units Act*
12 *2011*) or your nominee's Registry account (within the
13 meaning of the *Australian National Registry of*
14 *Emissions Units Act 2011*);
- 15 (iii) an *international emissions unit is transferred from your
16 foreign account (within the meaning of the *Australian*
17 *National Registry of Emissions Units Act 2011*) to your
18 Registry account (within the meaning of that Act) or
19 your nominee's Registry account (within the meaning of
20 that Act);
- 21 (iv) an international emissions unit is transferred from your
22 nominee's foreign account (within the meaning of the
23 *Australian National Registry of Emissions Units Act*
24 *2011*) to your Registry account (within the meaning of
25 that Act) or your nominee's Registry account (within
26 the meaning of that Act);
- 27 (v) an *Australian carbon credit unit is transferred from
28 your foreign account (within the meaning of the *Carbon*
29 *Credits (Carbon Farming Initiative) Act 2011*) to your
30 Registry account (within the meaning of the *Australian*
31 *National Registry of Emissions Units Act 2011*) or your
32 nominee's Registry account (within the meaning of the
33 *Australian National Registry of Emissions Units Act*
34 *2011*);
- 35 (vi) an Australian carbon credit unit is transferred from your
36 nominee's foreign account (within the meaning of the
37 *Carbon Credits (Carbon Farming Initiative) Act 2011*)
38 to your Registry account (within the meaning of the
39 *Australian National Registry of Emissions Units Act*
40 *2011*) or your nominee's Registry account (within the

- 1 meaning of the *Australian National Registry of*
2 *Emissions Units Act 2011*); and
3 (b) as a result of the transfer, you start to *hold the unit as a
4 *registered emissions unit; and
5 (c) just before the transfer, the unit was neither your *trading
6 stock nor your *revenue asset;
7 you are treated as if:
8 (d) just before the transfer, you had sold the unit to someone else
9 for its *market value just before the transfer; and
10 (e) you had, immediately after the sale, bought it back as a
11 registered emissions unit for the same amount.

12 **420-22 Becoming taxable in Australia on the proceeds of sale of**
13 **registered emissions units**

14 If:

- 15 (a) you start to *hold a *registered emissions unit at a particular
16 time; and
17 (b) assuming that you had sold the unit to someone else
18 immediately after you started to hold the unit, the proceeds of
19 the sale would not have been included in your assessable
20 income under section 420-25; and
21 (c) you hold the unit until a later time (the *taxable status*
22 *commencement time*), where the following conditions are
23 satisfied:
24 (i) assuming that you had sold the unit to someone else
25 immediately before the taxable status commencement
26 time, the proceeds of the sale would not have been
27 included in your assessable income under
28 section 420-25;
29 (ii) assuming that you had sold the unit to someone else at
30 the taxable status commencement time, the proceeds of
31 the sale would have been included in your assessable
32 income under section 420-25;
33 you are treated as if:
34 (d) immediately after the taxable status commencement time,
35 you had bought the unit from someone else for its *market
36 value; and

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1 (e) you had started to hold the unit immediately after the taxable
2 status commencement time instead of at the time mentioned
3 in paragraph (a).

4 Note: Under the *International Tax Agreements Act 1953*, for some foreign
5 residents, the proceeds of the sale of a registered emissions unit are
6 not assessable income in Australia.

7 **Subdivision 420-C—Disposing of registered emissions units etc.**

8 **Table of sections**

9	420-25	Assessable income on disposal of registered emissions units
10	420-30	Non-arm's length transactions and transactions with associates
11	420-35	Outgoing international transfers of emissions units
12	420-40	Disposal of registered emissions units for a purpose other than gaining assessable income
13		
14	420-41	Ceasing to be taxable in Australia on the proceeds of sale of registered emissions units
15		
16	420-42	Deduction for expenses incurred in ceasing to hold a registered emissions unit
17		
18	420-43	Deduction for charge imposed on the surrender of an eligible international emissions unit
19		

20 **420-25 Assessable income on disposal of registered emissions units**

21 (1) Your assessable income includes an amount that you are entitled to
22 receive because you cease to *hold a *registered emissions unit.

23 *Timing*

24 (2) The amount is included in your assessable income for the income
25 year in which you cease to *hold the unit.

26 *Source*

27 (3) An amount included in your assessable income under
28 subsection (1) is taken, for the purposes of the *income tax laws, to
29 have a source in Australia.

1 **420-30 Non-arm's length transactions and transactions with**
2 **associates**

3 If:

- 4 (a) an entity (the *transferor*) ceases to *hold a *registered
5 emissions unit; and
6 (b) the cessation is because of the transfer of the unit to:
7 (i) a Registry account (within the meaning of the
8 *Australian National Registry of Emissions Units Act*
9 *2011*); or
10 (ii) a foreign account (within the meaning of that Act);
11 kept by another entity (the *transferee*); and
12 (c) either:
13 (i) the transferor and the transferee did not deal with each
14 other at arm's length; or
15 (ii) the transferee is the transferor's *associate; and
16 (d) the transferee did not pay or give consideration equal to the
17 *market value of the unit for the transfer of the unit;

18 the transferor is treated as if the transferor were entitled to receive
19 an amount equal to that market value because the transferor ceased
20 to be the holder of the unit.

21 Note: In the application of Division 13 of Part III of the *Income Tax*
22 *Assessment Act 1936* (about international transfer-pricing
23 arrangements), this section is disregarded—see subsection 136AB(2)
24 of the *Income Tax Assessment Act 1936*.

25 **420-35 Outgoing international transfers of emissions units**

26 If:

- 27 (a) you stop *holding a *registered emissions unit; and
28 (b) you do so as a result of the transfer of the unit to:
29 (i) if the unit is a *carbon unit—your foreign account
30 (within the meaning of the *Clean Energy Act 2011*) or
31 your nominee's foreign account (within the meaning of
32 that Act); or
33 (ii) if the unit is an *international emissions unit—your
34 foreign account (within the meaning of the *Australian*
35 *National Registry of Emissions Units Act 2011*) or your
36 nominee's foreign account (within the meaning of that
37 Act); or

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1 (iii) if the unit is an *Australian carbon credit unit—your
2 foreign account (within the meaning of the *Carbon*
3 *Credits (Carbon Farming Initiative) Act 2011*) or your
4 nominee’s foreign account (within the meaning of that
5 Act);

6 you are treated as if:

- 7 (c) just before the transfer, you had sold the unit to someone else
8 for its *market value just before the transfer; and
9 (d) you had, immediately after the sale, bought it back for the
10 same amount.

11 Example: An Australian resident company carries on a business of trading in
12 emission units. The company owns 10,000 emission reduction units (a
13 type of international emissions unit) that are registered in Australia.
14 5,000 of those units are transferred from the company’s Australian
15 registry account to the company’s New Zealand registry account.

16 The company is treated as having sold each unit to someone else at its
17 market value just before it stopped being a registered emissions unit.
18 As the unit was a registered emissions unit, the market value is
19 included in the company’s assessable income (section 420-25).

20 The company is also treated as having bought 5,000 emission
21 reduction units for the same amount. As those units are trading stock,
22 the company may be able to deduct that amount under section 8-1.

23 **420-40 Disposal of registered emissions units for a purpose other**
24 **than gaining assessable income**

25 (1) If:

- 26 (a) an entity (the *first entity*) incurs expenditure in:
27 (i) becoming the *holder of a *registered emissions unit; or
28 (ii) ceasing to hold a registered emissions unit; and
29 (b) the first entity has deducted or can deduct the expenditure
30 under section 420-15 or 420-42; and
31 (c) the first entity ceases to hold the unit in a particular income
32 year; and
33 (d) the cessation is neither:
34 (i) in gaining or producing the first entity’s assessable
35 income; nor
36 (ii) in carrying on a *business for the purpose of gaining or
37 producing the first entity’s assessable income; and

1 (e) section 420-30 (non-arm's length transactions and
2 transactions with associates) did not apply to the first entity
3 ceasing to hold the unit;
4 the first entity's assessable income for that income year includes an
5 amount equal to the amount the first entity has deducted or can
6 deduct.

7 *Death*

8 (2) If:
9 (a) the first entity is an individual; and
10 (b) the cessation is because of the first entity's death; and
11 (c) the *registered emissions unit devolves to the first entity's
12 *legal personal representative;
13 then:
14 (d) the first entity's legal personal representative is treated as
15 having bought the unit for the amount included in the first
16 entity's assessable income under subsection (1); and
17 (e) if the unit *passes to a beneficiary in the first entity's estate:
18 (i) the first entity's legal personal representative is treated
19 as having disposed of the unit for the amount included
20 in the first entity's assessable income under
21 subsection (1); and
22 (ii) the beneficiary is treated as having bought the unit for
23 the amount included in the first entity's assessable
24 income under subsection (1).

25 (3) If:
26 (a) the first entity is an individual; and
27 (b) the cessation is because of the first entity's death; and
28 (c) the *registered emissions unit *passes to a beneficiary in the
29 first entity's estate without devolving to the first entity's
30 *legal personal representative;
31 the beneficiary is treated as having bought the unit for the amount
32 included in the first entity's assessable income under
33 subsection (1).

34 *Transfer—treatment of acquirer*

35 (4) If:

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-
- 1 (a) the cessation is because of the transfer of the unit to another
2 entity; and
3 (b) neither subsection (2) nor (3) applies;
4 the other entity is treated as having bought the unit for the amount
5 included in the first entity's assessable income under
6 subsection (1).
- 7 (5) If subsection (4) applies to the transfer of the unit to another entity:
8 (a) the first entity must inform the other entity that, as a result of
9 subsection (4) applying, the other entity is treated as having
10 bought the unit for a particular amount; and
11 (b) the first entity must do so:
12 (i) at, or as soon as practicable after, the time of the
13 transfer; or
14 (ii) by a later time allowed by the Commissioner.

15 *Source*

- 16 (6) An amount included in the first entity's assessable income under
17 subsection (1) is taken, for the purposes of the *income tax laws, to
18 have a source in Australia.

19 **420-41 Ceasing to be taxable in Australia on the proceeds of sale of**
20 **registered emissions units**

21 If:

- 22 (a) you start to *hold a *registered emissions unit; and
23 (b) assuming that you had sold the unit to someone else
24 immediately after you started to hold the unit, the proceeds of
25 sale would have been included in your assessable income
26 under section 420-25; and
27 (c) you hold the unit until a later time (the *taxable status*
28 *cessation time*), where the following conditions are satisfied:
29 (i) assuming that you had sold the unit to someone else
30 immediately before the taxable status cessation time, the
31 proceeds of the sale would have been included in your
32 assessable income under section 420-25;
33 (ii) assuming that you had sold the unit to someone else at
34 the taxable status cessation time, the proceeds of sale
35 would not have been included in your assessable income
36 under section 420-25;

- 1 you are treated as if:
- 2 (d) just before the taxable status cessation time, you had sold the
- 3 unit to someone else for its *market value; and
- 4 (e) you had, at the taxable status cessation time, bought it back
- 5 for the same amount.

6 Note: Under the *International Tax Agreements Act 1953*, for some foreign

7 residents, the proceeds of the sale of a registered emissions unit are

8 not assessable income in Australia.

9 **420-42 Deduction for expenses incurred in ceasing to hold a**

10 **registered emissions unit**

- 11 (1) You can deduct expenditure to the extent that you incur it in
- 12 ceasing to *hold a *registered emissions unit.

13 *Timing*

- 14 (2) You deduct the expenditure in the income year in which you cease
- 15 to *hold the *registered emissions unit.

16 **420-43 Deduction for charge imposed on the surrender of an eligible**

17 **international emissions unit**

- 18 (1) You can deduct an amount of charge imposed by the *Clean Energy*
- 19 (*International Unit Surrender Charge*) *Act 2011* on the surrender
- 20 by you of an eligible international emissions unit (within the
- 21 meaning of the *Australian National Registry of Emissions Units*
- 22 *Act 2011*).

23 *Timing*

- 24 (2) You deduct the amount in the income year in which you pay the
- 25 amount.

26 **Subdivision 420-D—Accounting for registered emissions units**

27 **you hold at the start or end of the income year**

28 **Table of sections**

29	420-45	You include the value of your registered emissions units in working out
30		your assessable income and deductions
31	420-50	Value of registered emissions units at start of income year
32	420-51	Valuation methods

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1	420-52	FIFO cost method of working out the value of units
2	420-53	Actual cost method of working out the value of units
3	420-54	Market value method of working out the value of units
4	420-55	Valuation method for first income year at the end of which you held
5		registered emissions units
6	420-57	Valuation method for later income years at the end of which you held
7		registered emissions units
8	420-58	Value of registered emissions units at end of income year—certain free
9		carbon units
10	420-60	Cost of registered emissions units

420-45 You include the value of your registered emissions units in working out your assessable income and deductions

- (1) You compare:
- (a) the *value of all *registered emissions units you *held at the start of the income year; and
 - (b) the value of all registered emissions units you held at the end of the income year.

Increase in value is included in assessable income

- (2) Your assessable income includes any excess of the *value at the end of the income year over the value at the start of the income year.

Decrease in value is a deduction

- (3) On the other hand, you can deduct any excess of the *value at the start of the income year over the value at the end of the income year.

Source

- (4) An amount included in your assessable income under subsection (2) is taken, for the purposes of the *income tax laws, to have a source in Australia.

Disregard value of unit if sale proceeds would not be assessable

- (5) For the purposes of this Subdivision, disregard the *value of a *registered emissions unit you *held at the end of the income year if, assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of the

1 sale would not have been included in your assessable income under
2 section 420-25.

3 Note: Under the *International Tax Agreements Act 1953*, for some foreign
4 residents, the proceeds of the sale of a registered emissions unit are
5 not assessable income in Australia.

6 **420-50 Value of registered emissions units at start of income year**

7 (1) The *value* of a *registered emissions unit you *held at the start of
8 an income year is the same amount at which it was taken into
9 account under this Subdivision at the end of the last income year.

10 (2) The *value* of the unit is a nil amount if the unit was not taken into
11 account under this Subdivision at the end of the last income year.

12 **420-51 Valuation methods**

13 (1) The *value* of a *registered emissions unit you *held at the end of an
14 income year is worked out using one of the following methods:

- 15 (a) the *FIFO cost method;
- 16 (b) the *actual cost method;
- 17 (c) the *market value method.

18 Sections 420-55 and 420-57 tell you which method applies.

19 (2) This section has effect subject to section 420-58 (certain free
20 carbon units).

21 **420-52 FIFO cost method of working out the value of units**

22 The *FIFO cost method* for working out the *value of the
23 *registered emissions units you *held at the end of an income year
24 means that the value of the units is the *cost of the registered
25 emissions units, and, for the purposes of the application of this
26 Subdivision to you for the income year:

- 27 (a) if any of the registered emissions units are:
 - 28 (i) *carbon units that have a *vintage year that is the same
29 as, or earlier than, the financial year to which the
30 income year relates; or
 - 31 (ii) eligible international emissions units (within the
32 meaning of the *Australian National Registry of*
33 *Emissions Units Act 2011*); or

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- 1 (iii) *Australian carbon credit units;
2 you must account for those units on a first-in first-out basis;
3 and
4 (b) if:
5 (i) any of the registered emissions units are carbon units
6 that have the same vintage year; and
7 (ii) that vintage year is later than the financial year to which
8 the income year relates;
9 you must account for those units on a first-in first-out basis;
10 and
11 (c) if any of the registered emissions units are *Kyoto units that
12 are not eligible international emissions units (within the
13 meaning of the *Australian National Registry of Emissions*
14 *Units Act 2011*)—you must account for those units on a
15 first-in first-out basis.

16 **420-53 Actual cost method of working out the value of units**

17 The *actual cost method* for working out the value of the *registered
18 emissions units you *held at the end of the income year means that
19 the value of the units is the *cost of the units, and, for the purposes
20 of the application of this Subdivision to you for the income year,
21 you must not account for any of those units on a first-in first-out
22 basis.

23 **420-54 Market value method of working out the value of units**

24 The *market value method* for working out the value of the
25 *registered emissions units you *held at the end of the income year
26 means that the value of the units is the *market value of the units at
27 the end of the income year.

28 **420-55 Valuation method for first income year at the end of which**
29 **you held registered emissions units**

30 *Scope*

- 31 (1) This section applies if:
32 (a) you *held one or more *registered emissions units at the end
33 of an income year; and
-

1 (b) the income year is the first income year at the end of which
2 you held one or more registered emissions units.

3 *Choice of method*

4 (2) You may choose one of the following methods:

5 (a) the *FIFO cost method;

6 (b) the *actual cost method;

7 (c) the *market value method;

8 for working out the *value* of the *registered emissions units you
9 *held at the end of the income year.

10 *FIFO cost method applies if no choice made*

11 (3) If you do not make a choice under subsection (2) for the income
12 year, the *value* of the *registered emissions units you *held at the
13 end of the income year is worked out using the *FIFO cost method.

14 *Time for making choice*

15 (4) You must make a choice under subsection (2) before you lodge
16 your *income tax return for the income year for which you make
17 the choice.

18 *No revocation of choice*

19 (5) A choice made under subsection (2) cannot be revoked.

20 *Certain free carbon units*

21 (6) This section has effect subject to section 420-58 (certain free
22 carbon units).

23 **420-57 Valuation method for later income years at the end of which**
24 **you held registered emissions units**

25 *Scope*

26 (1) This section applies if:

27 (a) you *held one or more *registered emissions units at the end
28 of an income year (the *current income year*); and

29 (b) the current income year is not the first income year at the end
30 of which you held one or more registered emissions units.

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Choice of method

- (2) You may choose one of the following methods:
- (a) the *FIFO cost method;
 - (b) the *actual cost method;
 - (c) the *market value method;
- for working out the **value** of the *registered emissions units you *held at the end of the current income year.

Previous method applies if no choice made

- (3) If you do not make a choice under subsection (2) for the current income year, the **value** of the *registered emissions units you *held at the end of the current income year is worked out using the method that applied to the most recent income year at the end of which you held one or more registered emissions units.

Limitation on choice—before 2015-16 income year

- (4) If the current income year is before the 2015-16 income year, you must not make a choice under subsection (2) for the current income year if you have previously made a choice under that subsection for an earlier income year.

Limitation on choice—2015-16 income year or a later income year

- (5) If the current income year is:
- (a) the 2015-16 income year; or
 - (b) a later income year;
- you must not make a choice under subsection (2) for the current income year unless:
- (c) the same method applied for each of the 4 most recent income years at the end of which you *held one or more *registered emissions units; and
 - (d) the method mentioned in paragraph (c) is different from the method to which your choice for the current income year relates.
-

1 *Limitation on choice—change from FIFO cost method to actual*
2 *cost method*

3 (6) You must not choose under subsection (2) the *actual cost method
4 for the current income year if the *FIFO cost method applied for
5 the most recent income year at the end of which you *held one or
6 more *registered emissions units.

7 *Time for making choice*

8 (7) You must make a choice under subsection (2) before you lodge
9 your *income tax return for the income year for which you make
10 the choice.

11 *No revocation of choice*

12 (8) A choice made under subsection (2) cannot be revoked.

13 *Certain free carbon units*

14 (9) This section has effect subject to section 420-58 (certain free
15 carbon units).

16 **420-58 Value of registered emissions units at end of income year—**
17 **certain free carbon units**

18 *Scope*

19 (1) This section applies to a *carbon unit with a particular *vintage
20 year if:
21 (a) it was issued to you in accordance with the Jobs and
22 Competitiveness Program (within the meaning of the *Clean*
23 *Energy Act 2011*); and
24 (b) you *held it throughout the period:
25 (i) beginning when it was issued to you; and
26 (ii) ending at the end of an income year that ended before
27 1 February in the financial year next following the
28 vintage year.

29 *Value*

30 (2) The *value* of the unit you *held at the end of an income year that
31 ended during that period is a nil amount.

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- 1 (3) For the purposes of:
2 (a) subsection 420-57(3); and
3 (b) paragraph 420-57(5)(c);
4 the method that applied to a previous income year mentioned in
5 that subsection or paragraph, as the case may be, is the method that
6 would have applied if this section had not been enacted.

7 **420-60 Cost of registered emissions units**

8 *Free carbon units*

- 9 (1) If a *carbon unit was issued to you free of charge under the *Clean*
10 *Energy Act 2011*, the *cost* of the unit is its *market value
11 immediately after you began to *hold the unit.
12 (2) Subsection (1) does not affect the operation of section 420-58.

13 *Australian carbon credit units*

- 14 (3) If an *Australian carbon credit unit was issued to you under the
15 *Carbon Credits (Carbon Farming Initiative) Act 2011*, the *cost* of
16 the unit is its *market value immediately after you began to *hold
17 the unit.

18 *Other registered emissions units*

- 19 (4) If a *registered emissions unit (other than an *Australian carbon
20 credit unit) was not issued to you free of charge under the *Clean*
21 *Energy Act 2011*, the *cost* of the unit is the total of the expenditure
22 that you:
23 (a) incurred in becoming the *holder of the unit; and
24 (b) can deduct under section 420-15.

25 **Subdivision 420-E—Exclusivity of Division**

26 **Table of sections**

27	420-65	Exclusivity of deductions etc.
28	420-70	Exclusivity of assessable income etc.

1 **420-65 Exclusivity of deductions etc.**

2 *Expenditure incurred in becoming the holder of a registered*
3 *emissions unit*

- 4 (1) You cannot deduct under any provision of this Act outside this
5 Division any expenditure to the extent that you incur it in
6 becoming the *holder of a *registered emissions unit.
- 7 (2) To the extent you incur expenditure in becoming the *holder of a
8 *registered emissions unit, the expenditure is not to be taken into
9 account in working out:
- 10 (a) an amount you can deduct; or
11 (b) an amount included in your assessable income;
12 under any provision of this Act outside this Division.

13 *Free carbon units*

- 14 (3) Subsections (1) and (2) do not affect the application of a provision
15 of this Act outside this Division to expenditure you incur in
16 becoming the *holder of a *carbon unit issued to you in accordance
17 with:
- 18 (a) the Jobs and Competitiveness Program (within the meaning
19 of the *Clean Energy Act 2011*); or
20 (b) Part 8 (coal-fired electricity generation) of that Act.

21 *Australian carbon credit units*

- 22 (4) Subsections (1) and (2) do not affect the application of a provision
23 of this Act outside this Division to expenditure you incur in
24 becoming the *holder of an *Australian carbon credit unit issued to
25 you in accordance with the *Carbon Credits (Carbon Farming*
26 *Initiative) Act 2011* if you do not incur the expenditure in preparing
27 or lodging:
- 28 (a) an application for a certificate of entitlement (within the
29 meaning of that Act); or
30 (b) an offsets report (within the meaning of that Act).
- 31 (5) Subsections (1) and (2) do not affect the operation of Division 30
32 (deductions for gifts and contributions).

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1 Note: If you make a gift or contribution, Division 30 applies in the normal
2 way to determine whether you can deduct the amount of the gift or
3 contribution.

4 *Expenditure incurred in ceasing to hold a registered emissions unit*

5 (6) You cannot deduct under any provision of this Act outside this
6 Division any expenditure to the extent that you incur it in ceasing
7 to *hold a *registered emissions unit.

8 **420-70 Exclusivity of assessable income etc.**

9 (1) An amount that you are entitled to receive because you ceased to
10 *hold a *registered emissions unit is not to be:
11 (a) included in your assessable income; or
12 (b) taken into account in working out your assessable income; or
13 (c) taken into account in working out an amount you can deduct;
14 under any provision of this Act outside this Division.

15 (2) Subsection (1) does not affect the operation of Division 6 so far as
16 that Division provides for the significance of residence or source
17 for the assessability of ordinary and statutory income.

18 Note: An amount included in your assessable income under this Division
19 may be ordinary or statutory income for the purposes of Division 6.

20 *Free carbon units*

21 (3) An amount is not to be included in your assessable income under
22 any provision of this Act outside this Division because a *carbon
23 unit was issued to you in accordance with:
24 (a) the Jobs and Competitiveness Program (within the meaning
25 of the *Clean Energy Act 2011*); or
26 (b) Part 8 (coal-fired electricity generation) of that Act.

27 Note 1: A capital gain or capital loss you make from a registered emissions
28 unit is disregarded (subsection 118-15(1)).

29 Note 2: A capital gain or capital loss you make from a right to receive a free
30 carbon unit is disregarded (subsection 118-15(2)).

31 *Australian carbon credit units*

32 (4) An amount is not to be included in your assessable income under
33 any provision of this Act outside this Division because an

1 *Australian carbon credit unit was issued to you in accordance with
2 the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

3 Note 1: A capital gain or capital loss you make from a registered emissions
4 unit is disregarded (subsection 118-15(1)).

5 Note 2: A capital gain or capital loss you make from a right to receive an
6 Australian carbon credit unit is disregarded (subsection 118-15(3)).

7 **29 Subsection 701-10(5) (heading)**

8 Repeal the heading, substitute:

9 *Multiple setting of tax cost for same trading stock or registered*
10 *emissions unit*

11 **30 Paragraph 701-10(5)(a)**

12 After “*trading stock”, insert “or a *registered emissions unit”.

13 **31 Paragraph 701-25(2)(a)**

14 Repeal the paragraph, substitute:

15 (a) either:

16 (i) the asset is *trading stock of the *head company; or

17 (ii) the asset is a *registered emissions unit and an asset of
18 the head company; and

19 **32 Subsection 701-25(3) (note)**

20 After “trading stock”, insert “or registered emissions units”.

21 **33 Subsection 701-25(4)**

22 Omit “The asset is taken”, substitute “If subparagraph (2)(a)(i) applies,
23 the asset is taken”.

24 **34 At the end of section 701-25 (after the note)**

25 Add:

26 *Setting value of registered emissions unit at tax-neutral amount*

27 (5) If subparagraph (2)(a)(ii) applies, the asset is taken to be an asset
28 of the *head company at the end of the income year (but not at the
29 start of the next income year) and the head company’s *value for
30 the asset at that time is taken to be equal to:

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- 1 (a) if the asset was *held by the head company at the start of the
2 income year—the value of the asset at the start of the income
3 year; or
4 (b) otherwise—the expenditure incurred by the head company in
5 becoming the holder of the asset.

6 **35 Subsection 701-35(2)**

7 Repeal the subsection, substitute:

8 *Assets to which section applies*

- 9 (2) This section applies in relation to an asset if:
10 (a) the asset is *trading stock of the entity just before it becomes
11 a *subsidiary member of the group; or
12 (b) the asset is:
13 (i) a *registered emissions unit; and
14 (ii) an asset of the entity;
15 just before it becomes a subsidiary member of the group.

16 **36 Subsection 701-35(3) (note)**

17 After “trading stock”, insert “or registered emissions units”.

18 **37 Subsection 701-35(4)**

19 Omit “The *value of the”, substitute “If paragraph (2)(a) applies, the
20 *value of the”.

21 **38 At the end of section 701-35 (after the note)**

22 Add:

23 *Setting value of registered emissions unit at tax-neutral amount*

- 24 (5) If paragraph (2)(b) applies, the *value of the *registered emissions
25 unit at the end of the income year that ends, or, if section 701-30
26 applies, of the income year that is taken by subsection (3) of that
27 section to end, when the entity becomes a *subsidiary member is
28 taken to be equal to:
29 (a) if the unit was *held by the joining entity at the start of the
30 income year—the value of the unit at the start of the income
31 year; or
-

1 (b) otherwise—the expenditure incurred by the joining entity in
2 becoming the holder of the unit.

3 Note: See also section 701A-7 of the *Income Tax (Transitional Provisions)*
4 *Act 1997*.

5 **39 After subsection 701-55(3)**

6 Insert:

7 *Registered emissions unit provisions*

8 (3A) If Division 420 is to apply in relation to the asset, the expression
9 means that the Division applies as if the asset were a *registered
10 emissions unit at the start of the income year in which the
11 particular time occurs, and its *value at that time were equal to the
12 asset's *tax cost setting amount.

13 **39A Subsection 701-58(2)**

14 After “(3)”, insert “(3A),”.

15 **40 After subsection 705-30(1)**

16 Insert:

17 *Registered emissions units*

18 (1A) If an asset of the joining entity is a *registered emissions unit, the
19 joining entity's **terminating value** for the unit is equal to:
20 (a) if the unit was *held by the joining entity at the start of the
21 income year—the *value of the unit at the start of the income
22 year; or
23 (b) otherwise—the expenditure incurred by the joining entity in
24 becoming the holder of the unit.

25 **41 Section 705-40 (heading)**

26 Repeal the heading, substitute:

27 **705-40 Tax cost setting amount for reset cost base assets held on**
28 **revenue account etc.**

29 **42 Subsection 705-40(1)**

30 After “*depreciating asset”, insert “, a *registered emissions unit”.

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1 **43 Subsection 705-40(2)**

2 After “*depreciating assets”, insert “, *registered emissions units”.

3 **44 Paragraph 705-40(3)(b)**

4 After “*depreciating asset”, insert “, to a *registered emissions unit”.

5 **45 Subsection 705-57(1)**

6 After “*depreciating assets”, insert “, *registered emissions units”.

7 **46 Paragraph 705-57(2)(c)**

8 After “*depreciating asset”, insert “, a *registered emissions unit”.

9 **47 Subsection 705-163(1)**

10 After “*depreciating assets”, insert “, *registered emissions units”.

11 **48 Subsection 705-240(1)**

12 After “*depreciating assets”, insert “, *registered emissions units”.

13 **49 Subsection 713-225(4) (heading)**

14 Repeal the heading, substitute:

15 *Special character of partnership cost setting interest in partnership*
16 *asset that is trading stock, a depreciating asset or a registered*
17 *emissions unit*

18 **50 Subsection 713-225(4)**

19 Omit “or a *depreciating asset”, substitute “, a *depreciating asset or a
20 *registered emissions unit”.

21 **51 Subsection 715-660(1) (after table item 1)**

22 Insert:

2 A provision of Valuing *registered emissions units
Subdivision 420-D that provides
for a choice

23 **51B At the end of paragraph 715-910(3)(b)**

24 Add “and”.

25 **51C After paragraph 715-910(3)(b)**

1 Insert:

2 (c) subsection 701-35(5) (setting value of registered emissions
3 unit at tax-neutral amount);

4 **51D At the end of paragraph 715-920(3)(b)**

5 Add “and”.

6 **51E After paragraph 715-920(3)(b)**

7 Insert:

8 (c) subsection 701-35(5) (setting value of registered emissions
9 unit at tax-neutral amount);

10 **52 Section 719-165 (heading)**

11 Repeal the heading, substitute:

12 **719-165 Trading stock value and registered emissions unit value not**
13 **set for assets of eligible tier-1 companies**

14 **53 At the end of section 719-165**

15 Add:

16 (3) Subsection 701-35(5) (setting value of registered emissions unit at
17 tax-neutral amount) does not apply to the assets of the MEC
18 joining entity if it is an *eligible tier-1 company at the MEC joining
19 time.

20 **54 Subsection 995-1(1)**

21 Insert:

22 *actual cost method* of working out the *value of a *registered
23 emissions unit has the meaning given by section 420-53.

24 **55 Subsection 995-1(1)**

25 Insert:

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

28 **56 Subsection 995-1(1)**

29 Insert:

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1 *carbon unit* has the same meaning as in the *Clean Energy Act*
2 *2011*.

3 **57 Subsection 995-1(1) (paragraph (b) of the definition of**
4 **cost)**

5 Omit “section 70-55.”, substitute “section 70-55; and”.

6 **58 Subsection 995-1(1) (at the end of the definition of cost,**
7 **after the note)**

8 Add:

9 (c) *cost* of a *registered emissions unit has the meaning given by
10 section 420-60.

11 **59 Subsection 995-1(1)**

12 Insert:

13 *eligible no-till seeder* has the meaning given by section 385-235.

14 **60 Subsection 995-1(1)**

15 Insert:

16 *FIFO cost method* of working out the *value of a *registered
17 emissions unit has the meaning given by section 420-52.

18 **61 Subsection 995-1(1)**

19 Insert:

20 *free carbon unit* has the same meaning as in the *Clean Energy Act*
21 *2011*.

22 **62 Subsection 995-1(1) (at the end of the definition of hold)**

23 Add:

24 ; and (c) *hold* a *registered emissions unit has the meaning given by
25 section 420-12.

26 **63 Subsection 995-1(1)**

27 Insert:

28 *international emissions unit* means:

29 (a) a *Kyoto unit; or

1 (b) a *prescribed international unit.

2 **64 Subsection 995-1(1)**

3 Insert:

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

6 **65 Subsection 995-1(1)**

7 Insert:

8 *market value method* of working out the *value of a *registered
9 emissions unit has the meaning given by section 420-54.

10 **66 Subsection 995-1(1)**

11 Insert:

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

14 **67 Subsection 995-1(1)**

15 Insert:

16 *registered emissions unit* has the meaning given by
17 section 420-10.

18 **68 Subsection 995-1(1) (definition of *trading stock*)**

19 After “modified by”, insert “section 70-12 of this Act and”.

20 **69 Subsection 995-1(1) (paragraph (b) of the definition of**
21 ***value*)**

22 Omit “70-C.”, substitute “70-C; and”.

23 **70 Subsection 995-1(1) (after paragraph (b) of the definition**
24 ***of value*)**

25 Insert:

26 (c) the *value* of a *registered emissions unit has the meaning
27 given by Subdivision 420-D; and

28 **71 Subsection 995-1(1)**

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1 Insert:

2 *vintage year* of a *carbon unit has the same meaning as in the
3 *Clean Energy Act 2011*.

4 ***Income Tax (Transitional Provisions) Act 1997***

5 **72 After Part 3-45**

6 Insert:

7 **Part 3-50—Climate change**

8 **Division 420—Registered emissions units**

9 **Table of Subdivisions**

10 420-A General application provision

11 420-B Units held before the commencement of Division 420 of the
12 Income Tax Assessment Act 1997

13 **Subdivision 420-A—General application provision**

14 **Table of sections**

15 420-1 Application of Division 420 of the *Income Tax Assessment Act 1997*

16 **420-1 Application of Division 420 of the *Income Tax Assessment Act***
17 ***1997***

18 Division 420 of the *Income Tax Assessment Act 1997* does not
19 apply to a registered emissions unit held by you unless you became
20 the holder of the unit after the commencement of that Division.

21 **Subdivision 420-B—Units held before the commencement of**
22 **Division 420 of the *Income Tax Assessment Act 1997***

23 **Table of sections**

24 420-5 Transitional provision—units held before the commencement of
25 Division 420 of the *Income Tax Assessment Act 1997*

1 **420-5 Transitional provision—units held before the commencement**
2 **of Division 420 of the *Income Tax Assessment Act 1997***

3 If, just before the commencement of Division 420 of the *Income*
4 *Tax Assessment Act 1997*, you held:

- 5 (a) an Australian carbon credit unit; or
- 6 (b) a Kyoto unit; or
- 7 (c) a prescribed international unit;

8 for which there was an entry in the Australian National Registry of
9 Emissions Units, you are treated as if:

- 10 (d) just before that commencement, you had sold the unit to
11 someone else for its cost; and
- 12 (e) you had, immediately after that commencement, bought it
13 back as a registered emissions unit for the same amount.

14 **72A After section 701A-5**

15 Insert:

16 **701A-7 Modified application of Part 3-90 of *Income Tax Assessment***
17 ***Act 1997* to registered emissions units of continuing**
18 **majority-owned entity**

- 19 (1) The operation of Part 3-90 of the *Income Tax Assessment Act 1997*
20 is modified in accordance with this section in relation to each asset
21 of a continuing majority-owned entity that is a registered emissions
22 unit just before the entity becomes a subsidiary member of the
23 entity's designated group.

24 *Continuing majority-owned entity to revalue its registered*
25 *emissions units under normal provisions*

- 26 (2) For the entity core purposes:
- 27 (a) subsection 701-35(5) of the *Income Tax Assessment Act 1997*
28 does not apply in relation to the asset; and
 - 29 (b) instead, the value of the asset at the end of the income year
30 that ends, or, if section 701-30 of that Act applies, of the
31 income year that is taken by subsection (3) of that section to
32 end, is the value determined in accordance with
33 sections 420-51 to 420-58 of that Act.

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1 *For head company, registered emissions units to be retained cost*
2 *base asset with tax cost setting amount equal to entity's year-end*
3 *valuation*

4 (3) For the head company core purposes when the continuing
5 majority-owned entity becomes a subsidiary member of the
6 designated group, the asset is a retained cost base asset whose tax
7 cost setting amount is equal to the value applicable in accordance
8 with paragraph (2)(b).

9 ***Taxation Administration Act 1953***

10 **73 After subsection 45-120(5) in Schedule 1**

11 Insert:

12 *Gross proceeds on disposal of registered emissions units included*
13 *in instalment income*

14 (5A) Your ***instalment income*** for a period also includes an amount that
15 section 420-25 of the *Income Tax Assessment Act 1997* includes in
16 your assessable income, for the income year that is or includes that
17 period, because you cease to *hold a *registered emissions unit
18 during that period.
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Part 3—Amendments commencing on 1 July 2015

Income Tax Assessment Act 1997

74 Section 67-23 (table item 24)

Repeal the item.

75 Subdivision 385-J

Repeal the Subdivision.

76 Subsection 995-1(1) (definition of *eligible no-till seeder*)

Repeal the definition.

77 Application

The amendments made by this Part apply to assessments for the 2015-16 income year and later income years.

1
2 **Schedule 3—Amendments relating to**
3 **renewable energy certificates**
4

5 ***Renewable Energy (Electricity) Act 2000***

6 **1 Section 11**

7 Repeal the section, substitute:

8 **11 Regulator to refuse or approve application**

- 9 (1) If the Regulator receives an application that is properly made under
10 section 10, the Regulator must:
11 (a) approve the application; or
12 (b) refuse the application.
- 13 (2) The Regulator may refuse the application on a ground specified in
14 the regulations.
- 15 (3) The Regulator must refuse the application if the Regulator is
16 satisfied that the applicant has previously been a registered person.

17 **2 At the end of section 23AAA**

18 Add:

- 19 (3) A report of an inspection carried out in accordance with regulations
20 made under subsection (1) may set out:
21 (a) conclusions; or
22 (b) recommendations; or
23 (c) other material;
24 that is or are relevant to the performance of the functions, or the
25 exercise of the powers, conferred on the Regulator by section 26.
- 26 (4) Subsection (3) does not limit the matters that may be set out in a
27 report.

28 Note: Inspections carried out in accordance with regulations made under
29 subsection (1):

- 30 (a) may be relevant in determining whether a certificate is eligible
31 for registration under section 26 (see subsection 26(3AA)); and

- 1 (b) provide an indication of the effectiveness of the process for the
2 registration of certificates.

3 **3 After subsection 26(3)**

4 Insert:

5 (3AA) In determining whether a certificate is eligible for registration, the
6 Regulator must have regard to any relevant:

- 7 (a) conclusions; or
8 (b) recommendations; or
9 (c) other material;

10 set out in a report of an inspection carried out in accordance with
11 regulations made under subsection 23AAA(1).

12 Note: Subsection 23AAA(1) deals with the inspection of the installation of
13 small generation units.

14 (3AB) Subsection (3AA) does not limit the matters to which regard may
15 be had.

16 **4 After subsection 26(3A)**

17 Insert:

18 (3B) The amount of a fee prescribed under subsection (3A) must be
19 reasonably related to the expenses incurred, or to be incurred, by
20 the Commonwealth in connection with:

- 21 (a) the performance of the Regulator's functions, or the exercise
22 of the Regulator's powers, under this section; and
23 (b) the carrying out of inspections in accordance with regulations
24 made under subsection 23AAA(1), to the extent to which the
25 inspections are relevant to the performance of the functions,
26 or the exercise of the powers, conferred on the Regulator by
27 this section; and
28 (c) the preparation of reports of inspections carried out in
29 accordance with regulations made under subsection
30 23AAA(1), to the extent to which such reports set out:

- 31 (i) conclusions; or
32 (ii) recommendations; or
33 (iii) other material;

34 that is or are relevant to the performance of the functions, or
35 the exercise of the powers, conferred on the Regulator by this
36 section.

1 (3C) A fee prescribed under subsection (3A) must not be such as to
2 amount to taxation.

3 **5 At the end of section 30A**

4 Add:

5 *Prescribed ground*

6 (5) The Regulator may, by written notice, suspend the registration of a
7 registered person on a ground specified in the regulations.

8 (6) The registration is suspended for such period (including
9 permanently) as the Regulator considers appropriate in all of the
10 circumstances. That period must be specified in the notice.

11 **6 Application—registration under the *Renewable Energy***
12 ***(Electricity) Act 2000***

13 The amendment of Division 2 of Part 2 of the *Renewable Energy*
14 *(Electricity) Act 2000* made by this Schedule applies in relation to
15 applications for registration made after the commencement of this item.
16

1
2 **Schedule 4—Amendments relating to the**
3 **Australian National Registry of**
4 **Emissions Units**
5

6 *Australian National Registry of Emissions Units Act 2011*

7 **1 Section 3**

8 Omit “non-Kyoto international emissions units” (wherever occurring),
9 substitute “prescribed international units”.

10 **2 Section 4 (paragraph (e) of the definition of *eligible***
11 ***international emissions unit*)**

12 Omit “non-Kyoto international emissions unit”, substitute “prescribed
13 international unit”.

14 **3 Section 4 (paragraph (b) of the definition of *foreign***
15 ***account*)**

16 Omit “non-Kyoto international emissions unit”, substitute “prescribed
17 international unit”.

18 **4 Section 4 (paragraph (b) of the definition of *foreign***
19 ***account*)**

20 Omit “foreign non-Kyoto registry”, substitute “foreign registry”.

21 **5 Section 4 (definition of *foreign non-Kyoto registry*)**

22 Repeal the definition.

23 **6 Section 4**

24 Insert:

25 *foreign registry* means a registry that:

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

28 **7 Section 4 (definition of *non-Kyoto international emissions***
29 ***unit*)**

1 Repeal the definition.

2 **8 Section 4**

3 Insert:

4 *prescribed international unit* means:

5 (a) a prescribed unit issued in accordance with an international
6 agreement (other than the Kyoto Protocol); or

7 (b) a prescribed unit issued outside Australia under a law of a
8 foreign country.

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

11 **9 Section 4 (paragraph (c) of the definition of *registered***
12 ***holder*)**

13 Omit “non-Kyoto international emissions unit”, substitute “prescribed
14 international unit”.

15 **10 Section 4 (paragraph (b) of the definition of *transfer*)**

16 Omit “non-Kyoto international emissions unit”, substitute “prescribed
17 international unit”.

18 **11 Subsection 5(6)**

19 Omit “subsections 14(3) and (4)”, substitute “section 14A”.

20 **12 Paragraph 15(2)(d)**

21 Omit “non-Kyoto international emissions units”, substitute “prescribed
22 international units”.

23 **13 Subsection 16(5)**

24 Omit “non-Kyoto international emissions unit”, substitute “prescribed
25 international unit”.

26 **14 Subsection 17(3) (heading)**

27 Repeal the heading, substitute:

28 *Prescribed international units*

29 **15 Subsection 17(3)**

1 Omit “non-Kyoto international emissions unit”, substitute “prescribed
2 international unit”.

3 **16 After subsection 19(3)**

4 Insert:

- 5 (3A) The Administrator must not exercise the power conferred by
6 subsection (1) of this section in a manner contrary to:
- 7 (a) regulations made for the purposes of section 32A or 49A of
8 this Act; or
 - 9 (b) section 150A of the *Carbon Credits (Carbon Farming*
10 *Initiative) Act 2011*.

11 **17 Section 21 (heading)**

12 Repeal the heading, substitute:

13 **21 General power of correction of Registry—prescribed**
14 **international units**

15 **18 Subsection 21(1)**

16 Omit “non-Kyoto international emissions unit”, substitute “prescribed
17 international unit”.

18 **19 After subsection 22(4)**

19 Insert:

- 20 (4A) The court must not make an order that is contrary to:
- 21 (a) regulations made for the purposes of section 32A or 49A of
22 this Act; or
 - 23 (b) section 150A of the *Carbon Credits (Carbon Farming*
24 *Initiative) Act 2011*.

25 **20 At the end of subsection 25(1)**

26 Add:

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

28 **21 Subsection 25(2)**

29 Repeal the subsection.

30 **22 Subparagraph 26(3)(a)(iii)**

- 1 Repeal the subparagraph, substitute:
2 (iii) prescribed international units;

3 **23 At the end of Division 7 of Part 2**

4 Add:

5 **28A Administrator may defer giving effect to a transfer instruction**

6 *Scope*

- 7 (1) This section applies if the Administrator receives an instruction to
8 transfer one or more:
9 (a) Australian carbon credit units; or
10 (b) Kyoto units; or
11 (c) prescribed international units;
12 to or from a Registry account kept in the name of a person.

13 *Administrator may defer giving effect to the instruction*

- 14 (2) The Administrator may defer giving effect to the instruction, for a
15 period not exceeding 48 hours, if the Administrator is satisfied that
16 it is prudent to do so in order to:
17 (a) ensure the integrity of the Registry; or
18 (b) prevent, mitigate or minimise abuse of the Registry; or
19 (c) prevent, mitigate or minimise criminal activity involving the
20 Registry.

21 *Prior notice not required*

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

24 *Other provisions*

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

28B Administrator may refuse to give effect to a transfer instruction*Scope*

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

Administrator may refuse to give effect to instruction

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

Notification

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

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Prior notice not required

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

Decision on request

- (8) If the Administrator receives a request under subsection (4), the Administrator must:
- (a) cease to refuse to give effect to the instruction; or
 - (b) decide to continue to refuse to give effect to the instruction.
- (9) The Administrator must take all reasonable steps to ensure that a decision is made under subsection (8):
- (a) if the Administrator requires the person to give further information under subsection (6) in relation to the request—within 7 days after the person gave the Administrator the information; or
 - (b) otherwise—within 7 days after the request was made.
- (10) As soon as practicable after the Administrator makes a decision under subsection (8), the Administrator must notify the person, in writing, of the decision.

Other provisions

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

Note: For additional powers of refusal, see:

- (a) paragraph 34(3)(a) of this Act; and
- (b) paragraph 35(3)(a) of this Act; and
- (c) subsection 36(2) of this Act; and
- (d) subsection 53(2) of this Act.

28C Conditions restricting or limiting the operation of Registry accounts*Scope*

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

Imposition of conditions

- (2) The Administrator may, by written instrument, impose conditions restricting or limiting the operation of the Registry account for a specified period.
- (3) The Administrator may exercise the power conferred by subsection (2):
- (a) on the Administrator's own initiative; or
 - (b) on written request made to the Administrator by the person.
- (4) The Administrator must not make an instrument under subsection (2) unless the Administrator is satisfied that it is prudent to do so in order to:
- (a) ensure the integrity of the Registry; or
 - (b) prevent, mitigate or minimise abuse of the Registry; or
 - (c) prevent, mitigate or minimise criminal activity involving the Registry.
- (5) A condition under subsection (2) may:
- (a) prohibit, restrict or limit the transfer of units from the Registry account; or
 - (b) prohibit, restrict or limit the transfer of units to the Registry account.
- (6) Subsection (5) does not limit subsection (2).

Notification

- (7) As soon as practicable after making an instrument under subsection (2), the Administrator must give the person a copy of the instrument.
- (8) If an instrument under subsection (2) is made on the Administrator's own initiative, the copy of the instrument must be

-
- 1 accompanied by a notice inviting the person to request the
2 Administrator to:
3 (a) revoke the instrument; or
4 (b) vary the instrument in the manner specified in the request.

5 *Request*

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

10 *Further information*

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

15 *Prior notice not required*

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

18 *Decision in relation to instrument made on own initiative*

- 19 (12) If the Administrator receives a request under subsection (8), the
20 Administrator must:
21 (a) if the request is to revoke the instrument:
22 (i) revoke the instrument; or
23 (ii) decide not to revoke the instrument; or
24 (b) if the request is to vary the instrument:
25 (i) vary the instrument as requested; or
26 (ii) decide not to vary the instrument.
- 27 (13) The Administrator must take all reasonable steps to ensure that a
28 decision is made under subsection (12):
29 (a) if the Administrator requires the person to give further
30 information under subsection (10) in relation to the request—
31 within 7 days after the person gave the Administrator the
32 information; or

-
- 1 (b) otherwise—within 7 days after the request was made.
- 2 (14) As soon as practicable after the Administrator makes a decision
3 under subsection (12), the Administrator must notify the person, in
4 writing, of the decision.

5 *Revocation of instrument made in response to a request*

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

12 *Acts Interpretation Act*

- 13 (16) Subsections (12) and (15) do not, by implication, limit subsection
14 33(3) of the *Acts Interpretation Act 1901*.

15 *Other provisions*

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

20 **28D Suspension of Registry accounts**

21 *Scope*

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

24 *Suspension*

- 25 (2) The Administrator may, by written instrument, suspend the
26 Registry account for a specified period.
- 27 (3) The Administrator may exercise the power conferred by
28 subsection (2):
29 (a) on the Administrator's own initiative; or
30 (b) on written request made to the Administrator by the person.

-
- 1 (4) The Administrator must not make an instrument under
2 subsection (2) unless the Administrator is satisfied that it is prudent
3 to do so in order to:
4 (a) ensure the integrity of the Registry; or
5 (b) prevent, mitigate or minimise abuse of the Registry; or
6 (c) prevent, mitigate or minimise criminal activity involving the
7 Registry.
- 8 (5) If an account is suspended under subsection (2):
9 (a) the Administrator must not:
10 (i) give effect to any instruction to transfer units to or from
11 the Registry account; or
12 (ii) issue any Australian carbon credit units to the Registry
13 account; and
14 (b) a notice to relinquish Australian carbon credit units under
15 section 175 of the *Carbon Credits (Carbon Farming*
16 *Initiative) Act 2011* does not have effect.

17 *Notification*

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

27 *Request*

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

32 *Further information*

- 33 (9) If the person makes a request under subsection (7), the
34 Administrator may, by written notice given to the person, require

1 the person to give the Administrator, within the period specified in
2 the notice, further information in connection with the request.

3 *Prior notice not required*

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

6 *Decision in relation to instrument made on own initiative*

7 (11) If the Administrator receives a request under subsection (7), the
8 Administrator must:

- 9 (a) if the request is to revoke the instrument:
10 (i) revoke the instrument; or
11 (ii) decide not to revoke the instrument; or
12 (b) if the request is to vary the instrument:
13 (i) vary the instrument as requested; or
14 (ii) decide not to vary the instrument.

15 (12) The Administrator must take all reasonable steps to ensure that a
16 decision is made under subsection (11):

- 17 (a) if the Administrator requires the person to give further
18 information under subsection (9) in relation to the request—
19 within 7 days after the person gave the Administrator the
20 information; or
21 (b) otherwise—within 7 days after the request was made.

22 (13) As soon as practicable after the Administrator makes a decision
23 under subsection (11), the Administrator must notify the person, in
24 writing, of the decision.

25 *Revocation of instrument made in response to a request*

26 (14) If:

- 27 (a) an instrument is in force under subsection (2); and
28 (b) the instrument was made in response to a request under
29 paragraph (3)(b);

30 the Administrator must, at the written request of the person, revoke
31 the instrument.

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Acts Interpretation Act

2

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

3

4

Other provisions

5

(16) This section has effect despite:

6

(a) any other provision of this Act; or

7

(b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

8

9

24 After section 32

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Insert:

11

32A Ownership of Kyoto unit

12

(1) The regulations may provide that the registered holder of a Kyoto unit:

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(a) is the legal owner of the unit; and

15

16

(b) may, subject to this Act, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

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(2) Regulations made for the purposes of subsection (1) only protect a person who deals with the registered holder of the unit as a purchaser:

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21

(a) in good faith for value; and

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(b) without notice of any defect in the title of the registered holder.

24

25 After section 45

25

Insert:

26

45A Registration of equitable interests in relation to Kyoto units

27

(1) The regulations may make provision for or in relation to the registration in the Registry of equitable interests in relation to Kyoto units.

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- 1 (2) Subsection (1) does not apply to an equitable interest that is a
2 security interest within the meaning of the *Personal Property*
3 *Securities Act 2009*, and to which that Act applies.

4 **26 Part 4 (heading)**

5 Repeal the heading, substitute:

6 **Part 4—Prescribed international units**

7 **27 Section 48**

8 Omit “non-Kyoto international emissions units”, substitute “prescribed
9 international units”.

10 **28 Section 49 (heading)**

11 Repeal the heading, substitute:

12 **49 Entries for prescribed international units**

13 **29 Section 49**

14 Omit “non-Kyoto international emissions unit”, substitute “prescribed
15 international unit”.

16 **30 After section 49**

17 Insert:

18 **49A Ownership of prescribed international unit**

- 19 (1) The regulations may provide that the registered holder of a
20 prescribed international unit:
21 (a) is the legal owner of the unit; and
22 (b) may, subject to this Act, deal with the unit as its legal owner
23 and give good discharges for any consideration for any such
24 dealing.
- 25 (2) Regulations made for the purposes of subsection (1) only protect a
26 person who deals with the registered holder of the unit as a
27 purchaser:
28 (a) in good faith for value; and

1 (b) without notice of any defect in the title of the registered
2 holder.

3 **31 Section 50 (heading)**

4 Repeal the heading, substitute:

5 **50 Transfer of prescribed international units**

6 **32 Subsections 50(1) and (2)**

7 Omit “non-Kyoto international emissions unit”, substitute “prescribed
8 international unit”.

9 **33 Section 51 (heading)**

10 Repeal the heading, substitute:

11 **51 Domestic transfers of prescribed international units**

12 **34 Subsection 51(1)**

13 Omit “non-Kyoto international emissions units”, substitute “prescribed
14 international units”.

15 **35 Section 52 (heading)**

16 Repeal the heading, substitute:

17 **52 Outgoing international transfers of prescribed international units**

18 **36 Subsection 52(1)**

19 Omit “non-Kyoto international emissions units”, substitute “prescribed
20 international units”.

21 **37 Section 53 (heading)**

22 Repeal the heading, substitute:

23 **53 Incoming international transfers of prescribed international units**

24 **38 Subsection 53(1)**

25 Omit “non-Kyoto international emissions unit” (wherever occurring),
26 substitute “prescribed international unit”.

39 Subsections 53(2) and (3)

Omit “non-Kyoto international emissions unit”, substitute “prescribed international unit”.

40 Section 54 (heading)

Repeal the heading, substitute:

54 A registered prescribed international unit is personal property for certain purposes**41 Subsection 54(1)**

Omit “non-Kyoto international emissions unit”, substitute “prescribed international unit”.

42 After section 54

Insert:

54A Registration of equitable interests in relation to prescribed international units

(1) The regulations may make provision for or in relation to the registration in the Registry of equitable interests in relation to prescribed international units.

(2) Subsection (1) does not apply to an equitable interest that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

43 Section 55 (heading)

Repeal the heading, substitute:

55 Equitable interests in relation to a prescribed international unit**44 Subsection 55(1)**

Omit “non-Kyoto international emissions unit”, substitute “prescribed international unit”.

45 Section 56 (heading)

Repeal the heading, substitute:

1 **56 Transmission of registered prescribed international units by**
2 **operation of law etc.**

3 **46 Paragraph 56(1)(a)**

4 Omit “non-Kyoto international emissions unit”, substitute “prescribed
5 international unit”.

6 **47 After subsection 56(1)**

7 Insert:

8 *Effect of transmission*

9 (1A) The transmission is of no force until the Administrator transfers the
10 prescribed international unit under subsection (7) or (8).

11 **48 Section 57 (heading)**

12 Repeal the heading, substitute:

13 **57 Regulations about prescribed international units**

14 **49 Section 57**

15 Omit “non-Kyoto international emissions units”, substitute “prescribed
16 international units”.

17 **50 Section 58**

18 Omit “non-Kyoto international emissions units”, substitute “prescribed
19 international units”.

20 **51 Subsection 61(3) (heading)**

21 Repeal the heading, substitute:

22 *Prescribed international units*

23 **52 Paragraphs 61(3)(a) and (4)(a)**

24 Omit “*non-Kyoto international emissions unit*”, substitute “*prescribed*
25 *international unit*”.

26 **53 Section 63 (heading)**

27 Repeal the heading, substitute:

1 **63 Information about number of voluntarily cancelled prescribed**
2 **international units**

3 **54 Section 63**

4 Omit “non-Kyoto international emissions units” (wherever occurring),
5 substitute “prescribed international units”.

6 **55 Section 64**

7 Omit “non-Kyoto international emissions units”, substitute “prescribed
8 international units”.

9 **56 Section 66 (heading)**

10 Repeal the heading, substitute:

11 **66 Voluntary cancellation of prescribed international units**

12 **57 Subsection 66(1)**

13 Omit “non-Kyoto international emissions units”, substitute “prescribed
14 international units”.

15 **58 Paragraph 66(2)(a)**

16 Omit “non-Kyoto international emissions unit”, substitute “prescribed
17 international unit”.

18 **59 Paragraph 66(2)(b)**

19 Omit “non-Kyoto international emissions unit”, substitute “prescribed
20 international unit”.

21 **60 Subsection 66(3)**

22 Omit “non-Kyoto international emissions unit”, substitute “prescribed
23 international unit”.

24 **61 Section 82 (at the end of the table)**

25 Add:

26

10 A decision under subsection 28B(8) to continue to refuse to give effect to a
transfer instruction.

11 A decision under subsection 28C(12) not to revoke an instrument imposing
conditions restricting or limiting the operation of a Registry account.

Schedule 4 Amendments relating to the Australian National Registry of Emissions Units

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

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1
2 **Schedule 5—Amendments relating to the**
3 **Carbon Farming Initiative**
4

5 ***Carbon Credits (Carbon Farming Initiative) Act 2011***

6 **1 Section 5 (definition of *foreign account*)**

7 Omit “foreign non-Kyoto registry”, substitute “foreign registry”.

8 **2 Section 5 (definition of *foreign non-Kyoto registry*)**

9 Repeal the definition.

10 **3 Section 5**

11 Insert:

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

14 **4 Subsection 7(6)**

15 Omit “subsections 14(3) and (4)”, substitute “section 14A”.

16 **5 After subsection 16(2)**

17 Insert:

18 *Prescribed non-CFI offsets scheme*

19 (2A) If the project area for the project is or was, or the project areas for
20 the project are or were, wholly or partly covered by a prescribed
21 non-CFI offsets scheme, the number worked out using the formula
22 in subsection (2) is to be reduced by the number ascertained in
23 accordance with the regulations.

24 **6 Before subsection 16(3)**

25 Insert:

26 *Rounding down*

27 **7 After subsection 17(3)**

28 Insert:

1 *Prescribed non-CFI offsets scheme*

2 (3A) If the project area for the project is or was, or the project areas for
3 the project are or were, wholly or partly covered by a prescribed
4 non-CFI offsets scheme, the number worked out using the formula
5 in subsection (2) or (3) is to be reduced by the number ascertained
6 in accordance with the regulations.

7 **8 At the end of section 18**

8 Add:

9 *Prescribed non-CFI offsets scheme*

10 (3) If the project area for the project is or was, or the project areas for
11 the project are or were, wholly or partly covered by a prescribed
12 non-CFI offsets scheme, the number of tonnes referred to in
13 subsection (2) is to be reduced by the number ascertained in
14 accordance with the regulations.

15 **9 Subparagraph 23(1)(e)(i)**

16 Omit “was, or the project areas for the project were”, substitute “is or
17 was, or the project areas for the project are or were”.

18 **10 After subparagraph 23(1)(e)(i)**

19 Insert:

20 (ia) the prescribed non-CFI offsets scheme is specified in
21 regulations made for the purposes of this subparagraph;
22 and

23 **11 Paragraph 27(4)(m)**

24 Omit “project; and”, substitute “project.”.

25 **12 Paragraph 27(4)(n)**

26 Repeal the paragraph.

27 **13 After subsection 41(4)**

28 Insert:

29 (4A) Paragraph (1)(b) does not apply to a requirement of a kind
30 specified in the regulations.

1 (4B) Subsection (4A) does not, by implication, limit the application of
 2 subsection 13(3) of the *Legislative Instruments Act 2003* to another
 3 instrument under this Act.

4 **14 At the end of section 41**

5 Add:

6 *Regulations*

7 (6) If:

8 (a) regulations specifying a particular kind of project were made
 9 for the purposes of paragraph (1)(a), in accordance with
 10 section 4 of the *Acts Interpretation Act 1901*, during the
 11 period:

12 (i) beginning at the commencement of section 1; and

13 (ii) ending at the commencement of section 3; and

14 (b) before recommending to the Governor-General that those
 15 regulations should be made, the Minister requested the
 16 Interim Domestic Offsets Integrity Committee to advise the
 17 Minister about whether such a project should, or should not,
 18 be specified in those regulations; and

19 (c) the Minister had regard to any such advice;

20 this Act has effect, and is taken always to have had effect, as if the
 21 Minister had, before recommending to the Governor-General that
 22 those regulations should be made:

23 (d) requested the Domestic Offsets Integrity Committee to advise
 24 the Minister about whether such a project should, or should
 25 not, be specified in those regulations; and

26 (e) complied with paragraph (3)(c); and

27 (f) complied with subsection (5).

28 **15 At the end of subsection 95(2)**

29 Add:

30 ; and (c) if the project is a landfill legacy emissions avoidance
 31 project—paragraph 41(1)(b) had not been enacted.

32 **16 Subsection 95(3)**

33 Omit “was, or the project areas were”, substitute “is or was, or the
 34 project areas are or were”.

1 **17 At the end of subsection 95(3)**

2 Add “that is specified in regulations made for the purposes of
3 subparagraph 23(1)(e)(ia)”.

4 **18 Subsection 131(3) (heading)**

5 Repeal the heading, substitute:

6 *Effect*

7 **19 At the end of section 131**

8 Add:

9 (4) If:

10 (a) before the commencement of this section, the Interim
11 Domestic Offsets Integrity Committee published on the
12 Department’s website:

13 (i) the proposal; and

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

17 (b) the time limit was not shorter than 30 days;

18 this Act has effect, and is taken always to have had effect, as if the
19 Domestic Offsets Integrity Committee had complied with
20 paragraph 112(5)(a) and subsection 112(6) in relation to the
21 proposal.

22 (5) If:

23 (a) before the commencement of this section, the Interim
24 Domestic Offsets Integrity Committee received any
25 submissions in accordance with a notice referred to in
26 subsection (4) in relation to the proposal; and

27 (b) before the commencement of this section, the Interim
28 Domestic Offsets Integrity Committee:

29 (i) considered the submissions; and

30 (ii) published the submissions on the Department’s website;

31 this Act has effect, and is taken always to have had effect, as if the
32 Domestic Offsets Integrity Committee had complied with
33 paragraph 112(5)(b) and subsection 112(11) in relation to the
34 proposal.

1 (6) Subparagraph (5)(b)(ii) does not apply in relation to a particular
 2 submission made by a person if the person has requested the
 3 Interim Domestic Offsets Integrity Committee not to publish the
 4 submission on the ground that publication of the submission could
 5 reasonably be expected to substantially prejudice the commercial
 6 interests of the person or another person.

7 (7) If:

8 (a) before the commencement of this section, the Interim
 9 Domestic Offsets Integrity Committee received any
 10 submissions in accordance with a notice referred to in
 11 subsection (4) in relation to a proposal; and

12 (b) paragraph (5)(b) does not apply in relation to the
 13 submissions;

14 this Act has effect, and is taken always to have had effect, as if the
 15 Domestic Offsets Integrity Committee had received the
 16 submissions under subsection 112(5) within the time limit referred
 17 to in subparagraph 112(5)(a)(ii).

18 **20 After section 150**

19 Insert:

20 **150A Ownership of Australian carbon credit unit**

21 (1) The registered holder of an Australian carbon credit unit:

22 (a) is the legal owner of the unit; and

23 (b) may, subject to this Act and the *Australian National Registry*
 24 *of Emissions Units Act 2011*, deal with the unit as its legal
 25 owner and give good discharges for any consideration for any
 26 such dealing.

27 (2) Subsection (1) only protects a person who deals with the registered
 28 holder of the unit as a purchaser:

29 (a) in good faith for value; and

30 (b) without notice of any defect in the title of the registered
 31 holder.

32 **21 Subsection 152(1)**

33 After “Australian carbon credit unit”, insert “for which there is an entry
 34 in a Registry account”.

1 **22 Subsection 153(1)**

2 After “Australian carbon credit unit”, insert “for which there is an entry
3 in a Registry account”.

4 **22A After subsection 153(1)**

5 Insert:

6 *Effect of transmission*

7 (1A) The transmission is of no force until the Administrator transfers the
8 Australian carbon credit unit under subsection (7) or (8).

9 **23 After section 157**

10 Insert:

11 **157A Registration of equitable interests in relation to an Australian
12 carbon credit unit**

13 (1) The regulations may make provision for or in relation to the
14 registration in the Registry of equitable interests in relation to
15 Australian carbon credit units.

16 (2) Subsection (1) does not apply to an equitable interest that is a
17 security interest within the meaning of the *Personal Property*
18 *Securities Act 2009*, and to which that Act applies.

19 **24 Paragraph 162(a)**

20 Omit “before 31 December 2011”, substitute “within 6 months after the
21 commencement of this section”.

22 **25 Subsection 257(3)**

23 Repeal the subsection, substitute:

24 (3) The Minister must ensure that the Chair of the Domestic Offsets
25 Integrity Committee is not a person covered by subsection (4).

26 **26 Subsection 257(6)**

27 Omit “one Domestic Offsets Integrity Committee member is an
28 officer”, substitute “at least one, and not more than 2, Domestic Offsets
29 Integrity Committee members are officers”.

1 **27 Paragraph 276(1)(b)**

2 Repeal the paragraph, substitute:

3 (b) Low Carbon Australia Limited (ACN 141 478 748);

4 (ba) the Australian Transaction Reports and Analysis Centre;

5 **28 Section 280**

6 Omit “is already publicly available”, substitute “has already been
7 lawfully made available to the public”.