

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Carbon Credits (Carbon Farming Initiative) Bill 2011

No. , 2011

(Climate Change and Energy Efficiency)

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

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1 **A Bill for an Act about projects to remove carbon**
2 **dioxide from the atmosphere and projects to avoid**
3 **emissions of greenhouse gases, and for other**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *Carbon Credits (Carbon Farming*
10 *Initiative) Act 2011*.

Section 2

1 **2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 307	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the later of: (a) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and (b) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent. However, if any of the provision(s) do not commence within the period of 6 months beginning on the later of: (c) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and (d) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent; they commence on the day after the end of that period.	
7 Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

7
8
9

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

4 **3 Objects**

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

6 *Climate Change Convention and Kyoto Protocol*

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

11 *Incentives*

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

14 *Carbon abatement*

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

20 **4 Simplified outline**

21 The following is a simplified outline of this Act:

- | | |
|----|--|
| 22 | <ul style="list-style-type: none">• This Act sets up a scheme for the issue of Australian carbon credit units in relation to eligible offsets projects.• An Australian carbon credit unit is personal property and is generally transferable.• The main eligibility requirements for eligible offsets projects are as follows: |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |

Section 5

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- (a) the project must be carried out in Australia;
 - (b) the project must be covered by a methodology determination made under this Act.
- A methodology determination must comply with the offsets integrity standards set out in this Act.
 - This Act is administered by the Carbon Credits Administrator.

5 Definitions

In this Act:

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

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

additionality test has the meaning given by section 41.

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

Administrator means the Carbon Credits Administrator.

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

- (a) an emission of methane from the digestive tract of livestock;
- (b) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the decomposition of:
 - (iii) livestock urine; or
 - (iv) livestock dung;
- (c) an emission of methane from:
 - (i) rice fields; or

- 1 (ii) rice plants;
 2 (d) an emission of:
 3 (i) methane; or
 4 (ii) nitrous oxide;
 5 from the burning of:
 6 (iii) savannas; or
 7 (iv) grasslands;
 8 (e) an emission of:
 9 (i) methane; or
 10 (ii) nitrous oxide;
 11 from the burning of:
 12 (iii) crop stubble in fields; or
 13 (iv) crop residues in fields; or
 14 (v) sugar cane before harvest;
 15 (f) an emission of:
 16 (i) methane; or
 17 (ii) nitrous oxide;
 18 from soil.

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

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

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

25 ***applicable methodology determination***, in relation to an offsets
 26 project, means the methodology determination that is applicable to
 27 the project.

28 Note: See also sections 124 to 130.

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

31 ***associated provisions*** means the following provisions:

- 32 (a) the provisions of the regulations;

Section 5

1 (b) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and
2 137.2 of the *Criminal Code*, in so far as those sections relate
3 to:

- 4 (i) this Act; or
5 (ii) the regulations.

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

- 8 (a) paragraph 13(1)(e);
9 (b) paragraph 23(1)(d);
10 (c) paragraph 76(4)(c);
11 (d) section 214;
12 (e) section 215.

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

15 ***Australian carbon credit unit*** means a unit issued under
16 section 147.

17 ***Australian police force*** means:

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

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

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

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

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

29 Note: The text of the Convention is set out in Australian Treaty Series 1993
30 No. 32 ([1993] ATS 32). In 2011, the text of a Convention in the
31 Australian Treaty Series was accessible through the Australian
32 Treaties Library on the AustLII website (www.austlii.edu.au).

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

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

5 **certificate of entitlement** means a certificate issued under
6 section 15.

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

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

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

12 **Climate Change Convention** means the United Nations
13 Framework Convention on Climate Change done at New York on
14 9 May 1992, as amended and in force for Australia from time to
15 time.

16 Note: The text of the Convention is set out in Australian Treaty Series 1994
17 No. 2 ([1994] ATS 2). In 2011, the text of a Convention in the
18 Australian Treaty Series was accessible through the Australian
19 Treaties Library on the AustLII website (www.austlii.edu.au).

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

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

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

26 **Commonwealth relinquished units account** means the
27 Commonwealth Registry account designated as the
28 Commonwealth relinquished units account.

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

30 (a) the first crediting period for the project, worked out under
31 section 69; or

Section 5

- 1 (b) a subsequent crediting period for the project, determined
2 under section 74.

3 **Crown land** means land that is the property of:

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

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

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

20 **Crown lands Minister:**

- 21 (a) in relation to a State—means the Minister of the State who,
22 under the regulations, is taken to be the Crown lands Minister
23 of the State; or
24 (b) in relation to the Northern Territory—means the Minister of
25 the Northern Territory who, under the regulations, is taken to
26 be the Crown lands Minister of the Northern Territory; or
27 (c) in relation to the Australian Capital Territory—means the
28 Minister of the Australian Capital Territory who, under the
29 regulations, is taken to be the Crown lands Minister of the
30 Australian Capital Territory; or
31 (d) in relation to a Territory other than the Northern Territory or
32 the Australian Capital Territory—means the person who,
33 under the regulations, is taken to be the Crown lands Minister
34 of the Territory.

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

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

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

10 **Domestic Offsets Integrity Committee member** means a member
11 of the Domestic Offsets Integrity Committee, and includes the
12 Chair of the Domestic Offsets Integrity Committee.

13 **electronic communication** means a communication by means of
14 guided and/or unguided electromagnetic energy.

15 **electronic notice transmitted to the Administrator** has the meaning
16 given by section 7.

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

19 **eligible Kyoto project** has the meaning given by paragraph
20 27(2)(a).

21 **eligible non-Kyoto project** has the meaning given by paragraph
22 27(2)(b).

23 **eligible offsets project** has the meaning given by paragraph
24 27(2)(a) or (b).

25 **eligible voluntary action** means:

- 26 (a) making an application; or
 - 27 (b) giving information in connection with an application; or
 - 28 (c) withdrawing an application; or
 - 29 (d) giving a notice (including an electronic notice); or
 - 30 (e) making a submission; or
 - 31 (f) making a request; or
 - 32 (g) giving information in connection with a request;
-

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

5 **emission** of greenhouse gas means the release of greenhouse gas
6 into the atmosphere.

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

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

11 **engage in conduct** means:

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

14 **entrusted public official** means:

- 15 (a) the Administrator; or
16 (b) a delegate of the Administrator; or
17 (c) a person assisting the Administrator under section 250; or
18 (d) a person whose services are made available to the
19 Administrator under section 251; or
20 (e) a person engaged as a consultant under section 252; or
21 (f) an audit team leader; or
22 (g) a person assisting an audit team leader; or
23 (h) a Domestic Offsets Integrity Committee member; or
24 (i) a person assisting the Domestic Offsets Integrity Committee
25 under section 269.

26 **evidential burden**, in relation to a matter, means the burden of
27 adducing or pointing to evidence that suggests a reasonable
28 possibility that the matter exists or does not exist.

29 **excluded offsets project** has the meaning given by section 56.

30 **exclusive possession native title land** means native title land,
31 where the native title confers a right of exclusive possession over
32 the land.

1 ***executive officer*** of a body corporate means:

- 2 (a) a director of the body corporate; or
3 (b) the chief executive officer (however described) of the body
4 corporate; or
5 (c) the chief financial officer (however described) of the body
6 corporate; or
7 (d) the secretary of the body corporate.

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

10 ***Federal Court*** means the Federal Court of Australia.

11 ***foreign account***, when used in relation to an Australian carbon
12 credit unit, means an account kept within a foreign non-Kyoto
13 registry.

14 ***foreign country*** includes a region where:

- 15 (a) the region is a colony, territory or protectorate of a foreign
16 country; or
17 (b) the region is part of a foreign country; or
18 (c) the region is under the protection of a foreign country; or
19 (d) a foreign country exercises jurisdiction or control over the
20 region; or
21 (e) a foreign country is responsible for the region's international
22 relations.

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

25 ***freehold land rights land*** means land, where:

- 26 (a) a freehold estate exists over the land, and the grant of the
27 freehold estate took place under a law of a State or a
28 Territory that makes provision for the grant of such things
29 only to, or for the benefit of, Aboriginal peoples or Torres
30 Strait Islanders; or
31 (b) a freehold estate exists over the land, and the grant of the
32 freehold estate took place under a law of the Commonwealth
33 that makes provision for the grant of such things only to, or

Section 5

1 for the benefit of, Aboriginal peoples or Torres Strait
2 Islanders; or
3 (c) the land is vested in a person, and the vesting took place
4 under a law of the Commonwealth that makes provision for
5 the vesting of land only in, or for the benefit of, Aboriginal
6 peoples or Torres Strait Islanders.

7 **general law land** means land other than:

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

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

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

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

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

18 **inspector** means a person appointed as an inspector under
19 section 196.

20 **Interim Domestic Offsets Integrity Committee** means the
21 committee that was:

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

25 **international agreement** means an agreement whose parties are:

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

28 **introduced animal** means an animal other than:

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

1 ***introduced animal emissions avoidance project*** means:

2 (a) a project to avoid emissions of methane from the digestive
3 tract of an introduced animal; or

4 (b) a project to avoid emissions of:

5 (i) methane; or

6 (ii) nitrous oxide;

7 from the decomposition of:

8 (iii) introduced animal urine; or

9 (iv) introduced animal dung.

10 Note: See also section 303.

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

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

16 ***Kyoto abatement deadline*** means:

17 (a) 30 June 2012; or

18 (b) if a later day is specified in the regulations—the later day.

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

22 ***Kyoto offsets project*** has the meaning given by section 55.

23 ***Kyoto Protocol*** means the Kyoto Protocol to the United Nations
24 Framework Convention on Climate Change done at Kyoto on
25 11 December 1997, as amended and in force for Australia from
26 time to time.

27 Note: The text of the Kyoto Protocol is set out in Australian Treaty Series
28 2008 No. 2 ([2008] ATS 2). In 2011, the text of an international
29 agreement in the Australian Treaty Series was accessible through the
30 Australian Treaties Library on the AustLII website
31 (www.austlii.edu.au).

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

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

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

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

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

- 13 (a) if the land rights land is covered by paragraph (a) of the
14 definition of **land rights land**—the person who holds the
15 freehold estate, or the lease, mentioned in that paragraph; or
16 (b) if the land rights land is covered by paragraph (b) of the
17 definition of **land rights land**—the person in whom the land
18 is vested as mentioned in that paragraph; or
19 (c) if the land rights land is covered by paragraph (c) of the
20 definition of **land rights land**—the person who holds the land
21 as mentioned in that paragraph; or
22 (d) if the land rights land is covered by paragraph (d) of the
23 definition of **land rights land**—the person who holds the land
24 reserved as mentioned in that paragraph; or
25 (e) if the land rights land is covered by paragraph (e) of the
26 definition of **land rights land**—a person specified in the
27 regulations.

28 **land rights land** means land, where:

- 29 (a) a freehold estate exists, or a lease is in force, over the land,
30 where the grant of the freehold estate or lease took place
31 under legislation that makes provision for the grant of such
32 things only to, or for the benefit of, Aboriginal peoples or
33 Torres Strait Islanders; or
34 (b) the land is vested in a person, where the vesting took place
35 under legislation that makes provision for the vesting of land

- 1 only in, or for the benefit of, Aboriginal peoples or Torres
2 Strait Islanders; or
- 3 (c) neither paragraph (a) nor (b) applies, and the land is held
4 expressly for the benefit of, or is held in trust expressly for
5 the benefit of, Aboriginal peoples or Torres Strait Islanders;
6 or
- 7 (d) the land is reserved expressly for the benefit of Aboriginal
8 peoples or Torres Strait Islanders; or
- 9 (e) the land is specified in the regulations.

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

12 ***lease***, in relation to land rights land, includes:

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

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

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

23 ***methodology determination*** has the meaning given by section 106.

24 ***monitoring powers*** has the meaning given by section 199.

25 ***monitoring warrant*** means a warrant issued under section 211.

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

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

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

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- 1 **native forest** means an area of land that:
- 2 (a) is dominated by trees that:
- 3 (i) are located within their natural range; and
- 4 (ii) have attained, or have the potential to attain, a crown
- 5 cover of at least 20% of the area of land; and
- 6 (iii) have reached, or have the potential to reach, a height of
- 7 at least 2 metres; and
- 8 (b) is not a plantation.
- 9 It is immaterial whether any of the trees have been established with
- 10 human assistance following any of the following events:
- 11 (c) flood;
- 12 (b) bushfire;
- 13 (d) drought;
- 14 (e) pest attack;
- 15 (f) disease;
- 16 (g) an event specified in the regulations.
- 17 The regulations may provide that, for the purposes of this
- 18 definition, **trees** and **crown cover** have the respective meanings
- 19 given by the regulations.
- 20 **native forest protection project** means a project:
- 21 (a) to remove carbon dioxide from the atmosphere by
- 22 sequestering carbon in trees in one or more native forests;
- 23 and
- 24 (b) to avoid emissions of greenhouse gases attributable to the
- 25 clearing or clear-felling of one or more native forests.
- 26 **native title** has the same meaning as in the *Native Title Act 1993*.
- 27 **native title holder** has the same meaning as in the *Native Title Act*
- 28 *1993*.
- 29 **native title land**: an area of land is **native title land** if there is an
- 30 entry on the National Native Title Register specifying that native
- 31 title exists in relation to the area.
- 32 **natural disturbance**, in relation to an eligible offsets project,
- 33 means any of the following events, where the event could not
- 34 reasonably be prevented by the project proponent for the project:

- 1 (a) flood;
2 (b) bushfire;
3 (c) drought;
4 (d) pest attack;
5 (e) disease;
6 (f) an event specified in the regulations.

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

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

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

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

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

16 **offsets integrity standards** has the meaning given by section 133.

17 **offsets project** means:

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

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

22 **offsets report** means a report under section 76.

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

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

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

29 **permitted carbon activity** has the meaning given by paragraph
30 97(2)(b).

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1 **person** means any of the following:

- 2 (a) an individual;
- 3 (b) a body corporate;
- 4 (c) a trust;
- 5 (d) a corporation sole;
- 6 (e) a body politic;
- 7 (f) a local governing body.

8 **person assisting** an inspector has the meaning given by

9 section 200.

10 **premises** includes the following:

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

14 **prescribed eligible carbon unit** means a prescribed unit that is

15 issued under a scheme relating to either or both of the following:

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

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

20 **prescribed native forest protection project** means a native forest

21 protection project that meets the requirements specified in

22 regulations made for the purposes of this definition.

23 **prescribed non-CFI offsets scheme** has the meaning given by the

24 regulations.

25 **project** includes a set of activities.

26 **project area**, in relation an offsets project, means an area of land

27 on which the project has been, is being, or is to be, carried out.

28 **project proponent**:

- 29 (a) in relation to a sequestration offsets project—means the
- 30 person who:
- 31 (i) is responsible for carrying out the project; and
- 32 (ii) has the legal right to carry out the project; and

Section 5

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

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

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

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

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

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

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

25 ***protected information*** means information that:

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

31 ***quarter*** means a period of 3 months beginning on 1 January,
 32 1 April, 1 July or 1 October.

33 ***recognised*** as an offsets entity means recognised under section 64.

Section 5

1 **recognised offsets entity** means a person recognised as an offsets
2 entity.

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

5 **regional natural resource management plan** means a plan
6 prepared by a regional natural resource management organisation.

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

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

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

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

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

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

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

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

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

- 28 (a) relates to, or to an element of, the project; and
29 (b) is required under a law of the Commonwealth, a State or
30 Territory that relates to:
31 (i) land use or development; or

- 1 (ii) the environment; or
2 (iii) water.

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

- 4 (a) to the extent (if any) to which the project is a project to
5 remove carbon dioxide from the atmosphere by sequestering
6 carbon in particular living biomass—means the biomass; or
7 (b) to the extent (if any) to which the project is a project to
8 remove carbon dioxide from the atmosphere by sequestering
9 carbon in particular dead organic matter—means the dead
10 organic matter; or
11 (c) to the extent (if any) to which the project is a project to
12 remove carbon dioxide from the atmosphere by sequestering
13 carbon in particular soil—means the soil.

14 **relevant land registration official**:

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

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

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

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

30 Note: See section 76.

31 **reviewable decision** has the meaning given by section 240.

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

Section 5

1 **scheme**, when used in Part 22, means:

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

9 **Secretary** means the Secretary of the Department.

10 **sequestration offsets project** has the meaning given by section 54.

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

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

- 18 (a) an Aboriginal Land Trust established under the *Aboriginal*
19 *Land Rights (Northern Territory) Act 1976*; or
20 (b) the Wreck Bay Aboriginal Community Council established
21 by the *Aboriginal Land Grant (Jervis Bay Territory) Act*
22 *1986*; or
23 (c) a corporation registered under the *Corporations (Aboriginal*
24 *and Torres Strait Islander) Act 2006*; or
25 (d) an authority or body that is:
26 (i) established by or under a law of the Commonwealth, a
27 State or a Territory; and
28 (ii) specified in the regulations.

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

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

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

1 ***transfer:***

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

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

8 ***trustee*** has the same meaning as in the *Income Tax Assessment Act*
9 *1997*.

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

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

14 ***voluntary automatic unit cancellation regime:*** see paragraph
15 27(3)(e).

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

18 **6 Vacancy in the office of a Domestic Offsets Integrity Committee**
19 **member**

20 For the purposes of a reference in:

- 21 (a) this Act to a ***vacancy*** in the office of a Domestic Offsets
22 Integrity Committee member; or
23 (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the
24 membership of a body;

25 there are taken to be 4 offices of member of the Domestic Offsets
26 Integrity Committee in addition to the Chair of the Domestic
27 Offsets Integrity Committee.

28 **7 Electronic notice transmitted to the Administrator**

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

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- 1 (a) the notice is transmitted to the Administrator by means of an
2 electronic communication; and
3 (b) if the Administrator requires that the notice be transmitted, in
4 accordance with particular information technology
5 requirements, by means of a particular kind of electronic
6 communication—the Administrator’s requirement has been
7 met; and
8 (c) the notice complies with regulations made for the purposes of
9 subsection (2).
- 10 (2) The regulations may make provision for or in relation to the
11 security and authenticity of notices transmitted to the
12 Administrator by means of an electronic communication.
- 13 (3) Regulations made for the purposes of subsection (2) may deal with:
14 (a) encryption; and
15 (b) authentication of identity.
- 16 (4) Subsection (3) does not limit subsection (2).
- 17 (5) For the purposes of this Act, if a notice is transmitted to the
18 Administrator by means of an electronic communication, the notice
19 is taken to have been transmitted on the day on which the
20 electronic communication is dispatched.
- 21 (6) Subsection (5) of this section has effect despite subsections 14(3)
22 and (4) of the *Electronic Transactions Act 1999*.
- 23 (7) This section does not, by implication, limit the regulations that may
24 be made under the *Electronic Transactions Act 1999*.

25 **8 Crown to be bound**

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

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

3 **9 Extension to external Territories**

4 This Act extends to every external Territory.
5

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

3 **Division 1—Introduction**

4 **10 Simplified outline**

5 The following is a simplified outline of this Part:

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

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

3 **11 Issue of Australian carbon credit units in respect of offsets**
4 **projects**

5 *Scope*

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

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

9 *Issue of units*

- 10 (2) If:
11 (a) the project is an eligible Kyoto project; and
12 (b) the reporting period ends on or before the Kyoto abatement
13 deadline;
14 the Administrator must, as soon as practicable after the day on
15 which the certificate was issued, issue to the holder of the
16 certificate a number of Kyoto Australian carbon credit units equal
17 to the number specified in the certificate as the unit entitlement for
18 that certificate.
- 19 (3) If:
20 (a) the project is an eligible non-Kyoto project; and
21 (b) the reporting period ends on or before the Kyoto abatement
22 deadline;
23 the Administrator must, as soon as practicable after the day on
24 which the certificate was issued, issue to the holder of the
25 certificate a number of non-Kyoto Australian carbon credit units
26 equal to the number specified in the certificate as the unit
27 entitlement for that certificate.
- 28 (4) If the reporting period ends after the Kyoto abatement deadline, the
29 Administrator must, as soon as practicable after the day on which
30 the certificate was issued, issue to the holder of the certificate a
31 number of non-Kyoto Australian carbon credit units equal to the

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

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

Section 11

1 number specified in the certificate as the unit entitlement for that
2 certificate.

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

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

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

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

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

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

18

1 **Division 3—Certificate of entitlement**

2 **12 Application for certificate of entitlement**

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

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

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

9 **13 Form of application**

10 (1) An application must:

- 11 (a) be in writing; and
12 (b) be in a form approved, in writing, by the Administrator; and
13 (c) set out the account number of a Registry account of the
14 applicant that should be specified in the certificate; and
15 (d) be accompanied by such information as is specified in the
16 regulations; and
17 (e) be accompanied by a prescribed audit report prepared by a
18 registered greenhouse and energy auditor who has been
19 appointed as an audit team leader for the purpose; and
20 (f) be accompanied by the offsets report about the project for the
21 relevant reporting period; and
22 (g) be accompanied by such other documents (if any) as are
23 specified in the regulations; and
24 (h) be accompanied by the fee (if any) specified in the
25 regulations.

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

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

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

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

8 **14 Further information**

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

18 **15 Issue of certificate of entitlement**

19 *Scope*

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

23 *Issue of certificate*

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

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

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

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

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

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

28 *Timing*

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

Section 16

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

2 *Refusal*

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

6 **16 Unit entitlement—sequestration offsets projects other than native**
7 **forest protection projects**

8 *Scope*

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

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

13 *Unit entitlement*

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

18
$$\text{Net abatement number} - \frac{\text{Risk of reversal}}{\text{buffer number}}$$

19 where:

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

24 *risk of reversal buffer number* means:

25 (a) 5%; or

26 (b) if:

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

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

9 **17 Unit entitlement—native forest protection projects**

10 *Scope*

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

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

14 *Unit entitlement—prescribed native forest protection projects*

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

$$19 \text{ Net sequestration number} - \frac{\text{Risk of reversal}}{\text{buffer number}}$$

20 where:

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

26 *risk of reversal buffer number* means:

27 (a) 5%; or

28 (b) if:

- 29 (i) at the start of the crediting period in which the reporting
30 period is included, another percentage is specified in the

Section 17

- 1 regulations in relation to a particular kind of project;
2 and
3 (ii) the project is of that kind;
4 that other percentage;
5 of the net sequestration number.

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

7 *Unit entitlement—other native forest protection projects*

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

12
$$\left(\frac{\text{Net sequestration number}}{\text{Risk of reversal buffer number}} \right) \times \frac{\text{Reporting period number}}{\text{Crediting period number}}$$

13 where:

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

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

21 *reporting period number* means the number of years in the
22 reporting period.

23 *risk of reversal buffer number* means:

24 (a) 5%; or

25 (b) if:

- 26 (i) at the start of the crediting period in which the reporting
27 period is included, another percentage is specified in the
28 regulations in relation to a particular kind of project;
29 and
30 (ii) the project is of that kind;
-

1 that other percentage;
2 of the net sequestration number.

3 *Rounding down*

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

7 (5) For the purposes of subsection (4), zero is taken to be a whole
8 number.

9 **18 Unit entitlement—emissions avoidance offsets project**

10 *Scope*

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

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

14 *Unit entitlement*

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

21 **19 Cancellation of units issued in respect of a project that is subject**
22 **to the voluntary automatic unit cancellation regime**

23 *Scope*

24 (1) This section applies if:

25 (a) an eligible offsets project is subject to the voluntary
26 automatic unit cancellation regime; and

27 (b) an Australian carbon credit unit is issued to a person in
28 respect of the project.

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

Division 3 Certificate of entitlement

Section 20

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

3 *Automatic cancellation*

4 (2) Immediately after the issue of the unit:

5 (a) the unit is cancelled; and

6 (b) the Administrator 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 Administrator, direct the Administrator to transfer a
12 Kyoto unit from a Commonwealth holding account to a
13 voluntary cancellation account before the end of the
14 true-up period for the relevant commitment period; and

15 (ii) the Administrator must comply with a direction under
16 subparagraph (i).

17 (3) The Registry must set out a record of each cancellation under
18 subsection (2).

19 *No transfer*

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

21 **20 Certificate of entitlement not transferable**

22 A certificate of entitlement is not transferable.
23

1 **Part 3—Eligible offsets projects**

2 **Division 1—Introduction**

3 **21 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
- 7
- 8
- 9
- | |
|--|
| <ul style="list-style-type: none">• The Administrator may declare an offsets project to be an eligible offsets project.• The Administrator may vary or revoke a declaration of an eligible offsets project. |
|--|

Section 22

1 **Division 2—Declaration of eligible offsets project**

2 **22 Application for declaration of eligible offsets project**

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

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

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

9 **23 Form of application**

- 10 (1) An application must:
- 11 (a) be in writing; and
- 12 (b) be in a form approved, in writing, by the Administrator; and
- 13 (c) be accompanied by such information as is specified in the
14 regulations; and
- 15 (d) if the project is of a kind specified in the regulations—be
16 accompanied by a prescribed audit report prepared by a
17 registered greenhouse and energy auditor who has been
18 appointed as an audit team leader for the purpose; and
- 19 (e) if:
- 20 (i) the project area for the project was, or the project areas
21 for the project were, wholly or partly covered by a
22 prescribed non-CFI offsets scheme; and
- 23 (ii) the applicant is entitled to make a request under
24 section 92 in relation to the project;
25 be accompanied by such a request; and
- 26 (f) if an indigenous land use agreement is relevant to the
27 Administrator’s decision on the application—be
28 accompanied by a copy of the agreement; and
- 29 (g) if the project area, or any of the project areas, for the project
30 is covered by a regional natural resource management plan—
31 be accompanied by a statement about whether the project is
32 consistent with the plan; and

Section 24

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

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

- 7 (2) The approved form of application may provide for verification by
8 statutory declaration of statements in applications.
- 9 (3) A fee specified under paragraph (1)(i) must not be such as to
10 amount to taxation.
- 11 (4) An application may include a statement to the effect that the
12 project should be subject to the voluntary automatic unit
13 cancellation regime.
- 14 (5) Paragraph (1)(d) of this section does not, by implication, affect the
15 application of subsection 13(3) of the *Legislative Instruments Act*
16 *2003* to:
17 (a) another paragraph of subsection (1) of this section; or
18 (b) another instrument under this Act.

19 **24 Further information**

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

29 **25 Withdrawal of application**

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

Part 3 Eligible offsets projects

Division 2 Declaration of eligible offsets project

Section 26

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

26 Application may be split

Scope

- 8
9
10 (1) This section applies if:
11 (a) an application under section 22 has been made, or
12 purportedly made, for a declaration of an offsets project as an
13 eligible offsets project; and
14 (b) the Administrator is satisfied that the application relates to 2
15 or more offsets projects.

16 Note: See also subsection 55(6).

Application may be split

- 17
18 (2) The Administrator may, by written notice given to the applicant,
19 determine that this Act has effect as if the applicant had made a
20 separate application under section 22 in relation to each of the
21 offsets projects referred to in paragraph (1)(b) of this section.

27 Declaration of eligible offsets project

Scope

- 22
23
24 (1) This section applies if an application under section 22 has been
25 made for a declaration of an offsets project as an eligible offsets
26 project.

Declaration

- 27
28 (2) After considering the application, the Administrator may, by
29 writing:

- 1 (a) declare that the offsets project is:
2 (i) an *eligible offsets project* for the purposes of this Act;
3 and
4 (ii) an *eligible Kyoto project* for the purposes of this Act; and
5 (b) declare that the offsets project is:
6 (i) an *eligible offsets project* for the purposes of this Act;
7 and
8 (ii) an *eligible non-Kyoto project* for the purposes of this
9 Act.
- 10 (3) A declaration under subsection (2) must:
11 (a) identify the name of the project; and
12 (b) identify, in accordance with the regulations, the project area
13 or project areas; and
14 (c) identify the project proponent for the project; and
15 (d) identify such attributes of the project as are specified in the
16 regulations; and
17 (e) if the application included a statement to the effect that the
18 project should be subject to the voluntary automatic unit
19 cancellation regime—declare that the project is subject to the
20 voluntary automatic unit cancellation regime.

21 *Criteria for declaration*

- 22 (4) The Administrator must not declare that the offsets project is an
23 eligible offsets project unless the Administrator is satisfied that:
24 (a) the project is, or is to be, carried on in Australia; and
25 (b) the project is covered by a methodology determination; and
26 (c) the project meets such requirements as are set out in the
27 methodology determination in accordance with paragraph
28 106(1)(b); and
29 (d) the project passes the additionality test; and
30 (e) the applicant is the project proponent for the project; and
31 (f) the applicant is a recognised offsets entity; and
32 (g) if the project is a sequestration offsets project—the project
33 area, or each project area, meets the requirements set out in
34 subsection (5) of this section; and
35 (h) if:
-

Part 3 Eligible offsets projects

Division 2 Declaration of eligible offsets project

Section 27

- 1 (i) the project is a sequestration offsets project; and
2 (ii) the project area is, or any of the project areas are, Crown
3 land in a State or Territory; and
4 (iii) the project area is not, or the project areas are not,
5 Torrens system land; and
6 (iv) the project area is not, or the project areas are not, the
7 property of the Commonwealth; and
8 (v) the project area is not, or the project areas are not,
9 freehold land rights land; and
10 (vi) the applicant is not the State or Territory;
11 the Crown lands Minister of the State or Territory has
12 certified in writing that:
13 (vii) the applicant holds the applicable carbon sequestration
14 right in relation to the project area or project areas; and
15 (viii) the State or Territory will not deal with the project area
16 or project areas in a way that is inconsistent with the
17 applicable carbon sequestration right; and
18 (ix) if another person is required to obtain the consent of the
19 State or Territory to a dealing with the project area or
20 project areas—the State or Territory will not give that
21 consent in a way that is inconsistent with the applicable
22 carbon sequestration right; and
23 (i) if:
24 (i) the project is a sequestration offsets project; and
25 (ii) the project area is, or any of the project areas are, Crown
26 land; and
27 (iii) the project area is, or the project areas are, the property
28 of the Commonwealth;
29 (iv) the project area is not, or the project areas are not,
30 freehold land rights land; and
31 the Minister has certified in writing that:
32 (v) the applicant holds the applicable carbon sequestration
33 right in relation to the project area or project areas; and
34 (vi) the Commonwealth will not deal with the project area or
35 project areas in a way that is inconsistent with the
36 applicable carbon sequestration right; and

Section 27

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

19 Note 1: Methodology determinations are made under section 106.

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

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

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

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

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

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

10 *When a declaration takes effect*

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

19 *Notification of declaration*

- 20 (17) As soon as practicable after making a declaration under
21 subsection (2), the Administrator must give a copy of the
22 declaration to:
23 (a) the applicant; and
24 (b) the relevant land registration official.

25 *Refusal*

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

29 *Registered indigenous land use agreements*

- 30 (19) If:
31 (a) a declaration under subsection (2) is in force; and
-

Part 3 Eligible offsets projects

Division 2 Declaration of eligible offsets project

Section 28

1 (b) a relevant consent under paragraph (4)(k) was set out in a
2 registered indigenous land use agreement;
3 details of the agreement must not be removed from the Register of
4 Indigenous Land Use Agreements under subparagraph
5 199C(1)(c)(ii) of the *Native Title Act 1993* without the written
6 consent of the Administrator.

7 *Declaration is not legislative instrument*

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

10 **28 Declaration may be subject to condition about obtaining**
11 **regulatory approvals**

12 *Scope*

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

21 *Condition*

- 22 (2) The Administrator must specify in the declaration that the
23 declaration is subject to the condition that all regulatory approvals
24 must be obtained for the project before the end of the first crediting
25 period for the project.
26

1 **Division 3—Variation of declaration of eligible offsets**
2 **project**

3 **29 Voluntary variation of declaration of eligible offsets project in**
4 **relation to the project area or project areas**

5 *Regulations*

- 6 (1) The regulations may make provision for and in relation to
7 empowering the Administrator to vary a declaration under
8 section 27 in relation to an offsets project so far as the declaration
9 identifies the project area or project areas.
- 10 (2) Regulations made for the purposes of subsection (1) must not
11 empower the Administrator to vary a declaration unless the project
12 proponent for the project applies to the Administrator for the
13 variation of the declaration.
- 14 (3) Regulations made for the purposes of subsection (1) may make
15 provision for or in relation to any or all of the following matters:
16 (a) applications for variations under those regulations;
17 (b) the approval by the Administrator of a form for such an
18 application;
19 (c) information that must accompany such an application;
20 (d) documents that must accompany such an application;
21 (e) verification by statutory declaration of statements in such an
22 application;
23 (f) consents that must be obtained for the making of such an
24 application;
25 (g) authorising a person to issue a certificate in relation to such
26 an application;
27 (h) requiring such an application to be accompanied by a
28 statement about consistency with a regional natural resource
29 management plan (if any) that covers the project area or any
30 of the project areas;
31 (i) the fee (if any) that must accompany such an application;
32 (j) the withdrawal of such an application;
33 (k) empowering the Administrator:

Part 3 Eligible offsets projects

Division 3 Variation of declaration of eligible offsets project

Section 29

- 1 (i) to require an applicant to give the Administrator further
2 information in connection with such an application; and
3 (ii) if the applicant breaches the requirement—to refuse to
4 consider the application, or to refuse to take any action,
5 or any further action, in relation to the application.

6 (4) Subsection (3) does not limit subsection (1).

7 (5) A fee mentioned in paragraph (3)(i) must not be such as to amount
8 to taxation.

9 (6) Regulations made for the purposes of subsection (1) must provide
10 that, if a declaration of an eligible offsets project is varied in
11 accordance with those regulations, the Administrator must give a
12 copy of the variation to:

- 13 (a) the applicant for the variation; and
14 (b) the relevant land registration official.

15 (7) Regulations made for the purposes of subsection (1) must provide
16 that, if the Administrator decides to refuse to vary a declaration of
17 an eligible offsets project in accordance with an application for
18 variation under those regulations, the Administrator must give
19 written notice of the decision to the applicant for the variation.

20 *Registered indigenous land use agreements*

21 (8) If:

- 22 (a) a declaration of an eligible offsets project is varied in
23 accordance with regulations made for the purposes of
24 subsection (1); and
25 (b) a consent to the making of the application for the variation
26 was set out in a registered indigenous land use agreement;
27 details of the agreement must not be removed from the Register of
28 Indigenous Land Use Agreements under subparagraph
29 199C(1)(c)(ii) of the *Native Title Act 1993* without the written
30 consent of the Administrator.

31 *References to eligible offsets project*

32 (9) If a declaration of an eligible offsets project is varied in accordance
33 with regulations made for the purposes of subsection (1), a

1 reference in this Act or the regulations to the eligible offsets
2 project is a reference to the eligible offsets project as varied.

3 **30 Voluntary variation of declaration of eligible offsets project in**
4 **relation to the project proponent**

5 *Regulations*

- 6 (1) The regulations may make provision for and in relation to
7 empowering the Administrator to vary a declaration under
8 section 27 in relation to an offsets project so far as the declaration
9 identifies the project proponent for the project.
- 10 (2) Regulations made for the purposes of subsection (1) must not
11 empower the Administrator to vary a declaration unless the project
12 proponent for the project applies to the Administrator for the
13 variation of the declaration.
- 14 (3) Regulations made for the purposes of subsection (1) may make
15 provision for or in relation to any or all of the following matters:
16 (a) applications for variations under those regulations;
17 (b) the approval by the Administrator of a form for such an
18 application;
19 (c) information that must accompany such an application;
20 (d) documents that must accompany such an application;
21 (e) verification by statutory declaration of statements in such an
22 application;
23 (f) the fee (if any) that must accompany such an application;
24 (g) the withdrawal of such an application;
25 (h) empowering the Administrator:
26 (i) to require an applicant to give the Administrator further
27 information in connection with such an application; and
28 (ii) if the applicant breaches the requirement—to refuse to
29 consider the application, or to refuse to take any action,
30 or any further action, in relation to the application;
31 (i) empowering the Administrator to require the applicant to
32 give security to the Commonwealth in relation to the
33 fulfilment by the applicant of any requirements to relinquish

Part 3 Eligible offsets projects

Division 3 Variation of declaration of eligible offsets project

Section 30

- 1 Australian carbon credit units that may be imposed on the
2 applicant under this Part in relation to the project.
- 3 (4) Subsection (3) does not limit subsection (1).
- 4 (5) A fee mentioned in paragraph (3)(f) must not be such as to amount
5 to taxation.
- 6 (6) Regulations made for the purposes of subsection (1) must provide
7 that, if a declaration of an eligible offsets project is varied in
8 accordance with those regulations, the Administrator must give a
9 copy of the variation to:
- 10 (a) the applicant for the variation; and
11 (b) the relevant land registration official.
- 12 (7) Regulations made for the purposes of subsection (1) must provide
13 that, if a declaration of an eligible offsets project is varied in
14 accordance with those regulations, the variation takes effect:
- 15 (a) when it is made; or
16 (b) if:
- 17 (i) the Administrator makes a written determination
18 specifying an earlier day; and
19 (ii) the applicant for the variation has consented to the
20 determination of the earlier day;
21 on the day so determined.
- 22 (8) A determination made under subparagraph (7)(b)(i) is not a
23 legislative instrument.
- 24 (9) Regulations made for the purposes of subsection (1) must provide
25 that, if the Administrator decides to refuse to vary a declaration of
26 an eligible offsets project in accordance with an application for
27 variation under those regulations, the Administrator must give
28 written notice of the decision to the applicant for the variation.
- 29 *References to eligible offsets project*
- 30 (10) If a declaration of an eligible offsets project is varied in accordance
31 with regulations made for the purposes of subsection (1), a
32 reference in this Act or the regulations to the eligible offsets
33 project is a reference to the eligible offsets project as varied.

1 **31 Voluntary variation of conditional declaration of eligible offsets**
2 **project—regulatory approvals obtained**

3 *Scope*

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

8 *Regulations*

- 9 (2) The regulations may make provision for and in relation to
10 empowering the Administrator to vary such a declaration by
11 removing such a condition.
- 12 (3) Regulations made for the purposes of subsection (2) must not
13 empower the Administrator to vary a declaration unless:
14 (a) the project proponent for the project applies to the
15 Administrator for the variation of the declaration; and
16 (b) the Administrator is satisfied that the condition has been met.
- 17 (4) Regulations made for the purposes of subsection (2) may make
18 provision for or in relation to any or all of the following matters:
19 (a) applications for variations under those regulations;
20 (b) the approval by the Administrator of a form for such an
21 application;
22 (c) information that must accompany such an application;
23 (d) documents that must accompany such an application;
24 (e) verification by statutory declaration of statements in such an
25 application;
26 (f) the fee (if any) that must accompany such an application;
27 (g) the withdrawal of such an application;
28 (h) empowering the Administrator:
29 (i) to require an applicant to give the Administrator further
30 information in connection with such an application; and
31 (ii) if the applicant breaches the requirement—to refuse to
32 consider the application, or to refuse to take any action,
33 or any further action, in relation to the application.

Part 3 Eligible offsets projects

Division 3 Variation of declaration of eligible offsets project

Section 31

- 1 (5) Subsection (4) does not limit subsection (2).
- 2 (6) A fee mentioned in paragraph (4)(f) must not be such as to amount
3 to taxation.
- 4 (7) Regulations made for the purposes of subsection (2) must provide
5 that, if a declaration of an eligible offsets project is varied in
6 accordance with those regulations, the Administrator must give a
7 copy of the variation to:
- 8 (a) the applicant for the variation; and
9 (b) the relevant land registration official.
- 10 (8) Regulations made for the purposes of subsection (2) must provide
11 that, if the Administrator decides to refuse to vary a declaration of
12 an eligible offsets project in accordance with an application for
13 variation under those regulations, the Administrator must give
14 written notice of the decision to the applicant for the variation.

15 *References to eligible offsets project*

- 16 (9) If a declaration of an eligible offsets project is varied in accordance
17 with regulations made for the purposes of subsection (2), a
18 reference in this Act or the regulations to the eligible offsets
19 project is a reference to the eligible offsets project as varied.
20

1 **Division 4—Revocation of declaration of eligible offsets**
2 **project**

3 **Subdivision A—Voluntary revocation of declaration of eligible**
4 **offsets project**

5 **32 Voluntary revocation of declaration of eligible offsets project—**
6 **units issued**

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

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

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

- 32 (3) Regulations made for the purposes of subsection (1) may make
33 provision for or in relation to either or both of the following
34 matters:

Part 3 Eligible offsets projects

Division 4 Revocation of declaration of eligible offsets project

Section 33

- 1 (a) applications for revocations under those regulations;
2 (b) the approval by the Administrator of a form for such an
3 application.
- 4 (4) Subsection (3) does not limit subsection (1).
- 5 (5) Regulations made for the purposes of subsection (1) must provide
6 that, if a declaration of an eligible offsets project is revoked in
7 accordance with those regulations, the Administrator must give a
8 copy of the revocation to:
- 9 (a) the applicant for the revocation; and
10 (b) the relevant land registration official.

11 **33 Voluntary revocation of declaration of eligible offsets project—no**
12 **units issued**

- 13 (1) The regulations may make provision for and in relation to
14 empowering the Administrator to revoke a declaration under
15 section 27 in relation to an offsets project.
- 16 (2) Regulations made for the purposes of subsection (1) must not
17 empower the Administrator to revoke a declaration unless:
- 18 (a) no Australian carbon credit units have been issued in relation
19 to the project in accordance with Part 2; and
20 (b) the project proponent for the project applies to the
21 Administrator for the revocation of the declaration.
- 22 (3) Regulations made for the purposes of subsection (1) may make
23 provision for or in relation to either or both of the following
24 matters:
- 25 (a) applications for revocations under those regulations;
26 (b) the approval by the Administrator of a form for such an
27 application.
- 28 (4) Subsection (3) does not limit subsection (1).
- 29 (5) Regulations made for the purposes of subsection (1) must provide
30 that, if a declaration of an eligible offsets project is revoked in
31 accordance with those regulations, the Administrator must give a
32 copy of the revocation to:

- 1 (a) the applicant for the revocation; and
2 (b) the relevant land registration official.

3 **Subdivision B—Unilateral revocation of declaration of eligible**
4 **offsets project**

5 **34 Unilateral revocation of declaration of eligible offsets project—**
6 **regulatory approvals not obtained**

- 7 (1) The regulations may make provision for and in relation to
8 empowering the Administrator to revoke a declaration under
9 section 27 in relation to an offsets project.
- 10 (2) Regulations made for the purposes of subsection (1) must not
11 empower the Administrator to revoke a declaration unless:
12 (a) the declaration is subject to the condition that all regulatory
13 approvals for the project must be obtained before the end of
14 the first crediting period for the project; and
15 (b) the Administrator is satisfied that the condition has not been
16 met.
- 17 (3) Regulations made for the purposes of subsection (1) must require
18 the Administrator to consult the project proponent for the project
19 before deciding to revoke a declaration.
- 20 (4) Regulations made for the purposes of subsection (1) must provide
21 that, if a declaration of an eligible offsets project is revoked in
22 accordance with those regulations, the Administrator must give a
23 copy of the revocation to:
24 (a) the project proponent; and
25 (b) the relevant land registration official.

26 **35 Unilateral revocation of declaration of eligible offsets project—**
27 **eligibility requirements not met etc.**

- 28 (1) The regulations may make provision for and in relation to
29 empowering the Administrator to revoke a declaration under
30 section 27 in relation to an offsets project.

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- 1 (2) Regulations made for the purposes of subsection (1) must not
2 empower the Administrator to revoke a declaration unless the
3 Administrator is satisfied that the project does not meet a
4 requirement that is:
5 (a) set out in subsection 27(5); and
6 (b) specified in regulations made for the purposes of this
7 paragraph.
- 8 (3) Regulations made for the purposes of subsection (1) must require
9 the Administrator to consult the project proponent for the project
10 before deciding to revoke a declaration.
- 11 (4) Regulations made for the purposes of subsection (1) must provide
12 that, if a declaration of an eligible offsets project is revoked in
13 accordance with those regulations, the Administrator must give a
14 copy of the revocation to:
15 (a) the project proponent; and
16 (b) the relevant land registration official.

17 **36 Unilateral revocation of declaration of eligible offsets project—**
18 **project proponent ceases to be a recognised offsets entity**

- 19 (1) The regulations may make provision for and in relation to
20 empowering the Administrator to revoke a declaration under
21 section 27 in relation to an offsets project.
- 22 (2) Regulations made for the purposes of subsection (1) must not
23 empower the Administrator to revoke a declaration unless:
24 (a) the project proponent for the project ceases to be a
25 recognised offsets entity; and
26 (b) 90 days pass after the cessation, and the person who, at the
27 end of that 90-day period, is the project proponent for the
28 project is not a recognised offsets entity.
- 29 (3) Regulations made for the purposes of subsection (1) must require
30 the Administrator to consult the project proponent for the project
31 before deciding to revoke a declaration.
- 32 (4) Regulations made for the purposes of subsection (1) must provide
33 that, if a declaration of an eligible offsets project is revoked in

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

- 3 (a) the project proponent; and
4 (b) the relevant land registration official.

5 **37 Unilateral revocation of declaration of eligible offsets project—**
6 **person responsible for carrying out project ceases to be**
7 **the project proponent**

- 8 (1) The regulations may make provision for and in relation to
9 empowering the Administrator to revoke a declaration under
10 section 27 in relation to an offsets project.
- 11 (2) Regulations made for the purposes of subsection (1) must not
12 empower the Administrator to revoke a declaration unless:
13 (a) the person who is responsible for carrying out the project
14 ceases to be the project proponent for the project; and
15 (b) 90 days pass after the cessation, and the person who, at the
16 end of that 90-day period, is responsible for carrying out the
17 project is not:
18 (i) the project proponent for the project; and
19 (ii) a recognised offsets entity.
- 20 (3) Regulations made for the purposes of subsection (1) must require
21 the Administrator to consult the project proponent for the project
22 before deciding to revoke a declaration.
- 23 (4) Regulations made for the purposes of subsection (1) must provide
24 that, if a declaration of an eligible offsets project is revoked in
25 accordance with those regulations, the Administrator must give a
26 copy of the revocation to:
27 (a) the person who is responsible for carrying out the project;
28 and
29 (b) the relevant land registration official.

Section 38

1 **38 Unilateral revocation of declaration of eligible offsets project—**
2 **false or misleading information**

- 3 (1) The regulations may make provision for and in relation to
4 empowering the Administrator to revoke a declaration under
5 section 27 in relation to an offsets project.
- 6 (2) Regulations made for the purposes of subsection (1) must not
7 empower the Administrator to revoke a declaration unless:
- 8 (a) information was given by a person to the Administrator in
9 connection with the project; and
- 10 (b) the information was:
- 11 (i) contained in an application under this Act or the
12 regulations; or
- 13 (ii) given in connection with an application under this Act
14 or the regulations; or
- 15 (iii) contained in an offsets report; or
- 16 (iv) contained in a notification under Part 6; and
- 17 (c) the information was false or misleading in a material
18 particular.
- 19 (3) Regulations made for the purposes of subsection (1) must require
20 the Administrator to consult the project proponent for the project
21 before deciding to revoke a declaration.
- 22 (4) Regulations made for the purposes of subsection (1) must provide
23 that, if a declaration of an eligible offsets project is revoked in
24 accordance with those regulations, the Administrator must give a
25 copy of the revocation to:
- 26 (a) the project proponent; and
- 27 (b) the relevant land registration official.
- 28

1 **Division 5—Entries in title registers**

2 **39 Entries in title registers—general**

3 *Scope*

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

5 *Entries*

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

15 **40 Entries in title registers—land subject to carbon maintenance**
16 **obligation**

17 *Scope*

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

20 *Entries*

- 21 (2) The relevant land registration official may make such entries or
22 notations in or on registers or other documents kept by the official
23 (in electronic form or otherwise) as the official thinks appropriate
24 for the purposes of drawing the attention of persons to the
25 obligation.
26

1 **Division 6—Additionality test**

2 **41 Additionality test**

- 3 (1) For the purposes of this Act, an offsets project *passes the*
4 *additionality test* if:
5 (a) the project is of a kind specified in the regulations; and
6 (b) the project is not required to be carried out by or under a law
7 of the Commonwealth, a State or a Territory.
- 8 (2) Before recommending to the Governor-General that regulations
9 should be made for the purposes of paragraph (1)(a) specifying a
10 particular kind of project, the Minister must request the Domestic
11 Offsets Integrity Committee to advise the Minister about whether
12 such a project should, or should not, be specified in those
13 regulations.
- 14 (3) In deciding whether to recommend to the Governor-General that
15 regulations should be made for the purposes of paragraph (1)(a)
16 specifying a particular kind of project, the Minister must have
17 regard to:
18 (a) whether carrying out such a project is not common practice
19 in:
20 (i) the relevant industry or the relevant part of the relevant
21 industry; or
22 (ii) the kind of environment in which such a project is to be
23 carried out; and
24 (b) whether, apart from Part 2, carrying out such a project would
25 not be common practice in:
26 (i) the relevant industry or the relevant part of the relevant
27 industry; or
28 (ii) the kind of environment in which such a project is to be
29 carried out; and
30 (c) any advice given by the Domestic Offsets Integrity
31 Committee under subsection (2); and
32 (d) such other matters (if any) as the Minister considers relevant.

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- 1 (4) Paragraph (1)(a) of this section does not, by implication, limit the
2 application of subsection 13(3) of the *Legislative Instruments Act*
3 *2003* to another instrument under this Act.
- 4 (5) If:
- 5 (a) the Domestic Offsets Integrity Committee gives advice to the
6 Minister under subsection (2) in relation to a particular kind
7 of project; and
- 8 (b) the Minister decides:
- 9 (i) to recommend to the Governor-General that regulations
10 should be made for the purposes of paragraph (1)(a)
11 specifying that kind of project; or
- 12 (ii) not to recommend to the Governor-General that
13 regulations should be made for the purposes of
14 paragraph (1)(a) specifying that kind of project;
- 15 the Minister must, as soon as practicable after making the decision,
16 cause a copy of the Domestic Offset Integrity Committee's advice
17 under subsection (2) to be published on the Department's website.
18

Part 3 Eligible offsets projects

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

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

4 **42 Net total number of Australian carbon credit units issued in**
5 **relation to an eligible offsets project**

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

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

11

1 **Division 8—Applicable carbon sequestration right**

2 **43 Applicable carbon sequestration right**

3 *Torrens system land*

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

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

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

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

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

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

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

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

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

18 *Crown land that is not Torrens system land*

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

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

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

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

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

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

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

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

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- 1 (c) as a result of the area being Crown land:
2 (i) the Commonwealth; or
3 (ii) a statutory authority of the Commonwealth;
4 has the exclusive legal right to obtain the benefit (whether
5 present or future) of sequestration of carbon dioxide by trees
6 on the area of land;
7 the exclusive right is the ***carbon sequestration right*** held by the
8 Commonwealth or statutory authority, as the case may be, in
9 relation to the land.

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

- 11 (8) For the purposes of the application of this Act to a sequestration
12 offsets project, if:
13 (a) an area of land is a project area for the project; and
14 (b) the area of land is Crown land in a State or Territory; and
15 (c) the area of land is not Torrens system land; and
16 (d) as a result of the area of land being Crown land:
17 (i) the State or Territory; or
18 (ii) a statutory authority of the State or Territory;
19 has the exclusive legal right to obtain the benefit (whether
20 present or future) of sequestration of carbon in the relevant
21 carbon pool on the area of land;
22 the exclusive right is the ***applicable carbon sequestration right***
23 held by the State, Territory or statutory authority, as the case may
24 be, in relation to the project area.

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

26 *Native title land*

- 27 (9) For the purposes of the application of this Act to a sequestration
28 offsets project, if:
29 (a) an area of land is a project area for the project; and
30 (b) the area of land is native title land; and
31 (c) there is a registered native title body corporate for the area of
32 land; and
33 (d) as a result of holding the native title, the native title holder
34 has the exclusive legal right to obtain the benefit (whether

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

26 *Regulations*

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

Part 3 Eligible offsets projects

Division 8 Applicable carbon sequestration right

Section 43

1 the prescribed right, prescribed estate or prescribed interest, as the
2 case may be, is the *applicable carbon sequestration right* held by
3 the person in relation to the project area.
4

1 **Division 9—Eligible interest in an area of land**

2 **44 Eligible interest in an area of land—Torrens system land**

3 *Scope*

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

6 *Eligible interest*

- 7 (2) For the purposes of this Act, if:

8 (a) a person holds an estate in fee simple, or any other legal
9 estate or interest, in the whole or a part of the area of land;
10 and

11 (b) the estate or interest is registered under a Torrens system of
12 registration;

13 the estate or interest is an *eligible interest* held by the person in the
14 area of land.

- 15 (3) For the purposes of this Act, if:

16 (a) under subsection (2), a person holds an eligible interest in the
17 area of land; and

18 (b) another person:

19 (i) is a mortgagee of the eligible interest, where the
20 mortgage is registered under a Torrens system of
21 registration; or

22 (ii) a chargee of the eligible interest, where the charge is
23 registered under a Torrens system of registration;

24 the mortgage or charge is an *eligible interest* held by the other
25 person in the area of land.

- 26 (4) For the purposes of this Act, if the area of land is Crown land, the
27 Crown lands Minister of the State or Territory holds an *eligible*
28 *interest* in the area of land.

- 29 (5) The regulations may provide that, for the purposes of this Act, a
30 person specified in, or ascertained in accordance with, the
31 regulations holds an *eligible interest* in the area of land.

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- 1 (6) For the purposes of this Act, if:
2 (a) the area of land is land rights land; and
3 (b) any of the following subparagraphs applies to the area of
4 land:
5 (i) a lease is in force over the land, and the grant of the
6 lease took place under a law of the Commonwealth that
7 makes provision for the grant of such things only to, or
8 for the benefit of, Aboriginal peoples or Torres Strait
9 Islanders;
10 (ii) subparagraph (i) does not apply, and the land is held by
11 the Commonwealth;
12 (iii) subparagraph (i) does not apply, and the land is held by
13 a statutory authority of the Commonwealth;
14 then:
15 (c) if subparagraph (b)(i) applies—the Minister who administers
16 the law mentioned in that subparagraph holds an *eligible*
17 *interest* in the area of land; or
18 (d) if subparagraph (b)(ii) applies—the Minister who administers
19 the *Aboriginal Land Rights (Northern Territory) Act 1976*
20 holds an *eligible interest* in the area of land; or
21 (e) if subparagraph (b)(iii) applies—the Minister who
22 administers the Act that establishes the statutory authority
23 holds an *eligible interest* in the area of land.
24 (7) For the purposes of this Act, if:
25 (a) the area of land is land rights land in a State or Territory; and
26 (b) the area of land is not covered by subsection (6); and
27 (c) the area of land is not freehold land rights land;
28 the Crown lands Minister of the State or Territory holds an *eligible*
29 *interest* in the area of land.

30 **45 Eligible interest in an area of land—Crown land that is not**
31 **Torrens system land**

32 *Scope*

- 33 (1) This section applies to an area of land in a State or Territory if the
34 area of land:

- 1 (a) is Crown land; and
2 (b) is not Torrens system land.

3 *Eligible interest*

- 4 (2) For the purposes of this Act, if the area of land is neither:
5 (a) exclusive possession native title land; nor
6 (b) land rights land;
7 the Crown lands Minister of the State or Territory holds an *eligible*
8 *interest* in the area of land.

- 9 (3) For the purposes of this Act, if:
10 (a) a person (other than the State or Territory) holds a legal
11 estate or interest (the *relevant estate or interest*) in the whole
12 or a part of the area of land; and
13 (b) any of the following conditions are satisfied:
14 (i) the relevant estate or interest came into existence as a
15 result of a grant by the Crown in any capacity;
16 (ii) the relevant estate or interest was derived from an estate
17 or interest that came into existence as a result of a grant
18 by the Crown in any capacity;
19 (iii) the relevant estate or interest was created by or under a
20 law of the Commonwealth, a State or a Territory;
21 (iv) the relevant estate or interest was derived from an estate
22 or interest that was created by or under a law of the
23 Commonwealth, a State or a Territory;
24 the relevant estate or interest is an *eligible interest* held by the
25 person in the area of land.

- 26 (4) For the purposes of this Act, if:
27 (a) under subsection (3), a person holds an eligible interest in the
28 area of land; and
29 (b) another person:
30 (i) is a mortgagee of the eligible interest; or
31 (ii) is a chargee of the eligible interest;
32 the mortgage or charge is an *eligible interest* held by the other
33 person in the area of land.

Section 45

- 1 (5) The regulations may provide that, for the purposes of this Act, a
2 person specified in, or ascertained in accordance with, the
3 regulations holds an *eligible interest* in the area of land.
- 4 (6) For the purposes of this Act, if:
5 (a) the area of land is land rights land; and
6 (b) any of the following subparagraphs applies to the area of
7 land:
8 (i) a lease is in force over the land, and the grant of the
9 lease took place under a law of the Commonwealth that
10 makes provision for the grant of such things only to, or
11 for the benefit of, Aboriginal peoples or Torres Strait
12 Islanders;
13 (ii) subparagraph (i) does not apply, and the land is held by
14 the Commonwealth;
15 (iii) subparagraph (i) does not apply, and the land is held by
16 a statutory authority of the Commonwealth;
17 then:
18 (c) if subparagraph (b)(i) applies—the Minister who administers
19 the law mentioned in that subparagraph holds an *eligible*
20 *interest* in the area of land; or
21 (d) if subparagraph (b)(ii) applies—the Minister who administers
22 the *Aboriginal Land Rights (Northern Territory) Act 1976*
23 holds an *eligible interest* in the area of land; or
24 (e) if subparagraph (b)(iii) applies—the Minister who
25 administers the Act that establishes the statutory authority
26 holds an *eligible interest* in the area of land.
- 27 (7) For the purposes of this Act, if:
28 (a) the area of land is land rights land in a State or Territory; and
29 (b) the area of land is not covered by subsection (6); and
30 (c) the area of land is not freehold land rights land;
31 the Crown lands Minister of the State or Territory holds an *eligible*
32 *interest* in the area of land.
33

1 **Division 10—Native title land**

2 **46 Registered native title bodies corporate—deemed project**
3 **proponent**

4 *Exclusive possession native title land*

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

- 8 (a) the project area is exclusive possession native title land;
9 (b) there is a registered native title body corporate for the project
10 area;
11 (c) no person (other than a body politic, the common law holders
12 or the registered native title body corporate) has the legal
13 right to carry out the project;
14 (d) no person (other than a body politic, the common law holders
15 or the registered native title body corporate) holds the
16 applicable carbon sequestration right in relation to the project
17 area;

18 then:

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

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

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

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

- 33 (a) the project area is native title land;

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- 1 (b) there is a registered native title body corporate for the project
2 area;
3 (c) the native title holder has the legal right to carry out the
4 project;
5 (d) the native title holder holds the applicable carbon
6 sequestration right in relation to the project area;
7 (e) subsection (1) does not apply to the project;

8 then:

- 9 (f) the registered native title body corporate for the project area
10 is taken to be the project proponent for the offsets project;
11 and
12 (g) no other person is taken to be the project proponent for the
13 project; and
14 (h) subparagraphs 27(4)(h)(vii) and (i)(v) have effect, in relation
15 to the project, as if a reference in those subparagraphs to the
16 applicant were a reference to the native title holder.

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

19 **47 Administrator to notify Crown lands Minister of declaration of**
20 **eligible offsets project**

21 *Scope*

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

1 *Notification*

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

5 **48 Designation of special native title account**

6 *Scope*

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

10 *Request for special native title account*

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

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1 *Designation of special native title account*

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

5 **49 Issue of Australian carbon credit units to special native title**
6 **account**

7 *Scope*

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

11 *Application for issue of Australian carbon credit units*

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

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

18 *Issue of Australian carbon credit units*

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

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

8 **50 Units held in special native title account**

9 *Scope*

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

12 *Units held in account*

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

17 **51 Regulations about consulting common law holders etc.**

- 18 (1) The regulations may make provision for a registered native title
19 body corporate to consult, and act in accordance with the directions
20 of, the common law holders in relation to anything done by the
21 registered native title body corporate under, or in connection with:
22 (a) this Act or the regulations; or
23 (b) the *Australian National Registry of Emissions Units Act 2011*
24 or regulations under that Act.
- 25 (2) The regulations may make provision for a registered native title
26 body corporate to be the agent of the common law holders for the
27 purposes of giving a consent under this Act or the regulations.
28

Section 52

1 **Division 11—Freehold land rights land**

2 **52 Administrator to notify Crown lands Minister of declaration of**
3 **eligible offsets project**

4 *Scope*

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

14 *Notification*

- 15 (2) As soon as practicable after making the declaration, the
16 Administrator must notify the Crown lands Minister of the State or
17 Territory, in writing, of the making of the declaration.
18

1 **Division 12—Types of projects**

2 **53 Emissions avoidance offsets projects**

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

15 **54 Sequestration offsets projects**

- 16 For the purposes of this Act, a project is a *sequestration offsets*
17 *project* if it is a project:
18 (a) to remove carbon dioxide from the atmosphere by
19 sequestering carbon in one or more of the following:
20 (i) living biomass;
21 (ii) dead organic matter;
22 (iii) soil; or
23 (b) to remove carbon dioxide from the atmosphere by
24 sequestering carbon in, and to avoid emissions of
25 greenhouses gases from, one or more of the following:
26 (i) living biomass;
27 (ii) dead organic matter;
28 (iii) soil.

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1 **55 Kyoto offsets projects and non-Kyoto offsets projects etc.**

2 *Kyoto offsets projects*

3 (1) For the purposes of this Act, an offsets project is a ***Kyoto offsets***
4 ***project*** if it is:

- 5 (a) an agricultural emissions avoidance project; or
6 (b) a landfill legacy emissions avoidance project; or
7 (c) an offsets project of a kind specified in the regulations.

8 (2) Subsection (1) has effect subject to subsection (3).

9 (3) For the purposes of this Act, an offsets project is not a ***Kyoto***
10 ***offsets project*** unless:

11 (a) if the project is a sequestration offsets project:

12 (i) to the extent to which the project is a project to remove
13 carbon dioxide from the atmosphere—the removal can
14 be used to meet Australia’s climate change targets under
15 the Kyoto Protocol or an international agreement (if
16 any) that is the successor (whether immediate or
17 otherwise) to the Kyoto Protocol; and

18 (ii) to the extent (if any) to which the project is a project to
19 avoid emissions of greenhouse gases—the avoidance
20 can be used to meet Australia’s climate change targets
21 under the Kyoto Protocol or an international agreement
22 (if any) that is the successor (whether immediate or
23 otherwise) to the Kyoto Protocol; or

24 (b) if the project is an emissions avoidance offsets project to
25 avoid emissions of one or more greenhouse gases—the
26 avoidance can be used to meet Australia’s climate change
27 targets under:

28 (i) the Kyoto Protocol; or

29 (ii) an international agreement (if any) that is the successor
30 (whether immediate or otherwise) to the Kyoto
31 Protocol.

32 (4) Paragraph (1)(c) does not, by implication, affect the application of
33 subsection 13(3) of the *Legislative Instruments Act 2003* to another
34 instrument under this Act.

1 *Non-Kyoto offsets projects*

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

5 *Dissection of project*

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

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

18 **56 Excluded offsets projects**

- 19 (1) For the purposes of this Act, an offsets project is an ***excluded***
20 ***offsets project*** if it is a project of a kind specified in the
21 regulations.
- 22 (2) In deciding whether to recommend to the Governor-General that
23 regulations should be made for the purposes of subsection (1)
24 specifying a particular kind of project, the Minister must have
25 regard to whether there is a significant risk that that kind of project
26 will have a significant adverse impact on one or more of the
27 following:
28 (a) the availability of water;
29 (b) the conservation of biodiversity;
30 (c) employment;
31 (d) the local community;
32 in, or in the vicinity of, the project area, or any of the project areas,
33 for that kind of project.

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Division 12 Types of projects

Section 56

- 1 (3) Subsection (1) of this section does not, by implication, limit the
2 application of subsection 13(3) of the *Legislative Instruments Act*
3 2003 to another instrument under this Act.
4

1 **Division 13—Restructure of eligible offsets projects**

2 **57 Restructure of eligible offsets projects**

3 (1) For the purposes of this section, if:

4 (a) as the result of the variation or revocation of a section 27
5 declaration, an area of land (the *relevant area*) ceases to be,
6 or ceases to be part of, the project area, or any of the project
7 areas, for an eligible offsets project that:

8 (i) is a sequestration offsets project; and

9 (ii) is not a native forest protection project; and

10 (b) as a result of the making or variation of another section 27
11 declaration, the relevant area becomes, or becomes part of,
12 the project area, or any of the project areas, for another
13 eligible offsets project that:

14 (i) is a sequestration offsets project; and

15 (ii) is not a native forest protection project;

16 then:

17 (c) the project mentioned in paragraph (a) is the *transferor*
18 *offsets project*; and

19 (d) the project mentioned in paragraph (b) is the *transferee*
20 *offsets project*.

21 *Regulations*

22 (2) The regulations may make provision for or in relation to the
23 adjustment of any or all of the following:

24 (a) the calculation of a unit entitlement in relation to the
25 transferee offsets project using the formula in subsection
26 16(2);

27 (b) the calculation of a unit entitlement in relation to the
28 transferor offsets project using the formula in subsection
29 16(2);

30 (c) the calculation of the net total number of Australian carbon
31 credit units issued in relation to the transferee offsets project
32 in accordance with Part 2;

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Division 13 Restructure of eligible offsets projects

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

8 *Determinations*

- 9 (3) Regulations made for the purposes of subsection (2) may empower
10 the Administrator to determine that, whenever it is necessary to
11 calculate a unit entitlement in relation to the transferor offsets
12 project using the formula in subsection 16(2), that subsection has
13 effect, in relation to the transferor offsets project, as if the net
14 abatement number were decreased by the number specified in the
15 determination.
- 16 (4) Regulations made for the purposes of subsection (2) may empower
17 the Administrator to determine that, whenever it is necessary to
18 calculate a unit entitlement in relation to the transferee offsets
19 project using the formula in subsection 16(2), that subsection has
20 effect, in relation to the transferee offsets project, as if the net
21 abatement number were increased by the number specified in the
22 determination.
- 23 (5) Regulations made for the purposes of subsection (2) may empower
24 the Administrator to determine that, whenever it is necessary to
25 work out the net total number of Australian carbon credit units
26 issued in relation to the transferor offsets project, this Act has
27 effect, in relation to the transferor offsets project, as if the net total
28 number of Australian carbon credit units issued in relation to the
29 project in accordance with Part 2 were decreased by the number
30 specified in the determination.
- 31 (6) Regulations made for the purposes of subsection (2) may empower
32 the Administrator to determine that, whenever it is necessary to
33 work out the net total number of Australian carbon credit units
34 issued in relation to the transferee offsets project, this Act has
35 effect, in relation to the transferee offsets project, as if the net total
36 number of Australian carbon credit units issued in relation to the

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

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

4 *Determination is not a legislative instrument*

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

7 **58 Restructure of an eligible offsets project that is subject to the**
8 **voluntary automatic unit cancellation regime**

9 *Scope*

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

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

17 *Restriction*

18 (2) The Administrator must not make or vary another section 27
19 declaration if doing so would result in the relevant area becoming,
20 or becoming part of, the project area, or any of the project areas,
21 for another eligible offsets project that is not subject to the
22 voluntary automatic unit cancellation regime.
23

1 **Part 4—Recognised offsets entities**
2

3 **59 Simplified outline**

4 The following is a simplified outline of this Part:

- 5

<ul style="list-style-type: none">• The Administrator may recognise a person as an offsets entity.
--

6 **60 Application for recognition as an offsets entity**

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

11 **61 Form of application**

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

25 **62 Further information**

- 26 (1) The Administrator may, by written notice given to an applicant,
27 require the applicant to give the Administrator, within the period

1 specified in the notice, further information in connection with the
2 application.

- 3 (2) If the applicant breaches the requirement, the Administrator may,
4 by written notice given to the applicant:
5 (a) refuse to consider the application; or
6 (b) refuse to take any action, or any further action, in relation to
7 the application.

8 **63 Withdrawal of application**

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

18 **64 Recognition as an offsets entity**

19 *Scope*

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

22 *Recognition*

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

26 *Criteria for recognition*

- 27 (3) The Administrator must not recognise the applicant as an offsets
28 entity unless:

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- 1 (a) the Administrator is satisfied that the applicant is a fit and
2 proper person, having regard to the following:
- 3 (i) whether the applicant has been convicted of an offence
4 against a law of the Commonwealth, a State or a
5 Territory, where the offence relates to dishonest
6 conduct;
- 7 (ii) whether the applicant has been convicted of an offence
8 against a law of the Commonwealth, a State or a
9 Territory, where the offence relates to the conduct of a
10 business;
- 11 (iii) whether the applicant has been convicted of an offence
12 against section 136.1, 137.1 or 137.2 of the *Criminal*
13 *Code*;
- 14 (iv) whether an order has been made against the applicant
15 under section 76 of the *Competition and Consumer Act*
16 *2010*;
- 17 (v) whether an order has been made against the applicant
18 under section 224 of Schedule 2 to the *Competition and*
19 *Consumer Act 2010*, as that section applies as a law of
20 the Commonwealth, a State or a Territory;
- 21 (vi) whether the applicant has breached this Act or the
22 associated provisions;
- 23 (vii) whether the applicant has breached the *Australian*
24 *National Registry of Emissions Units Act 2011* or
25 regulations under that Act;
- 26 (viii) whether the applicant has breached the *National*
27 *Greenhouse and Energy Reporting Act 2007* or
28 regulations under that Act;
- 29 (ix) if the applicant is a body corporate—whether an
30 executive officer of the body corporate has been
31 convicted of an offence against a law of the
32 Commonwealth, a State or a Territory, where the
33 offence relates to dishonest conduct;
- 34 (x) if the applicant is a body corporate—whether an
35 executive officer of the body corporate has been
36 convicted of an offence against a law of the
37 Commonwealth, a State or a Territory, where the
38 offence relates to the conduct of a business;

-
- 1 (xi) if the applicant is a body corporate—whether an
 2 executive officer of the body corporate has been
 3 convicted of an offence against section 136.1, 137.1 or
 4 137.2 of the *Criminal Code*;
- 5 (xii) if the applicant is a body corporate—whether an order
 6 has been made against an executive officer of the body
 7 corporate under section 76 of the *Competition and*
 8 *Consumer Act 2010*;
- 9 (xiii) if the applicant is a body corporate—whether an order
 10 has been made against an executive officer of the body
 11 corporate under section 224 of Schedule 2 to the
 12 *Competition and Consumer Act 2010*, as that section
 13 applies as a law of the Commonwealth, a State or a
 14 Territory;
- 15 (xiv) if the applicant is a body corporate—whether an
 16 executive officer of the body corporate has breached
 17 this Act or the associated provisions;
- 18 (xv) if the applicant is a body corporate—whether an
 19 executive officer of the body corporate has breached the
 20 *Australian National Registry of Emissions Units Act*
 21 *2011* or regulations under that Act;
- 22 (xvi) if the applicant is a body corporate—whether an
 23 executive officer of the body corporate has breached the
 24 *National Greenhouse and Energy Reporting Act 2007* or
 25 regulations under that Act;
- 26 (xvii) such other matters (if any) as the Administrator
 27 considers relevant; and
- 28 (b) if the applicant is an individual—the Administrator is
 29 satisfied that the applicant is not an insolvent under
 30 administration; and
- 31 (c) if the applicant is a body corporate—the Administrator is
 32 satisfied that the applicant is not an externally-administered
 33 body corporate; and
- 34 (d) if the regulations specify one or more other eligibility
 35 requirements—the Administrator is satisfied that those
 36 requirements are met.
- 37 (4) Subparagraphs (3)(a)(i) to (xvi) do not limit
 38 subparagraph (3)(a)(xvii).
-

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1 *Timing*

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

9 *Refusal*

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

13 *Spent convictions*

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

19 **65 Cancellation of recognition**

20 *Cancellation*

- 21 (1) The Administrator may cancel the recognition of a person as an
22 offsets entity if:
23 (a) the Administrator is satisfied that the person is not a fit and
24 proper person, having regard to the following:
25 (i) whether the person has been convicted of an offence
26 against a law of the Commonwealth, a State or a
27 Territory, where the offence relates to dishonest
28 conduct;
29 (ii) whether the person has been convicted of an offence
30 against a law of the Commonwealth, a State or a
31 Territory, where the offence relates to the conduct of a
32 business;

Section 65

- 1 (iii) whether the person has been convicted of an offence
2 against section 136.1, 137.1 or 137.2 of the *Criminal*
3 *Code*;
- 4 (iv) whether an order has been made against the person
5 under section 76 of the *Competition and Consumer Act*
6 *2010*;
- 7 (v) whether an order has been made against the person
8 under section 224 of Schedule 2 to the *Competition and*
9 *Consumer Act 2010*, as that section applies as a law of
10 the Commonwealth, a State or a Territory;
- 11 (vi) whether the person has breached this Act or the
12 associated provisions;
- 13 (vii) whether the person has breached the *Australian*
14 *National Registry of Emissions Units Act 2011* or
15 regulations under that Act;
- 16 (viii) whether the person has breached the *National*
17 *Greenhouse and Energy Reporting Act 2007* or
18 regulations under that Act;
- 19 (ix) if the person is a body corporate—whether an executive
20 officer of the body corporate has been convicted of an
21 offence against a law of the Commonwealth, a State or a
22 Territory, where the offence relates to dishonest
23 conduct;
- 24 (x) if the person is a body corporate—whether an executive
25 officer of the body corporate has been convicted of an
26 offence against a law of the Commonwealth, a State or a
27 Territory, where the offence relates to the conduct of a
28 business;
- 29 (xi) if the person is a body corporate—whether an executive
30 officer of the body corporate has been convicted of an
31 offence against section 136.1, 137.1 or 137.2 of the
32 *Criminal Code*;
- 33 (xii) if the person is a body corporate—whether an order has
34 been made against an executive officer of the body
35 corporate under section 76 of the *Competition and*
36 *Consumer Act 2010*;
- 37 (xiii) if the person is a body corporate—whether an order has
38 been made against an executive officer of the body

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- 1 corporate under section 224 of Schedule 2 to the
2 *Competition and Consumer Act 2010*, as that section
3 applies as a law of the Commonwealth, a State or a
4 Territory;
- 5 (xiv) if the person is a body corporate—whether an executive
6 officer of the body corporate has breached this Act or
7 the associated provisions;
- 8 (xv) if the person is a body corporate—whether an executive
9 officer of the body corporate has breached the
10 *Australian National Registry of Emissions Units Act*
11 *2011* or regulations under that Act;
- 12 (xvi) if the person is a body corporate—whether an executive
13 officer of the body corporate has breached the *National*
14 *Greenhouse and Energy Reporting Act 2007* or
15 regulations under that Act;
- 16 (xvii) such other matters (if any) as the Administrator
17 considers relevant; or
- 18 (b) if the person is an individual—the Administrator is satisfied
19 that the person is an insolvent under administration; or
- 20 (c) if the person is a body corporate—the Administrator is
21 satisfied that the person is an externally-administered body
22 corporate; or
- 23 (d) if the regulations specify one or more other grounds for
24 cancellation—the Administrator is satisfied that at least one
25 of those grounds is applicable to the person.
- 26 (2) Subparagraphs (1)(a)(i) to (xvi) do not limit
27 subparagraph (1)(a)(xvii).
- 28 *Spent convictions*
- 29 (3) Nothing in this section affects the operation of Part VIIC of the
30 *Crimes Act 1914* (which includes provisions that, in certain
31 circumstances, relieve persons from the requirement to disclose
32 spent convictions and require persons aware of such convictions to
33 disregard them).

1 **66 Surrender of recognition**

2 *Scope*

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

4 *Surrender*

5 (2) The person may, by written notice given to the Administrator,
6 surrender the person's recognition.

7 (3) The surrender takes effect on the day the notice is received by the
8 Administrator or, if a later day is specified in the notice, on that
9 later day.

10 **67 Recognition is not transferable**

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

13

1 **Part 5—Crediting periods**

2 **Division 1—Introduction**

3 **68 Simplified outline**

4 The following is a simplified outline of this Part:

5 • If an eligible offsets project is a native forest protection
6 project, the first crediting period for the project is:

7 (a) the period of 20 years; or

8 (b) if another period is specified in the regulations—
9 that other period;

10 that began when the declaration of the project under
11 section 27 took effect.

12 • If an eligible offsets project is not a native forest protection
13 project, the first crediting period for the project is:

14 (a) the period of 7 years; or

15 (b) if another period is specified in the regulations—
16 that other period;

17 that began when the declaration of the project under
18 section 27 took effect.

19 • The Administrator may, on application by a project proponent,
20 determine a subsequent crediting period for an eligible offsets
21 project that is not a native forest protection project.

22 Note: Under section 15, the Administrator may only issue a certificate of
23 entitlement to Australian carbon credit units in relation to a reporting
24 period for an eligible offsets project if the reporting period is included
25 in a crediting period for the project.
26

1 **Division 2—First crediting period**

2 **69 First crediting period**

- 3 (1) For the purposes of this Act, the first *crediting period* for an
4 eligible offsets project is:
- 5 (a) if the project is a native forest protection project:
 - 6 (i) the period of 20 years; or
 - 7 (ii) if another period is specified in the regulations—that
8 other period;
9 that began when the declaration of the project under
10 section 27 took effect; or
 - 11 (b) if the project is not a native forest protection project:
 - 12 (i) the period of 7 years; or
 - 13 (ii) if another period is specified in the regulations—that
14 other period;
15 that began when the declaration of the project under
16 section 27 took effect.
- 17 (2) Regulations made for the purposes of subparagraph (1)(a)(ii) or
18 (b)(ii) may specify different periods for different kinds of projects.
19 This does not limit subsection 33(3A) of the *Acts Interpretation*
20 *Act 1901*.
21

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1 **Division 3—Subsequent crediting period**

2 **70 Application for subsequent crediting period**

3 *Scope*

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

6 *Application period*

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

13 *Application*

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

1 **71 Form of application**

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

15 **72 Further information**

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

25 **73 Withdrawal of application**

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

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

5 **74 Determination of subsequent crediting period**

6 *Scope*

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

10 *Determination*

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

22 *Notification of determination*

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

26 *Refusal*

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

1

Determination is not a legislative instrument

2

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

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4

1 **Part 6—Reporting and notification requirements**

2 **Division 1—Introduction**

3 **75 Simplified outline**

4 The following is a simplified outline of this Part:

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

1 **Division 2—Reporting requirements**

2 **76 Offsets reports**

3 *Report for first reporting period*

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

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

16 *Reports for subsequent reporting periods*

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

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

29 Note 2: See also section 77.

30 *Offsets report*

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

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Offsets report requirements

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

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

4 *Ancillary contraventions*

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

14 *Civil penalty provisions*

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

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

18 **77 Declaration that offsets report requirement does not apply**

19 *Regulations*

- 20 (1) The regulations may make provision for and in relation to
21 empowering the Administrator to declare that subsection 76(2)
22 does not apply to a particular eligible offsets project.
- 23 (2) Regulations made for the purposes of subsection (1) must not
24 empower the Administrator to make a declaration unless:
25 (a) the project is a sequestration offsets project; and
26 (b) the project proponent for the project applies to the
27 Administrator for the declaration; and
28 (c) the Administrator is satisfied that the project has reached its
29 maximum carbon sequestration capacity.
- 30 (3) Regulations made for the purposes of subsection (1) may make
31 provision for or in relation to any or all of the following matters:
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Part 6 Reporting and notification requirements

Division 2 Reporting requirements

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

19 *When a declaration takes effect*

- 20 (6) A declaration under regulations made for the purposes of
21 subsection (1) takes effect:
22 (a) when it is made; or
23 (b) if a later day is specified in the declaration—on that later day.
24

1 **Division 3—Notification requirements**

2 **Subdivision A—Project proponents**

3 **78 Notification requirement—ceasing to be the project proponent**
4 **for an eligible offsets project otherwise than because of**
5 **death**

6 *Scope*

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

10 *Notification*

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

13 *Ancillary contraventions*

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

23 *Civil penalty provisions*

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

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

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1 **79 Notification requirement—death of the project proponent for an**
2 **eligible offsets project**

3 *Scope*

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

6 *Notification*

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

9 *Ancillary contraventions*

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

19 *Civil penalty provisions*

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

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

23 **80 Notification requirement—methodology determinations**

24 *Scope*

- 25 (1) This section applies if:
26 (a) there is an eligible offsets project; and
27 (b) under the applicable methodology determination, the project
28 proponent for the project is subject to a requirement to notify

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1 the Administrator of one or more matters relating to the
2 project.

3 *Notification*

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

5 *Ancillary contraventions*

6 (3) A person must not:

7 (a) aid, abet, counsel or procure a contravention of
8 subsection (2); or

9 (b) induce, whether by threats or promises or otherwise, a
10 contravention of subsection (2); or

11 (c) be in any way, directly or indirectly, knowingly concerned in,
12 or party to, a contravention of subsection (2); or

13 (d) conspire with others to effect a contravention of
14 subsection (2).

15 *Civil penalty provisions*

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

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

19 **81 Notification requirement—natural disturbances**

20 *Scope*

21 (1) This section applies to an eligible offsets project if the project is:

22 (a) a sequestration offsets project to remove carbon dioxide from
23 the atmosphere; or

24 (b) a sequestration offsets project to remove carbon dioxide from
25 the atmosphere and to avoid emissions of greenhouse gases.

26 *Notification*

27 (2) The project proponent for the project must:

28 (a) notify the Administrator, in writing, of:

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

9 *Ancillary contraventions*

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

19 *Civil penalty provisions*

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

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

23 **82 Notification requirement—reversal of sequestration due to**
24 **conduct of another person**

25 *Scope*

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

1 *Notification*

- 2 (2) The project proponent for the project must:
- 3 (a) notify the Administrator, in writing, of conduct engaged in by
- 4 a person (other than the project proponent), where the
- 5 conduct:
- 6 (i) is not within the reasonable control of the project
- 7 proponent; and
- 8 (ii) causes a reversal of the removal; and
- 9 (b) do so within 60 days after the project proponent becomes
- 10 aware that the conduct has been engaged in.
- 11 (3) The project proponent for the project must:
- 12 (a) notify the Administrator, in writing, of conduct engaged in by
- 13 a person (other than the project proponent), where the
- 14 conduct:
- 15 (i) is not within the reasonable control of the project
- 16 proponent; and
- 17 (ii) is likely to cause a reversal of the removal; and
- 18 (b) do so within 60 days after the project proponent becomes
- 19 aware that the conduct has been engaged in.
- 20 (4) Subsections (2) and (3) do not apply to a reversal unless the
- 21 reversal is, under the regulations, taken to be a significant reversal.

22 *Ancillary contraventions*

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

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1 *Civil penalty provisions*

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

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

5 **83 Notification requirement—project becomes inconsistent with a**
6 **regional natural resource management plan**

7 *Scope*

8 (1) This section applies if:

- 9 (a) there is an eligible offsets project; and
10 (b) the project area, or any of the project areas, for the project is
11 covered by a regional natural resource management plan; and
12 (c) as a result of a change to the project, the project becomes
13 inconsistent with the plan.

14 *Notification*

15 (2) The project proponent for the project must, within 90 days after the
16 change, notify the Administrator, in writing, of:

- 17 (a) the change; and
18 (b) the inconsistency.

19 (3) A person must not:

- 20 (a) aid, abet, counsel or procure a contravention of
21 subsection (2); or
22 (b) induce, whether by threats or promises or otherwise, a
23 contravention of subsection (2); or
24 (c) be in any way, directly or indirectly, knowingly concerned in,
25 or party to, a contravention of subsection (2); or
26 (d) conspire with others to effect a contravention of
27 subsection (2).

28 *Civil penalty provisions*

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

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

1 **Subdivision B—Recognised offsets entities**

2 **84 Notification requirement—recognised offsets entities**

3 *Scope*

4 (1) This section applies to a person if:

5 (a) the person is a recognised offsets entity; and

6 (b) any of the following events happen:

7 (i) the person is convicted of an offence against a law of
8 the Commonwealth, a State or a Territory, where the
9 offence relates to dishonest conduct;

10 (ii) the person is convicted of an offence against a law of
11 the Commonwealth, a State or a Territory, where the
12 offence relates to the conduct of a business;

13 (iii) the person is convicted of an offence against
14 section 136.1, 137.1 or 137.2 of the *Criminal Code*;

15 (iv) an order is made against the person under section 76 of
16 the *Competition and Consumer Act 2010*;

17 (v) an order is made against the person under section 224 of
18 Schedule 2 to the *Competition and Consumer Act 2010*,
19 as that section applies as a law of the Commonwealth, a
20 State or a Territory;

21 (vi) if the person is a body corporate—an executive officer
22 of the body corporate is convicted of an offence against
23 a law of the Commonwealth, a State or a Territory,
24 where the offence relates to dishonest conduct;

25 (vii) if the person is a body corporate—an executive officer
26 of the body corporate is convicted of an offence against
27 a law of the Commonwealth, a State or a Territory,
28 where the offence relates to the conduct of a business;

29 (viii) if the person is a body corporate—an executive officer
30 of the body corporate is convicted of an offence against
31 section 136.1, 137.1 or 137.2 of the *Criminal Code*;

32 (ix) if the person is a body corporate—an order is made
33 against an executive officer of the body corporate under
34 section 76 of the *Competition and Consumer Act 2010*;

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

9 *Notification*

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

12 *Ancillary contraventions*

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

22 *Civil penalty provisions*

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

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

26 **Subdivision C—General**

27 **85 Regulations may impose notification requirements**

28 *Scope*

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

1 (b) a recognised offsets entity.

2 *Regulations*

3 (2) The regulations may make provision requiring the person to notify
4 the Administrator of a matter.

5 (3) Regulations made for the purposes of subsection (2) may make
6 different provision with respect to different project proponents or
7 different recognised offsets entities. This does not limit subsection
8 33(3A) of the *Acts Interpretation Act 1901*.

9 (4) A matter specified in regulations made for the purposes of
10 subsection (2) must be relevant to the operation of this Act.

11 *Requirement*

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

15 *Ancillary contraventions*

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

25 *Civil penalty provisions*

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

27 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty
28 provisions.
29

1 **Part 7—Requirements to relinquish Australian**
2 **carbon credit units**

3 **Division 1—Introduction**

4 **86 Simplified outline**

5 The following is a simplified outline of this Part:

- 6 • Australian carbon credit units may be required to be
7 relinquished if:
- 8 (a) the issue of the units is attributable to the giving of
9 false or misleading information; or
- 10 (b) the units were issued in relation to a sequestration
11 offsets project, and the declaration of the
12 sequestration offsets project as an eligible offsets
13 project has been varied or revoked; or
- 14 (c) the units were issued in relation to a sequestration
15 offsets project, and there has been a complete or
16 partial reversal of sequestration.

17 **87 Maximum potential relinquishment period**

18 (1) For the purposes of this Act, the *maximum potential*
19 *relinquishment period* for an eligible offsets project is:

- 20 (a) 100 years; or
21 (b) if, at the time when the declaration of the project as an
22 eligible offsets project was made, a greater number of years
23 was specified in the regulations—that greater number of
24 years.

25 (2) However, if:

- 26 (a) the regulations specify a number of years that is less than 100
27 years; and

1 (b) those regulations are made after the time when the
2 declaration of a project as an eligible offsets project was
3 made;
4 then, despite subsection (1), that lesser number of years is the
5 *maximum potential relinquishment period* for the eligible offsets
6 project.
7

Section 88

1 **Division 2—General relinquishment requirements**

2 **88 Requirement to relinquish—false or misleading information**

3 *Scope*

4 (1) This section applies if:

- 5 (a) a number of Australian carbon credit units have been issued
6 to a person in relation to an eligible offsets project; and
7 (b) information was given by the person to the Administrator in
8 connection with the project; and
9 (c) the information was:
10 (i) contained in an application under this Act or the
11 regulations; or
12 (ii) given in connection with an application under this Act
13 or the regulations; or
14 (iii) contained in an offsets report; or
15 (iv) contained in a notification under Part 6; and
16 (d) the information was false or misleading in a material
17 particular; and
18 (e) the issue of any or all of the units was directly or indirectly
19 attributable to the false or misleading information.

20 *Relinquishment*

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

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

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

29 (3) A number specified under subsection (2) must not exceed the
30 number of Kyoto Australian carbon credit units the issue of which
31 was directly or indirectly attributable to the false or misleading
32 information.

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

11 Note: An administrative penalty is payable under section 179 for
12 non-compliance with a relinquishment requirement.
13

Section 89

1 **Division 3—Relinquishment requirements for**
2 **sequestration offsets projects**

3 **89 Requirement to relinquish—revocation of declaration of eligible**
4 **offsets project**

5 *Scope*

6 (1) This section applies if:

7 (a) an eligible offsets project is a sequestration offsets project;
8 and

9 (b) a number of Australian carbon credit units have been issued
10 in relation to the project; and

11 (c) the declaration of the project as an eligible offsets project is
12 revoked under regulations made for the purposes of any of
13 the following provisions:

14 (i) subsection 35(1);

15 (ii) subsection 36(1);

16 (iii) subsection 37(1);

17 (iv) subsection 38(1);

18 (v) subsection 139(1); and

19 (d) if the declaration has never been varied so as to add one or
20 more project areas—the period that has passed since the first
21 occasion on which an Australian carbon credit unit was
22 issued in relation to the project in accordance with Part 2 is
23 shorter than the maximum potential relinquishment period for
24 the project; and

25 (e) if the declaration has been varied so as to add one or more
26 project areas—the period that has passed since the last
27 occasion on which the declaration was so varied is shorter
28 than the maximum potential relinquishment period for the
29 project.

30 *Relinquishment*

31 (2) The Administrator may, by written notice given to the project
32 proponent for the project, require the project proponent to
33 relinquish a specified number of:

- 1 (a) if the project is an eligible Kyoto project—Kyoto Australian
2 carbon credit units; or
3 (b) if the project is an eligible non-Kyoto project—non-Kyoto
4 Australian carbon credit units.

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

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

- 9 (3) The specified number must not exceed the net total number of
10 Australian carbon credit units issued in relation to the project in
11 accordance with Part 2.

- 12 (4) The project proponent must comply with the requirement within 90
13 days after the notice was given.

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

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

17 **90 Requirement to relinquish—reversal of sequestration other than**
18 **due to natural disturbance or conduct etc.**

19 *Scope*

- 20 (1) This section applies if:
21 (a) an eligible offsets project is a sequestration offsets project to
22 remove carbon dioxide from the atmosphere; and
23 (b) a number of Australian carbon credit units have been issued
24 in relation to the project; and
25 (c) there has been a reversal of the removal; and
26 (d) the reversal is, under the regulations, taken to be a significant
27 reversal; and
28 (e) the reversal is not attributable to:
29 (i) natural disturbance; or
30 (ii) reasonable actions taken to reduce the risk of bushfire;
31 or
32 (iii) conduct engaged in by a person (other than the project
33 proponent for the project), where the conduct is not

1 **91 Requirement to relinquish—reversal of sequestration due to**
2 **natural disturbance or conduct and no mitigation**
3 **happens**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) an eligible offsets project is a sequestration offsets project to
7 remove carbon dioxide from the atmosphere; and
 - 8 (b) a number of Australian carbon credit units have been issued
9 in relation to the project; and
 - 10 (c) there has been a reversal of the removal; and
 - 11 (d) the reversal is, under the regulations, taken to be a significant
12 reversal; and
 - 13 (e) the reversal is attributable to:
 - 14 (i) natural disturbance; or
 - 15 (ii) conduct engaged in by a person (other than the project
16 proponent for the project), where the conduct is not
17 within the reasonable control of the project proponent;
18 and
 - 19 (f) the Administrator is not satisfied that the project proponent
20 has, within a reasonable period, taken reasonable steps to
21 mitigate the effect of the natural disturbance or conduct, as
22 the case may be, on the project; and
 - 23 (g) if the relevant section 27 declaration has never been varied so
24 as to add one or more project areas—the period that has
25 passed since the first occasion on which an Australian carbon
26 credit unit was issued in relation to the project in accordance
27 with Part 2 is shorter than the maximum potential
28 relinquishment period for the project; and
 - 29 (h) if the relevant section 27 declaration has been varied so as to
30 add one or more project areas—the period that has passed
31 since the last occasion on which the declaration was so varied
32 is shorter than the maximum potential relinquishment period
33 for the project.

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Relinquishment

- (2) The Administrator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of:
 - (a) if the project is an eligible Kyoto project—Kyoto Australian carbon credit units; or
 - (b) if the project is an eligible non-Kyoto project—non-Kyoto Australian carbon credit units.
- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

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

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

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

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

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

3 **92 Request for determination**

- 4 (1) If a person applies under section 22 for a declaration of an offsets
5 project as an eligible offsets project, the application may be
6 accompanied by a request for a determination under section 95 in
7 relation to the project.
- 8 (2) A person is not entitled to make a request after the end of the
9 2-year period beginning at the commencement of this section.

10 **93 Form of request**

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

20 **94 Further information**

- 21 (1) The Administrator may, by written notice given to a person who
22 has made a request under section 92, require the person to give the
23 Administrator, within the period specified in the notice, further
24 information in connection with the request.
- 25 (2) If the person breaches the requirement, the Administrator may, by
26 written notice given to the person:
27 (a) refuse to consider:
28 (i) the request; and
29 (ii) the application under section 22; or
30 (b) refuse to take any action, or any further action, in relation to:

Section 95

- 1 (i) the request; and
2 (ii) the application under section 22.

3 **95 Determination**

4 *Scope*

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

10 *Determination*

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

26 *Refusal*

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

1

Determination is not legislative instrument

2

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

3

instrument.

4

Part 8 Carbon maintenance obligation

Division 1 Introduction

Section 96

1 **Part 8—Carbon maintenance obligation**

2 **Division 1—Introduction**

3 **96 Simplified outline**

4 The following is a simplified outline of this Part:

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- 6
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- | |
|--|
| <ul style="list-style-type: none">• A carbon maintenance obligation may be imposed in relation to an area or areas of land if a relinquishment requirement has not been complied with. |
|--|

1 **Division 2—Carbon maintenance obligation**

2 **97 Carbon maintenance obligation**

3 *Scope*

4 (1) This section applies to one or more areas of land if:

5 (a) the following conditions are satisfied:

6 (i) a sequestration offsets project is or was an eligible
7 offsets project;

8 (ii) a notice was given under section 88, 89, 90 or 91 in
9 relation to the project;

10 (iii) the area was, or the areas were, identified in the relevant
11 section 27 declaration as the project area or project areas
12 for the eligible offsets project;

13 (iv) the notice required a person to relinquish a particular
14 number of Australian carbon credit units;

15 (v) the person did not comply with the requirement within
16 90 days after the notice was given; or

17 (b) the following conditions are satisfied:

18 (i) a sequestration offsets project is or was an eligible
19 offsets project;

20 (ii) a notice was given under section 88, 89, 90 or 91 in
21 relation to the project;

22 (iii) the area was, or the areas were, identified in the relevant
23 section 27 declaration as the project area or project areas
24 for the eligible offsets project;

25 (iv) the notice required a person to relinquish a particular
26 number of Australian carbon credit units;

27 (v) the Administrator is satisfied that it is likely that the
28 person will not comply with the requirement within 90
29 days after the notice was given; or

30 (c) the Administrator is satisfied that:

31 (i) a sequestration offsets project is or was an eligible
32 offsets project; and

33 (ii) it is likely that a notice will be given under section 88,
34 89, 90 or 91 in relation to the project; and

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- 1 (iii) the area is, or the areas are, identified in the relevant
2 section 27 declaration as the project area or project areas
3 for the eligible offsets project; and
4 (iv) the notice is likely to require a person to relinquish a
5 particular number of Australian carbon credit units; and
6 (v) it is likely that the person will not comply with the
7 requirement within 90 days after the notice is given.

8 *Declaration*

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

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

- 16 (3) If the area or areas of land are subject to a carbon maintenance
17 obligation, the carbon maintenance obligation ***relates*** to the project
18 mentioned in whichever of subparagraph (1)(a)(i), (1)(b)(i) or
19 (1)(c)(i) applies.
- 20 (4) An activity may be specified under paragraph (2)(b) by reference
21 to:
22 (a) the area or areas of land on which the activity may be carried
23 out; or
24 (b) the manner in which the activity may be carried out; or
25 (c) the time or times at which the activity may be carried out; or
26 (d) the period or periods during which the activity may be
27 carried out; or
28 (e) the person or persons who may carry out the activity.
- 29 (5) Subsection (4) does not limit the ways in which an activity may be
30 specified under paragraph (2)(b).
- 31 (6) If the Administrator makes a declaration under subsection (2), the
32 Administrator must take all reasonable steps to ensure that a copy
33 of the declaration is given to:

- 1 (a) the project proponent for the project; and
2 (b) each person who holds an eligible interest in the area, or any
3 of the areas, of land; and
4 (c) a person specified in the regulations; and
5 (d) the relevant land registration official.
- 6 (7) A failure to comply with subsection (6) does not affect the validity
7 of a declaration under subsection (2).

8 *Benchmark sequestration level*

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

15 *Obligations*

- 16 (9) If the area or areas of land are subject to a carbon maintenance
17 obligation, a person must not engage in conduct that:
18 (a) results, or is likely to result, in a reduction below the
19 benchmark sequestration level of the sequestration of carbon
20 in the relevant carbon pool on the area or areas; and
21 (b) is not a permitted carbon activity.
- 22 (10) If:
23 (a) the area or areas of land are subject to a carbon maintenance
24 obligation; and
25 (b) there has been a reduction below the benchmark
26 sequestration level of the sequestration of carbon in the
27 relevant carbon pool on the area or areas;
28 the owner or occupier of the land must take all reasonable steps to
29 ensure that the number of tonnes of carbon sequestered in the
30 relevant carbon pool on the area or areas is not less than the
31 benchmark storage level.

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1 *Ancillary contraventions*

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

11 *Civil penalty provisions*

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

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

14 provisions.

15 *Duration of declaration*

- 16 (13) A declaration under subsection (2) comes into force when a copy
- 17 of the declaration is given to the project proponent for the project
- 18 under subsection (6).
- 19 (14) Unless sooner revoked, a declaration under subsection (2) ceases to
- 20 be in force at whichever of the following times happens first:
- 21 (a) when the penalty payable under section 179 in respect of the
- 22 non-compliance with the requirement referred to in
- 23 subparagraph (1)(a)(v) or (b)(v) (including any late payment
- 24 penalty payable under section 180 in relation to the
- 25 section 179 penalty) is paid in full;
- 26 (b) if:
- 27 (i) the notice referred to in subparagraph (1)(c)(ii) is given;
- 28 and
- 29 (ii) the notice required a person to relinquish a particular
- 30 number of Australian carbon credit units; and
- 31 (iii) the person did not comply with the requirement within
- 32 90 days after the notice was given;

- 1 when the penalty payable under section 179 in respect of the
2 non-compliance with the requirement (including any late
3 payment penalty payable under section 180 in relation to the
4 section 179 penalty) is paid in full;
- 5 (c) if the relevant section 27 declaration has never been varied so
6 as to add one or more project areas—the end of the period
7 that:
- 8 (i) begins on the first occasion on which an Australian
9 carbon credit unit was issued in relation to the project in
10 accordance with Part 2; and
- 11 (ii) is of the same duration as the maximum potential
12 relinquishment period for the project;
- 13 (d) if the relevant section 27 declaration has been varied so as to
14 add one or more project areas—the end of the period that:
- 15 (i) begins on the last occasion on which the declaration was
16 so varied; and
- 17 (ii) is of the same duration as the maximum potential
18 relinquishment period for the project.

19 *Declaration is not a legislative instrument*

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

22 **98 Variation or revocation of declaration of carbon maintenance**
23 **obligation**

24 *Scope*

- 25 (1) This section applies if a declaration is in force under subsection
26 97(2) in relation to an area or areas of land.

27 *Variation or revocation*

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

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Application

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

Notification of variation or revocation

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

Refusal

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

Variation or revocation is not a legislative instrument

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

1 **99 Revocation of declaration of carbon maintenance obligation—**
2 **voluntary relinquishment of Australian carbon credit**
3 **units**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) an area or areas of land are subject to a carbon maintenance
7 obligation; and
 - 8 (b) in the case of a single area—the area is not a project area for
9 an eligible offsets project; and
 - 10 (c) in the case of 2 or more areas—none of the areas is a project
11 area for an eligible offsets project; and
 - 12 (d) a person applies to the Administrator for the revocation of the
13 relevant subsection 97(2) declaration; and
 - 14 (e) if the project is an eligible Kyoto project:
 - 15 (i) before the application was made, the applicant or
16 another person voluntarily relinquished a number of
17 Kyoto Australian carbon credit units in order to satisfy a
18 condition for revocation of the declaration; and
 - 19 (ii) the number of relinquished units equals the net total
20 number of Australian carbon credit units issued in
21 relation to the project in accordance with Part 2; and
 - 22 (f) if the project is an eligible non-Kyoto project:
 - 23 (i) before the application was made, the applicant or
24 another person voluntarily relinquished a number of
25 non-Kyoto Australian carbon credit units in order to
26 satisfy a condition for revocation of the declaration; and
 - 27 (ii) the number of relinquished units equals the net total
28 number of Australian carbon credit units issued in
29 relation to the project in accordance with Part 2.

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

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

34 *Revocation*

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

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

Notification of revocation

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

Refusal

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

Revocation is not a legislative instrument

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

1 **Division 3—Injunctions**

2 **100 Injunctions**

3 *Performance injunctions*

4 (1) If:

5 (a) a person has refused or failed, or is refusing or failing, or is
6 proposing to refuse or fail, to do an act or thing; and

7 (b) the refusal or failure was, is or would be a contravention of
8 subsection 97(9) or (10);

9 the Federal Court may, on the application of the Administrator,
10 grant an injunction requiring the person to do that act or thing.

11 *Restraining injunctions*

12 (2) If a person has engaged, is engaging or is proposing to engage, in
13 any conduct in contravention of subsection 97(9) or (10), the
14 Federal Court may, on the application of the Administrator, grant
15 an injunction:

16 (a) restraining the person from engaging in the conduct; and

17 (b) if, in the Court's opinion, it is desirable to do so—requiring
18 the person to do something.

19 **101 Interim injunctions**

20 *Grant of interim injunction*

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

25 *No undertakings as to damages*

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

Section 102

1 **102 Discharge etc. of injunctions**

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

4 **103 Certain limits on granting injunctions not to apply**

5 *Performance injunctions*

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

16 *Restraining injunctions*

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

28 **104 Other powers of the Federal Court unaffected**

29 The powers conferred on the Federal Court under this Division are
30 in addition to, and not instead of, any other powers of the Court,
31 whether conferred by this Act or otherwise.
32

1 **Part 9—Methodology determinations**

2 **Division 1—Introduction**

3 **105 Simplified outline**

4 The following is a simplified outline of this Part:

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

Section 106

1 **Division 2—Methodology determinations**

2 **Subdivision A—Making of methodology determinations**

3 **106 Methodology determinations**

4 (1) The Minister may, by legislative instrument, make a determination
5 that:

- 6 (a) is expressed to apply to a specified kind of offsets project;
7 and
8 (b) sets out requirements that must be met for such a project to
9 be an eligible offsets project; and
10 (c) provides that, if such a project is an eligible offsets project
11 other than a native forest protection project, the carbon
12 dioxide equivalent net abatement amount for the project in
13 relation to a reporting period for the project is taken, for the
14 purposes of this Act, to be equal to the amount ascertained
15 using a method specified in the determination; and
16 (d) provides that, if such a project is a native forest protection
17 project, the carbon dioxide equivalent net sequestration
18 amount for a crediting period for the project is taken, for the
19 purposes of this Act, to be equal to the amount ascertained
20 using a method specified in the determination.

21 Note: For declarations of eligible offsets projects, see section 27.

22 (2) A determination under subsection (1) is to be known as a
23 ***methodology determination***.

- 24 (3) A methodology determination that applies to a particular kind of
25 offsets project may provide that, if such a project is an eligible
26 offsets project, the project proponent for the project is subject to
27 any or all of the following requirements:
28 (a) specified requirements to include specified information
29 relating to the project in each offsets report about the project;
30 (b) specified requirements to notify one or more matters relating
31 to the project to the Administrator;
32 (c) specified record-keeping requirements relating to the project;
33 (d) specified requirements to monitor the project.

- 1 (4) The Minister must not make a methodology determination unless:
2 (a) the determination gives effect to a particular proposal for a
3 methodology determination; and
4 (b) the Domestic Offsets Integrity Committee has:
5 (i) endorsed the proposal under section 112; and
6 (ii) advised the Minister of the endorsement under
7 section 113; and
8 (c) the determination complies with the offsets integrity
9 standards; and
10 (d) the determination does not specify a kind of offsets project
11 by reference to a State or a part of a State; and
12 (e) the determination complies with such requirements (if any)
13 as are specified in the regulations; and
14 (f) the method specified in the determination in accordance with
15 paragraph (1)(c) or (d) of this section includes a calculation
16 of a baseline for the project; and
17 (g) in a case where:
18 (i) a method determined under subsection 10(3) of the
19 *National Greenhouse and Energy Reporting Act 2007* is
20 a method by which the amounts of the emissions of
21 greenhouse gases from a particular source are to be
22 measured for the purposes of that Act; and
23 (ii) the method specified in the methodology determination
24 in accordance with paragraph (1)(c) or (d) of this section
25 involves the measurement of emissions of greenhouse
26 gases from that source;
27 the methodology determination provides that the emissions
28 are to be measured, under the method specified in the
29 methodology determination in accordance with
30 paragraph (1)(c) or (d) of this section, in the same way as
31 they are measured under the method determined under
32 subsection 10(3) of the *National Greenhouse and Energy*
33 *Reporting Act 2007*.

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

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

- 36 (5) If:

Section 106

- 1 (a) an applicant applies under section 108 to the Domestic
2 Offsets Integrity Committee for the endorsement of a
3 proposal for a methodology determination; and
4 (b) the Domestic Offsets Integrity Committee:
5 (i) endorses the proposal under section 112; and
6 (ii) advises the Minister of the endorsement under
7 section 113; and
8 (c) the Minister decides not to make a methodology
9 determination to give effect to the proposal;
10 the Minister must, as soon as practicable after making the decision,
11 give the applicant a notice that sets out:
12 (d) the decision; and
13 (e) the reasons for the decision.
- 14 (6) Subsection (4) does not, by implication, prevent the Minister from:
15 (a) asking the Domestic Offsets Integrity Committee to give the
16 Minister additional advice about a matter arising under this
17 section; or
18 (b) asking another body or person to give the Minister advice
19 about a matter arising under this section.
- 20 (7) Paragraph (1)(a) of this section does not, by implication, affect the
21 application of subsection 13(3) of the *Legislative Instruments Act*
22 *2003* to another instrument under this Act.
- 23 (8) A methodology determination may make provision in relation to a
24 matter by applying, adopting or incorporating, with or without
25 modification, a matter contained in an instrument or writing:
26 (a) as in force or existing at a particular time; or
27 (b) as in force or existing from time to time.
- 28 (9) Subsection (8) has effect despite anything in subsection 14(2) of
29 the *Legislative Instruments Act 2003*.
- 30 (10) If a methodology determination makes provision in relation to a
31 matter by applying, adopting or incorporating, with or without
32 modification, a matter contained in an instrument or writing, the
33 Domestic Offsets Integrity Committee must ensure that the text of
34 the matter applied, adopted or incorporated is published on its
35 website.

Section 107

- 1 (11) Subsection (10) does not apply if the publication would infringe
2 copyright.
- 3 (12) If:
- 4 (a) the Domestic Offsets Integrity Committee:
- 5 (i) endorses a particular proposal for a methodology
6 determination under section 112; and
- 7 (ii) advises the Minister of the endorsement under
8 section 113; and
- 9 (b) the Minister decides:
- 10 (i) to make a methodology determination to give effect to
11 the proposal; or
- 12 (ii) not to make a methodology determination to give effect
13 to the proposal;
- 14 the Minister must, as soon as practicable after making the decision,
15 cause a copy of the Domestic Offset Integrity Committee's advice
16 under section 113 to be published on the Department's website.

17 **107 Baseline**

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

21 **108 Application for endorsement of proposal for methodology**
22 **determination**

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

28 **109 Form of application**

- 29 (1) An application under section 108 must:
- 30 (a) be in writing; and
- 31 (b) set out the proposal; and

Section 110

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

110 Further information

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

111 Withdrawal of application

- 23 (1) An applicant may withdraw the application at any time before the
24 Domestic Offsets Integrity Committee makes a decision on the
25 application.
- 26 (2) This Act does not prevent the applicant from making a fresh
27 application.
- 28 (3) If:
29 (a) the applicant withdraws the application; and
30 (b) the applicant has paid a fee in relation to the application;

1 the Domestic Offsets Integrity Committee must, on behalf of the
2 Commonwealth, refund the application fee.

3 **112 Endorsement of proposal for methodology determination**

4 *Scope*

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

8 *Endorsement*

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

- 11 (a) endorse the proposal; or
12 (b) refuse to endorse the proposal.

13 (3) The Domestic Offsets Integrity Committee must not endorse the
14 proposal unless the Committee is satisfied that, if the Minister were
15 to make a methodology determination to give effect to the
16 proposal:

- 17 (a) the determination would comply with the offsets integrity
18 standards; and
19 (b) the determination would not specify a kind of offsets project
20 by reference to a State or a part of a State; and
21 (c) the determination would comply with such requirements (if
22 any) as are specified in regulations made for the purposes of
23 paragraph 106(4)(e); and
24 (d) the method specified in the determination in accordance with
25 paragraph 106(1)(c) or (d) would include a calculation of a
26 baseline for the project;
27 (g) in a case where:
28 (i) a method determined under subsection 10(3) of the
29 *National Greenhouse and Energy Reporting Act 2007* is
30 a method by which the amounts of the emissions of
31 greenhouse gases from a particular source are to be
32 measured for the purposes of that Act; and

Section 112

- 1 (ii) the method specified in the methodology determination
2 in accordance with paragraph 106(1)(c) or (d) would
3 involve the measurement of emissions of greenhouse
4 gases from that source;
5 the methodology determination would provide that the
6 emissions are to be measured, under the method specified in
7 the methodology determination in accordance with paragraph
8 106(1)(c) or (d), in the same way as they are measured under
9 the method determined under subsection 10(3) of the
10 *National Greenhouse and Energy Reporting Act 2007*.

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

12 (4) If:

- 13 (a) a Domestic Offsets Integrity Committee member:
14 (i) is an SES employee in the Department; or
15 (ii) holds or performs the duties of an Executive Level 2
16 position, or an equivalent position, in the Department;
17 and
18 (b) the member advises the Committee that, if the Minister were
19 to make a methodology determination to give effect to the
20 proposal, the determination would not comply with the
21 offsets integrity standard set out in paragraph 133(1)(c);
22 then, for the purposes of paragraph (3)(a) of this section, the
23 Domestic Offsets Integrity Committee is to assume that the
24 determination would not comply with that offsets integrity
25 standard.

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

28 *Consultation and publication*

- 29 (5) The Domestic Offsets Integrity Committee must not endorse the
30 proposal unless the Committee has first:
31 (a) published on the Department's website:
32 (i) the proposal; and
33 (ii) a notice inviting the public to make a submission to the
34 Committee on the proposal by a specified time limit;
35 and

Section 112

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

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

2 *Notification*

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

6 (a) the decision; and

7 (b) if the decision is to refuse to endorse the proposal—the
8 reasons for the decision.

9 *Instrument is not a legislative instrument*

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

11 **113 Advice about endorsement of proposal**

12 *Scope*

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

16 *Advice*

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

20 **Subdivision B—Variation of methodology determinations**

21 **114 Variation of methodology determinations**

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

24 (2) The Minister must not vary a methodology determination unless:

25 (a) the variation gives effect to a particular proposal for the
26 variation of a methodology determination; and

27 (b) the Domestic Offsets Integrity Committee has:

28 (i) endorsed the proposal under section 120; and

- 1 (ii) advised the Minister of the endorsement under
2 section 121; and
- 3 (c) the varied determination complies with the offsets integrity
4 standards; and
- 5 (d) the varied determination does not specify a kind of offsets
6 project by reference to a State or a part of a State; and
- 7 (e) the varied determination complies with such requirements (if
8 any) as are specified in regulations made for the purposes of
9 paragraph 106(4)(e); and
- 10 (f) the method specified in the varied determination in
11 accordance with paragraph 106(1)(c) or (d) includes a
12 calculation of a baseline for the project; and
- 13 (g) in a case where:
- 14 (i) a method determined under subsection 10(3) of the
15 *National Greenhouse and Energy Reporting Act 2007* is
16 a method by which the amounts of the emissions of
17 greenhouse gases from a particular source are to be
18 measured for the purposes of that Act; and
- 19 (ii) the method specified in the varied methodology
20 determination in accordance with paragraph 106(1)(c)
21 or (d) involves the measurement of emissions of
22 greenhouse gases from that source;
- 23 the varied methodology determination provides that the
24 emissions are to be measured, under the method specified in
25 the varied methodology determination in accordance with
26 paragraph 106(1)(c) or (d), in the same way as they are
27 measured under the method determined under subsection
28 10(3) of the *National Greenhouse and Energy Reporting Act*
29 *2007*.

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

- 31 (3) If:
- 32 (a) an applicant applies under section 116 to the Domestic
33 Offsets Integrity Committee for the endorsement of a
34 proposal for the variation of a methodology determination;
35 and
- 36 (b) the Domestic Offsets Integrity Committee:
- 37 (i) endorses the proposal under section 120; and

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- 1 (ii) advises the Minister of the endorsement under
2 section 121; and
3 (c) the Minister decides not to vary the methodology
4 determination so as to give effect to the proposal;
5 the Minister must, as soon as practicable after making the decision,
6 give the applicant a notice that sets out:
7 (d) the decision; and
8 (e) the reasons for the decision.
- 9 (4) Subsection (2) does not, by implication, prevent the Minister from:
10 (a) asking the Domestic Offsets Integrity Committee to give the
11 Minister additional advice about a matter arising under this
12 section; or
13 (b) asking another body or person to give the Minister advice
14 about a matter arising under this section.
- 15 (5) Subsection (1) of this section does not, by implication, limit the
16 application of subsection 33(3) of the *Acts Interpretation Act 1901*
17 to other instruments under this Act.
- 18 (6) If:
19 (a) the Domestic Offsets Integrity Committee:
20 (i) endorses a particular proposal for the variation of a
21 methodology determination under section 120; and
22 (ii) advises the Minister of the endorsement under
23 section 121; and
24 (b) the Minister decides:
25 (i) to vary the methodology determination so as to give
26 effect to the proposal; or
27 (ii) not to vary the methodology determination so as to give
28 effect to the proposal;
29 the Minister must, as soon as practicable after making the decision,
30 cause a copy of the Domestic Offset Integrity Committee's advice
31 under section 120 to be published on the Department's website.

115 When variation takes effect

32 A variation of a methodology determination takes effect:
33

Section 116

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

4 **116 Application for endorsement of proposal for the variation of a**
5 **methodology determination**

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

11 **117 Form of application**

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

27 **118 Further information**

- 28 (1) The Domestic Offsets Integrity Committee may, by written notice
29 given to an applicant, require the applicant to give the Committee,
30 within the period specified in the notice, further information in
31 connection with the application.

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- 1 (2) If the applicant breaches the requirement, the Domestic Offsets
2 Integrity Committee may, by written notice given to the applicant:
3 (a) refuse to consider the application; or
4 (b) refuse to take any action, or any further action, in relation to
5 the application.

6 **119 Withdrawal of application**

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

17 **120 Endorsement of proposal for variation of methodology**
18 **determination**

19 *Scope*

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

23 *Endorsement*

- 24 (2) After considering the application, the Domestic Offsets Integrity
25 Committee must, in writing, either:
26 (a) endorse the proposal; or
27 (b) refuse to endorse the proposal.
- 28 (3) The Domestic Offsets Integrity Committee must not endorse the
29 proposal unless the Committee is satisfied that, if the Minister were

- 1 to vary the methodology determination so as to give effect to the
2 proposal:
- 3 (a) the varied determination would comply with the offsets
4 integrity standards; and
- 5 (b) the varied determination would not specify a kind of offsets
6 project by reference to a State or a part of a State; and
- 7 (c) the varied determination would comply with such
8 requirements (if any) as are specified in regulations made for
9 the purposes of paragraph 106(4)(e); and
- 10 (d) the method specified in the varied determination in
11 accordance with paragraph 106(1)(c) or (d) would include a
12 calculation of a baseline for the project; and
- 13 (e) in a case where:
- 14 (i) a method determined under subsection 10(3) of the
15 *National Greenhouse and Energy Reporting Act 2007* is
16 a method by which the amounts of the emissions of
17 greenhouse gases from a particular source are to be
18 measured for the purposes of that Act; and
- 19 (ii) the method specified in the varied methodology
20 determination in accordance with paragraph 106(1)(c)
21 or (d) involves the measurement of emissions of
22 greenhouse gases from that source;
- 23 the varied methodology determination would provide that the
24 emissions are to be measured, under the method specified in
25 the varied methodology determination in accordance with
26 paragraph 106(1)(c) or (d), in the same way as they are
27 measured under the method determined under subsection
28 10(3) of the *National Greenhouse and Energy Reporting Act*
29 *2007*.
- 30 (4) If:
- 31 (a) a Domestic Offsets Integrity Committee member:
- 32 (i) is an SES employee in the Department; or
- 33 (ii) holds or performs the duties of an Executive Level 2
34 position, or an equivalent position, in the Department;
35 and
- 36 (b) the member advises the Committee that, if the Minister were
37 to vary the methodology determination so as to give effect to

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1 the proposal, the varied determination would not comply with
2 the offsets integrity standard set out in paragraph 133(1)(c);
3 then, for the purposes of paragraph (3)(a) of this section, the
4 Domestic Offsets Integrity Committee is to assume that the varied
5 determination would not comply with that offsets integrity
6 standard.

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

9 *Consultation and publication*

- 10 (5) The Domestic Offsets Integrity Committee must not endorse the
11 proposal unless the Committee has first:
12 (a) published on the 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) considered any submissions that were received within that
18 time limit.
- 19 (6) The time limit must not be shorter than 40 days.
- 20 (7) If the Domestic Offsets Integrity Committee publishes the proposal
21 on the Department's website under subsection (5), the Committee
22 may also publish on the Department's website information given
23 by the applicant to the Committee in accordance with section 117
24 or 118.
- 25 (8) However, the Domestic Offsets Integrity Committee must not
26 publish particular information under subsection (5) if the applicant
27 has requested the Committee not to publish the information.
- 28 (9) A request under subsection (8) must:
29 (a) be in writing; and
30 (b) be in a form approved, in writing, by the Committee.
- 31 (10) The Domestic Offsets Integrity Committee must refuse to endorse
32 the proposal if:

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

19 *Notification*

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

26 *Instrument is not a legislative instrument*

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

Section 121

1 **121 Advice about endorsement of proposal**

2 *Scope*

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

6 *Advice*

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

10 **Subdivision C—Duration of methodology determinations**

11 **122 Duration of methodology determinations**

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

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

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

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

4 **Subdivision D—Revocation of methodology determinations**

5 **123 Revocation of methodology determinations**

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

Section 124

1 **Subdivision E—Applicable methodology determination**

2 **124 Applicable methodology determination for a reporting period**

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

7 **125 Original methodology determination continues to apply after**
8 **expiry**

9 *Scope*

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

14 *Continuation*

15 (2) Despite the expiry:
16 (a) the original determination continues to apply to the project
17 during the remainder of the crediting period as if the original
18 determination had not expired; and
19 (b) no other methodology determination applies to the project
20 during the remainder of the crediting period.

21 (3) However, if the Administrator approves, under section 130, the
22 application of another methodology determination to the project,
23 with effect from a particular time, subsection (2) does not apply to
24 the project during so much of the crediting period as occurs after
25 that time.

1 **126 Original methodology determination continues to apply after**
2 **variation**

3 *Scope*

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

8 *Continuation*

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

19 **127 Original methodology determination continues to apply after**
20 **revocation**

21 *Scope*

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

26 *Continuation*

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

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1 (b) no other methodology determination applies to the project
2 during the remainder of the crediting period.

3 (3) However, if the Administrator approves, under section 130, the
4 application of another methodology determination to the project,
5 with effect from a particular time, subsection (2) does not apply to
6 the project during so much of the crediting period as occurs after
7 that time.

8 **128 Request to approve application of methodology determination to**
9 **a project with effect from the start of a reporting period**

10 (1) During a reporting period for an eligible offsets project, the project
11 proponent for the project may request the Administrator to approve
12 the application of a specified methodology determination to the
13 project with effect from the start of the reporting period.

14 (2) A request must:

15 (a) be in writing; and

16 (b) be in a form approved, in writing, by the Administrator; and

17 (c) be accompanied by such information as is specified in the
18 regulations; and

19 (d) be accompanied by such other documents (if any) as are
20 specified in the regulations; and

21 (e) be accompanied by the fee (if any) specified in the
22 regulations.

23 (3) It is immaterial whether the end of the reporting period is known
24 when the request is made.

25 (4) The approved form of request may provide for verification by
26 statutory declaration of statements in requests.

27 (5) A fee specified under paragraph (2)(e) must not be such as to
28 amount to taxation.

29 **129 Further information**

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

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

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

8 **130 Administrator may approve application of methodology**
9 **determination to a project with effect from the start of a**
10 **reporting period**

11 *Scope*

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

17 *Approval*

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

24 *Notification of approval*

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

28 *Refusal*

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

Section 131

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

3 *Approval is not a legislative instrument*

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

6 **Subdivision F—Transitional**

7 **131 Transitional—pre-commencement application for endorsement**
8 **of proposal**

9 *Scope*

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

19 *Effect of application*

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

23 **132 Transitional—pre-commencement endorsement of proposal**

24 *Scope*

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

- 1 endorsement of a proposal for a methodology determination;
2 and
3 (b) before the commencement of this section, the Committee
4 endorsed the proposal; and
5 (c) assuming that:
6 (i) sections 112 and 113 had been in force at all material
7 times before the commencement of this section; and
8 (ii) a reference in those sections to the Domestic Offsets
9 Integrity Committee were a reference to the Interim
10 Domestic Offsets Integrity Committee; and
11 (iii) the reference in subsection 112(6) to 40 days were a
12 reference to 30 days;
13 the Interim Domestic Offsets Integrity Committee complied
14 with those sections in relation to the proposal.
- 15 (2) To avoid doubt, the proposal did not have to be in the form of a
16 draft methodology determination.

17 *Effect of application*

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

21 *Effect of proposal*

- 22 (4) This Act has effect as if the Domestic Offsets Integrity Committee
23 had, immediately after the commencement of this section:
24 (a) endorsed the proposal under section 112; and
25 (b) advised the Minister of the endorsement under section 113.
26

1 **Division 3—Offsets integrity standards**

2 **133 Offsets integrity standards**

- 3 (1) For the purposes of this Act, the *offsets integrity standards* are as
4 follows:
- 5 (a) a project of a kind specified in a methodology determination
6 in accordance with paragraph 106(1)(a) should be covered by
7 the additionality test regulations;
 - 8 (b) to the extent to which a method specified in a methodology
9 determination in accordance with paragraph 106(1)(c) or (d)
10 involves ascertaining any of the following:
 - 11 (i) the removal of one or more greenhouse gases from the
12 atmosphere;
 - 13 (ii) the reduction of emissions of one or more greenhouse
14 gases into the atmosphere;
 - 15 (iii) the emission of one or more greenhouse gases into the
16 atmosphere;the removal, reduction or emission, as the case may be,
17 should be:
 - 18 (iv) measurable; and
19 (v) capable of being verified;
 - 20 (c) a method specified in a methodology determination in
21 accordance with paragraph 106(1)(c) or (d) should not be
22 inconsistent with the methods set out in the National
23 Inventory Report;
 - 24 (d) a method specified in a methodology determination in
25 accordance with paragraph 106(1)(c) or (d) should be
26 supported by relevant scientific results published in
27 peer-reviewed literature; and
 - 28 (e) a method specified in a methodology determination in
29 accordance with paragraph 106(1)(c) or (d) should provide
30 that, in ascertaining whichever of the following is applicable:
 - 31 (i) the carbon dioxide equivalent net abatement amount for
32 a project;
 - 33 (ii) the carbon dioxide equivalent net sequestration amount
34 for a project;
 - 35

- 1 there is to be a deduction of the carbon dioxide equivalence
2 of the amount that, under the determination, is taken to be the
3 total amount of greenhouse gases that are emitted from any
4 source or sources as a consequence of carrying out the
5 project;
- 6 (f) a method specified in a methodology determination in
7 accordance with paragraph 106(1)(c) or (d) in relation to a
8 sequestration offsets project should provide for adjustments
9 to take account of significant cyclical variations that are
10 likely to occur in the amount of carbon sequestered in the
11 relevant carbon pool on the project area or project areas
12 during:
- 13 (i) a 100-year period; or
14 (ii) if, at the time when the methodology determination was
15 made, another period was specified in the regulations—
16 that other period;
- 17 (g) to the extent to which a method specified in a methodology
18 determination in accordance with paragraph 106(1)(c) or (d)
19 involves an estimate, projection or assumption—the estimate,
20 projection or assumption should be conservative;
- 21 (h) if:
- 22 (a) a method determined under subsection 10(3) of the
23 *National Greenhouse and Energy Reporting Act 2007* is
24 a method by which the amounts of the emissions of
25 greenhouse gases from a particular source are to be
26 measured for the purposes of that Act; and
- 27 (b) a method specified in a methodology determination in
28 accordance with paragraph 106(1)(c) or (d) involves the
29 measurement of emissions of greenhouse gases from
30 that source;
- 31 the methodology determination should provide that the
32 emissions are to be measured, under the method specified in
33 the methodology determination in accordance with paragraph
34 106(1)(c) or (d), in the same way as they are measured under
35 the method determined under subsection 10(3) of the
36 *National Greenhouse and Energy Reporting Act 2007*.

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

1 **Part 10—Multiple project proponents**

2 **Division 1—Introduction**

3 **134 Simplified outline**

4 The following is a simplified outline of this Part:

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

Section 135

1 **Division 2—References to project proponents**

2 **135 References to project proponents**

3 *Sequestration offsets projects*

4 (1) If:

- 5 (a) an offsets project is a sequestration offsets project; and
6 (b) there are 2 or more persons (the ***multiple project proponents***)
7 who:
8 (i) have joint responsibility for carrying out the project; and
9 (ii) jointly have the legal right to carry out the project; and
10 (iii) jointly hold the applicable carbon sequestration right in
11 relation to the project area, or each of the project areas;

12 then:

- 13 (c) for the purposes of this Act, each of the multiple project
14 proponents is a project proponent for the project; and
15 (d) a reference in:
16 (i) this Act; or
17 (ii) the regulations; or
18 (iii) another instrument made under this Act;
19 to the project proponent for the offsets project is to be read as
20 a reference to each of the multiple project proponents.

21 *Emissions avoidance offsets projects*

22 (2) If:

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

29 then:

- 30 (c) for the purposes of this Act, each of the multiple project
31 proponents is a project proponent for the project; and
32 (d) a reference in:

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- 1 (i) this Act; or
2 (ii) the regulations; or
3 (iii) any other instrument under this Act;
4 to the project proponent for the offsets project is to be read as
5 a reference to each of the multiple project proponents.
6

Section 136

1 **Division 3—Nominee of multiple project proponents**

2 **136 Nomination of nominee by multiple project proponents**

3 *Scope*

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

7 *Nomination*

- 8 (2) The multiple project proponents may, by joint written notice given
9 to the Administrator, nominate one of them as being their *nominee*
10 in relation to the offsets project.

- 11 (3) The joint written notice must be in a form approved, in writing, by
12 the Administrator.

- 13 (4) A notice under subsection (2) may accompany an application under
14 this Act or the regulations. In this case, the nomination is taken to
15 have been given immediately before the application was made.

16 *Revocation of nomination*

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

24 *Cessation of nomination—nominee ceases to be a project*
25 *proponent*

- 26 (6) If:
27 (a) a person has been nominated under subsection (2) in relation
28 to an eligible offsets project; and
29 (b) the nominee ceases to be one of the project proponents for
30 the eligible offsets project;

1 the nomination ceases to be in force.

2 **137 Service of documents on nominee**

3 *Scope*

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

6 *Service of documents*

7 (2) For the purposes of this Act, if:

- 8 (a) the multiple project proponents have nominated a nominee
9 under subsection 136(2) in relation to the project; and
10 (b) the nomination is in force; and
11 (c) a document relating to the eligible offsets project is required
12 or permitted by this Act to be given to the project proponent;
13 and
14 (d) the document is given to the nominee;
15 the document is taken to have been given to each of the multiple
16 project proponents.

17 **138 Eligible voluntary action taken by nominee**

18 *Scope*

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

21 *Eligible voluntary action to be taken by nominee*

22 (2) If:

- 23 (a) the multiple project proponents have nominated a nominee
24 under subsection 136(2) in relation to the project; and
25 (b) the nomination is in force; and
26 (c) the nominee takes an eligible voluntary action; and
27 (d) the application, nomination, request or notice to which the
28 eligible voluntary action relates is expressed to be made,

Part 10 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 138

- 1 withdrawn or given, as the case may be, on behalf of the
2 multiple project proponents;
3 this Act and the regulations have effect as if:
4 (e) the application, nomination, request or notice to which the
5 eligible voluntary action relates were made, withdrawn or
6 given, as the case may be, by the multiple project proponents
7 jointly; and
8 (f) if the eligible voluntary action is the making of an application
9 under section 22 for the declaration of an offsets project as an
10 eligible offsets project—each reference in subparagraphs
11 27(4)(h)(vii) and (i)(v) to the applicant holding the applicable
12 carbon sequestration right in relation to the project were a
13 reference to the multiple project proponents jointly holding
14 the applicable carbon sequestration right in relation to the
15 project; and
16 (g) if the eligible voluntary action is the making of an
17 application, under regulations made for the purposes of
18 subsection 29(1), for the variation of the declaration of an
19 eligible offsets project—each reference (if any) in those
20 regulations to the applicant holding the applicable carbon
21 sequestration right in relation to the varied project were a
22 reference to the multiple project proponents jointly holding
23 the applicable carbon sequestration right in relation to the
24 varied project; and
25 (h) if the eligible voluntary action is the making of an
26 application—a reference in this Act or the regulations (other
27 than a reference mentioned in paragraph (f) or (g)) to the
28 applicant were a reference to each of the multiple project
29 proponents.
30 (3) The multiple project proponents are not entitled to take an eligible
31 voluntary action except in accordance with subsection (2).

1 **139 Unilateral revocation of declaration of eligible offsets project—**
2 **failure of multiple project proponents to nominate a**
3 **nominee**

- 4 (1) The regulations may make provision for and in relation to
5 empowering the Administrator to revoke a declaration under
6 section 27 in relation to an offsets project.
- 7 (2) Regulations made for the purposes of subsection (1) must not
8 empower the Administrator to revoke a declaration unless:
- 9 (a) there are 2 or more project proponents (the *multiple project*
10 *proponents*) for the offsets project; and
 - 11 (b) a declaration is in force under section 27 in relation to the
12 project; and
 - 13 (c) the multiple project proponents have nominated a person
14 under subsection 136(2); and
 - 15 (d) the nomination ceases to be in force; and
 - 16 (e) 90 days pass, and no new nomination under subsection
17 136(2) is made by the multiple project proponents.
- 18 (3) Regulations made for the purposes of subsection (1) must require
19 the Administrator to consult the multiple project proponents before
20 deciding to revoke a declaration.

21 **140 Designation of nominee account**

22 *Scope*

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

29 *Request for nominee account*

- 30 (2) The nominee may:

Part 10 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 141

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

20 *Designation of nominee account*

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

24 **141 Issue of Australian carbon credit units to nominee account**

25 *Scope*

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

28 *Application for issue of Australian carbon credit units*

- 29 (2) If:

Section 141

- 1 (a) the multiple project proponents have nominated a nominee
2 under subsection 136(2) in relation to the project; and
3 (b) the nomination is in force; and
4 (c) a nominee account for the project is kept in the name of the
5 nominee; and
6 (d) the nominee makes an application under section 12 for the
7 issue of a certificate of entitlement in respect of the project
8 for a reporting period;
9 paragraph 13(1)(c) does not apply to the application.

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

12 *Issue of Australian carbon credit units*

- 13 (3) If:
14 (a) the multiple project proponents have nominated a nominee
15 under subsection 136(2) in relation to the project; and
16 (b) the nomination is in force; and
17 (c) a nominee account for the project is kept in the name of the
18 nominee; and
19 (d) apart from this subsection, the Administrator is required
20 under section 11 to issue one or more Australian carbon
21 credit units to the multiple project proponents in relation to
22 the eligible offsets project;
23 then:
24 (e) the Administrator must comply with the requirement by
25 issuing the units to the nominee and making an entry for the
26 units in the nominee account; and
27 (f) subsections 11(5) and (6) do not apply to the issue of the
28 units.
- 29 (4) If:
30 (a) no nomination made by the multiple project proponents
31 under subsection 136(2) in relation to the project is in force;
32 and
33 (b) apart from this subsection, the Administrator is required
34 under section 11 to issue one or more Australian carbon

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

4 **142 Units held in nominee account**

5 *Scope*

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

8 *Units held in account*

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

12 **143 Instructions in relation to nominee account**

13 *Scope*

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

16 *Instructions by nominee*

17 (2) A person is not entitled to give instructions under:
18 (a) this Act; or
19 (b) the *Australian National Registry of Emissions Units Act*
20 *2011*;
21 to the Administrator in relation to the nominee account unless:
22 (c) the account is kept in the name of the person; and
23 (d) the person has been nominated as a nominee under
24 subsection 136(2) in relation to the project; and
25 (e) the nomination is in force.
26 (3) If an instruction complies with subsection (2), the instruction is
27 taken to have been given on behalf of the project proponents for
28 the project.

1 **144 Updating nominee account details on change of nominee**

2 *Scope*

3 (1) This section applies if:

- 4 (a) there are 2 or more project proponents (the ***multiple project***
5 ***proponents***) for an eligible offsets project; and
6 (b) the multiple project proponents have nominated a nominee
7 under subsection 136(2) in relation to the project; and
8 (c) a nominee account for the project is kept in the name of the
9 nominee; and
10 (d) the nomination ceases to be in force; and
11 (e) a new nomination of a nominee (the ***new nominee***) is made
12 under subsection 136(2).

13 *Updating account details*

14 (2) As soon as practicable after receiving the new nomination, the
15 Administrator must make the necessary alterations in the Registry
16 to substitute the name of the new nominee for the name of the old
17 nominee.
18

1 **Division 4—Obligations of multiple project proponents**

2 **145 Obligations of multiple project proponents**

3 *Scope*

4 (1) This section applies if:

5 (a) there are 2 or more project proponents (the *multiple project*
6 *proponents*) for the eligible offsets project; and

7 (b) any of the following:

8 (i) this Act;

9 (ii) the regulations;

10 (iii) another instrument made under this Act;

11 imposes an obligation on the project proponent for the
12 project.

13 *Obligations of project proponent*

14 (2) The obligation is imposed on each of the multiple project
15 proponents, but may be discharged by any of the multiple project
16 proponents.

17 (3) The regulations may exempt a specified obligation from the scope
18 of subsection (2).
19

1 **Part 11—Australian carbon credit units**

2 **Division 1—Introduction**

3 **146 Simplified outline**

4 The following is a simplified outline of this Part:

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|--|
| <ul style="list-style-type: none">• The Administrator may issue Australian carbon credit units.• An Australian carbon credit unit is generally transferable.• Entries may be made in Registry accounts for Australian carbon credit units. |
|--|

1 **Division 2—Issue of Australian carbon credit units**

2 **147 Issue of Australian carbon credit units**

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

5 **148 How Australian carbon credit units are to be issued**

6 (1) The Administrator is to issue an Australian carbon credit unit to a
7 person by making an entry for the unit in a Registry account kept
8 by the person.

9 (2) The Administrator must not issue an Australian carbon credit unit
10 to a person unless the person has a Registry account.

11 **149 Circumstances in which Australian carbon credit units may be**
12 **issued**

13 The Administrator must not issue an Australian carbon credit unit
14 otherwise than in accordance with Part 2.
15

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

3 **150 An Australian carbon credit unit is personal property**

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

7 **151 Transfer of Australian carbon credit units**

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

- 11 (a) a *transfer* of the unit from the first Registry account to a
12 Registry account kept by another person consists of:
13 (i) the removal of the entry for the unit from the first
14 Registry account; and
15 (ii) the making of an entry for the unit in the Registry
16 account kept by the other person; and
17 (b) the *transfer* of the unit from the first Registry account to
18 another Registry account kept by the first person consists of:
19 (i) the removal of the entry for the unit from the first
20 Registry account; and
21 (ii) the making of an entry for the unit in the other Registry
22 account kept by the first person.

23 **152 Transmission of Australian carbon credit units by assignment**

- 24 (1) A transmission by assignment of an Australian carbon credit unit is
25 of no force until:
26 (a) the transferor, by electronic notice transmitted to the
27 Administrator, instructs the Administrator to transfer the unit
28 from the relevant Registry account kept by the transferor to a
29 Registry account kept by the transferee; and
30 (b) the Administrator complies with that instruction.
31 (2) An instruction under paragraph (1)(a) must set out:

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

10 **153 Transmission of Australian carbon credit units by operation of**
11 **law etc.**

12 *Scope*

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

17 *Declaration of transmission*

- 18 (2) The transferee must, within 90 days after the transmission, give the
19 Administrator:
20 (a) a declaration of transmission; and
21 (b) such evidence of transmission as is specified in the
22 regulations.
- 23 (3) A declaration of transmission must be made in accordance with the
24 regulations.
- 25 (4) If the transferee does not already have a Registry account, the
26 declaration of transmission must be accompanied by a request,
27 under regulations made for the purposes of subsection 10(1) of the
28 *Australian National Registry of Emissions Units Act 2011*, for the
29 Administrator to open a Registry account in the name of the
30 transferee.

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- 1 (5) If the Administrator is satisfied that special circumstances warrant
2 the extension of the 90-day period mentioned in subsection (2), the
3 Administrator may extend that period.
- 4 (6) The Administrator may exercise the power conferred by
5 subsection (5):
6 (a) on written application being made to the Administrator by the
7 transferee; or
8 (b) on the Administrator's own initiative.
- 9 *Transfer of unit—transferee already has a Registry account*
- 10 (7) If the transferee already has a Registry account, the Administrator
11 must, as soon as practicable after receiving the declaration of
12 transmission, transfer the unit from the relevant Registry account
13 kept by the transferor to a Registry account kept by the transferee.
- 14 *Transfer of unit—transferee does not have a Registry account*
- 15 (8) If:
16 (a) the transferee does not already have a Registry account; and
17 (b) in accordance with the request under regulations made for the
18 purposes of subsection 10(1) of the *Australian National*
19 *Registry of Emissions Units Act 2011*, the Administrator has
20 opened a Registry account in the name of the transferee;
21 the Administrator must, as soon as practicable after opening the
22 Registry account, transfer the unit from the relevant Registry
23 account kept by the transferor to the Registry account kept by the
24 transferee.
- 25 *Record*
- 26 (9) If the Administrator transfers the unit under subsection (7) or (8),
27 the Registry must set out a record of the declaration of
28 transmission.
- 29 *When the transferee is the Commonwealth*
- 30 (10) If the transferee is the Commonwealth, the Minister may give:
31 (a) the declaration of transmission; and
-

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- 1 (b) the evidence mentioned in paragraph (2)(b);
2 on behalf of the transferee.

3 *Notification*

- 4 (11) If:
5 (a) the Administrator decides to:
6 (i) extend the 90-day period mentioned in subsection (2);
7 or
8 (ii) refuse to extend the 90-day period mentioned in
9 subsection (2); and
10 (b) the Administrator made the decision in response to an
11 application;
12 the Administrator must give written notice of the decision to the
13 applicant.

14 **154 Outgoing international transfers of Australian carbon credit**
15 **units**

16 *Scope*

- 17 (1) This section applies if:
18 (a) a person (the *first person*) keeps a Registry account in which
19 there is an entry for an Australian carbon credit unit; and
20 (b) the first person, by electronic notice transmitted to the
21 Administrator, instructs the Administrator to transfer the unit
22 from the Registry account to:
23 (i) a foreign account kept by another person; or
24 (ii) a foreign account kept by the first person; and
25 (c) if the unit is a Kyoto Australian carbon credit unit—the
26 instruction does not contravene regulations made for the
27 purposes of section 155 of this Act or subsection 41(3) of the
28 *Australian National Registry of Emissions Units Act 2011*.
29 (2) An instruction under subsection (1) must set out:
30 (a) the account number of the relevant Registry account kept by
31 the first person; and
32 (b) such other information as is specified in the regulations.

1 *Compliance with instruction*

- 2 (3) If the Administrator receives an instruction under subsection (1),
3 the Administrator must take such steps as are required by the
4 regulations.
- 5 (4) Regulations made for the purposes of subsection (3) may require
6 the Administrator to remove the entry for the unit from the relevant
7 Registry account kept by the first person.
- 8 (5) If the unit is a Kyoto Australian carbon credit unit, regulations
9 made for the purposes of subsection (3) may require the
10 Administrator to transfer an assigned amount unit from a
11 Commonwealth holding account to a voluntary cancellation
12 account.
- 13 (6) If the Administrator takes steps under subsection (3) in relation to
14 an instruction, the Registry must set out a record of the instruction.
- 15 (7) If the first person is the Commonwealth, the Minister may give an
16 instruction under subsection (1) on behalf of the first person.

17 **155 Restrictions on outgoing international transfers of Kyoto**
18 **Australian carbon credit units**

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

22 **156 Transfer of Australian carbon credit units to another Registry**
23 **account held by the transferor**

24 *Scope*

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

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- 1 from the first Registry account to another Registry account
2 kept by the person; and
3 (c) the instruction sets out:
4 (i) the account number of the first Registry account; and
5 (ii) the account number of the other Registry account.

6 *Compliance with instruction*

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

12 **157 Exchange of Kyoto Australian carbon credit units for Kyoto**
13 **units**

14 *Scope*

- 15 (1) This section applies if:
16 (a) a person keeps a Registry account in which there is an entry
17 for a Kyoto Australian carbon credit unit issued to the
18 person; and
19 (b) before 1 July 2013, the person, by electronic notice
20 transmitted to the Administrator, instructs the Administrator
21 to exchange the unit for whichever of the following units is
22 specified in the instruction:
23 (i) an assigned amount unit;
24 (ii) if the Kyoto Australian carbon credit unit was issued in
25 respect of a sequestration offsets project—a removal
26 unit;
27 (iii) if the Kyoto Australian carbon credit unit was issued in
28 respect of a joint implementation project—an emission
29 reduction unit; and
30 (c) the instruction sets out the account number of the Registry
31 account; and
32 (d) the conditions (if any) specified in the regulations are
33 satisfied; and

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

4 *Compliance with instruction*

5 (2) If the Administrator receives an instruction under paragraph (1)(b),
6 the Administrator must take such steps as are required by the
7 regulations.

8 (3) Regulations made for the purposes of subsection (2) may require
9 the Administrator to:

- 10 (a) cancel the Kyoto Australian carbon credit unit; and
11 (b) remove the entry for the Kyoto Australian carbon credit unit
12 from the Registry account; and
13 (c) transfer an assigned amount unit, a removal unit, or an
14 emission reduction unit, as the case requires, from a
15 Commonwealth holding account to the Registry account.

16 (4) For the purposes of this Act, the assigned amount unit, removal
17 unit or emission reduction unit transferred to the Registry account
18 is taken to have been exchanged for the Kyoto Australian carbon
19 credit unit.

20 (5) The Registry must set out a record of the instruction under
21 paragraph (1)(b).

22 **158 Equitable interests in relation to an Australian carbon credit**
23 **unit**

24 (1) This Act does not affect:
25 (a) the creation of; or
26 (b) any dealings with; or
27 (c) the enforcement of;
28 equitable interests in relation to an Australian carbon credit unit.

29 (2) Subsection (1) has effect subject to:
30 (a) section 50; and
31 (b) regulations made for the purposes of section 51; and
32 (c) section 142.

Part 11 Australian carbon credit units

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

Section 158

1
2

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

1 **Part 12—Publication of information**

2 **Division 1—Introduction**

3 **159 Simplified outline**

4 The following is a simplified outline of this Part:

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

1 **Division 2—Information about units**

2 **160 Information about issue of Australian carbon credit units**

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

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

9 **161 Quarterly reports about issue of Australian carbon credit units**

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

14 **162 Publication of concise description of the characteristics of**
15 **Australian carbon credit units**

16 The Administrator must:

- 17 (a) before 31 December 2011, publish on the Administrator's
18 website a statement setting out a concise description of the
19 characteristics of Australian carbon credit units; and
20 (b) keep that statement up-to-date.
21

1 **Division 3—Information about voluntary cancellation of**
2 **units**

3 **163 Information about number of voluntarily cancelled Australian**
4 **carbon credit units**

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

- 8 (a) the name of the person; and
9 (b) the total number of Australian carbon credit units cancelled.
10

1 **Division 4—Information about relinquishment**
2 **requirements**

3 **164 Information about relinquishment requirements**

4 *Scope*

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

8 *Relinquishment requirement*

- 9 (2) The Administrator must publish on the Administrator's website:

- 10 (a) the name of the person; and
11 (b) details of the relinquishment requirement.

- 12 (3) If any of the following paragraphs applies:

- 13 (a) the decision to require the person to relinquish a specified
14 number of Australian carbon credit units is being
15 reconsidered by the Administrator under section 242;
16 (b) the decision to require the person to relinquish a specified
17 number of Australian carbon credit units has been affirmed or
18 varied by the Administrator under section 242, and the
19 decision as so affirmed or varied is the subject of an
20 application for review by the Administrative Appeals
21 Tribunal;
22 (c) the decision to require the person to relinquish a specified
23 number of Australian carbon credit units is the subject of an
24 application for review by the Administrative Appeals
25 Tribunal;

26 the Administrator must:

- 27 (d) publish an appropriate annotation on the Administrator's
28 website; and
29 (e) if paragraph (a) applies—when the Administrator notifies the
30 applicant for reconsideration of the Administrator's decision
31 on the reconsideration, the Administrator must publish an
32 appropriate annotation on the Administrator's website; and

- 1 (f) if paragraph (b) or (c) applies—when the review by the
2 Administrative Appeals Tribunal (including any court
3 proceedings arising out of the review) has been finalised, the
4 Administrator must publish an appropriate annotation on the
5 Administrator’s website.

6 **165 Information about unpaid administrative penalties**

7 *Scope*

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

16 *Penalty amount*

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

20 **166 Information about number of relinquished units**

21 *Scope*

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

28 *Australian carbon credit units relinquished*

- 29 (2) As soon as practicable after receiving the relinquishment notice,
30 the Administrator must publish on the Administrator’s website:

Part 12 Publication of information

Division 4 Information about relinquishment requirements

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- 1 (a) the name of the person; and
2 (b) the total number of Australian carbon credit units
3 relinquished.
4

1 **Division 5—Register of Offsets Projects**

2 **167 Register of Offsets Projects**

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

11 **168 Entries in the Register**

- 12 (1) The Register of Offsets Projects must set out, for each eligible
13 offsets project:
- 14 (a) the name of the project; and
15 (b) the project area or project areas; and
16 (c) a description of the project; and
17 (d) whether the project is a joint implementation project; and
18 (e) the location of the project; and
19 (f) the project proponent for the project; and
20 (g) the name of the applicable methodology determination; and
21 (h) whether the relevant declaration under section 27 is subject to
22 a condition that all relevant regulatory approvals must be
23 obtained before the end of the first crediting period for the
24 project; and
25 (i) if the project area, or any of the project areas, is covered by a
26 regional natural resource management plan—whether the
27 project is consistent with the plan; and
28 (j) whether the project is subject to the voluntary automatic unit
29 cancellation regime;
30 (k) if any Kyoto Australian carbon credit units have been issued
31 in relation to the project in accordance with Part 2:
32 (i) the total number of units so issued; and
-

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- 1 (ii) the financial year, or each of the financial years, in
2 which those units were so issued; and
- 3 (iii) the name of the person, or each of the persons, to whom
4 those units have been issued; and
- 5 (iv) if any of those units have been exchanged for assigned
6 amount units—the total number of units so exchanged,
7 and the financial year, or each of the financial years, in
8 which those units were so exchanged; and
- 9 (v) if any of those units have been exchanged for removal
10 units—the total number of units so exchanged, and the
11 financial year, or each of the financial years, in which
12 those units were so exchanged; and
- 13 (vi) if any of those units have been exchanged for emission
14 reduction units—the total number of units so
15 exchanged, and the financial year, or each of the
16 financial years, in which those units were so exchanged;
17 and
- 18 (l) if any non-Kyoto Australian carbon credit units have been
19 issued in relation to the project in accordance with Part 2:
20 (i) the total number of units so issued; and
21 (ii) the financial year, or each of the financial years, in
22 which those units were so issued; and
23 (iii) the name of the person, or each of the persons, to whom
24 those units have been issued; and
- 25 (m) if any Australian carbon credit units have been relinquished
26 in order to comply with a requirement under Part 7 in relation
27 to the project—the total number of units so relinquished; and
- 28 (n) if the project area or project areas are subject to a carbon
29 maintenance obligation:
30 (i) a statement to that effect; and
31 (ii) the net total number of Australian carbon credit units
32 issued in relation to the project in accordance with
33 Part 2; and
- 34 (o) if:
35 (i) the project proponent for the project has requested the
36 Administrator that particular information about the
37 environmental benefits, or community benefits, of the
38 project be set out in the Register of Offsets Projects; and

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

20 **169 Requests for information about project area not to be set out in**
21 **the Register**

- 22 (1) The Register of Offsets Projects must not set out the project area or
23 project areas for an eligible offsets project if:
24 (a) the project proponent for the project has requested the
25 Administrator not to set out the project area or project areas
26 in the Register of Offsets Projects; and
27 (b) the Administrator is satisfied that:
28 (i) the setting out of the project area or project areas could
29 reasonably be expected to substantially prejudice the
30 commercial interests of the project proponent or another
31 person; and
32 (ii) the prejudice outweighs the public interest in the setting
33 out of the project area or project areas.

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- 1 (2) A request under subsection (1) must:
2 (a) be in writing; and
3 (b) be in a form approved, in writing, by the Administrator.
- 4 (3) The Administrator must take all reasonable steps to ensure that a
5 decision is made on the request within 30 days after the request
6 was made.
- 7 (4) If the Administrator decides to refuse the request, the
8 Administrator must give written notice of the decision to the
9 project proponent.
10

Part 13—Fraudulent conduct**170 Simplified outline**

The following is a simplified outline of this Part:

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

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

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

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

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Relinquishment

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

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

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

Compliance

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

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

- (4) The person does not comply with an order under subsection (2) unless the notice of relinquishment under section 175 specifies the order.

- (5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:

- (a) the person is not the registered holder of any Australian carbon credit units; or
- (b) the person is not the registered holder of the number of Australian carbon credit units required to be relinquished; or
- (c) if the order requires the person to relinquish Kyoto Australian carbon credit units:
 - (i) the person is not the registered holder of any Kyoto Australian carbon credit units; or
 - (ii) the person is not the registered holder of the number of Kyoto Australian carbon credit units required to be relinquished; or

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- 1 (d) if the order requires the person to relinquish non-Kyoto
2 Australian carbon credit units:
3 (i) the person is not the registered holder of any non-Kyoto
4 Australian carbon credit units; or
5 (ii) the person is not the registered holder of the number of
6 non-Kyoto Australian carbon credit units required to be
7 relinquished.

8 *Conviction*

- 9 (6) It is immaterial whether the conviction occurred before, at or after
10 the commencement of this section.

11 *Copy of order*

- 12 (7) A copy of an order under subsection (2) is to be given to the
13 Administrator.

14 *Appropriate court*

- 15 (8) For the purposes of this section, each of the following courts is an
16 *appropriate court*:
17 (a) the court that convicted the person of the offence;
18 (b) the Federal Court;
19 (c) the Supreme Court of a State or Territory.

20 *Spent convictions*

- 21 (9) Nothing in this section affects the operation of Part VIIC of the
22 *Crimes Act 1914* (which includes provisions that, in certain
23 circumstances, relieve persons from the requirement to disclose
24 spent convictions and require persons aware of such convictions to
25 disregard them).
26

Section 172

1 **Part 14—Voluntary cancellation of Australian**
2 **carbon credit units**
3

4 **172 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
 - If a person is the registered holder of one or more Australian
7 carbon credit units, the person may request the Administrator
8 to cancel any or all of those units.

9 **173 Voluntary cancellation of Australian carbon credit units**

- 10 (1) If a person is the registered holder of one or more Australian
11 carbon credit units, the person may, by electronic notice
12 transmitted to the Administrator, request the Administrator to
13 cancel any or all of those units.
- 14 (2) A notice under subsection (1) must:
- 15 (a) specify the Australian carbon credit unit or units that are to
16 be cancelled; and
- 17 (b) specify the account number or account numbers of the
18 person's Registry account, or the person's Registry accounts,
19 in which there is an entry or entries for the Australian carbon
20 credit unit or units that are to be cancelled.
- 21 (3) If the Administrator receives a notice under subsection (1) in
22 relation to an Australian carbon credit unit:
- 23 (a) the unit is cancelled; and
- 24 (b) the Administrator must remove the entry for the unit from the
25 person's Registry account in which there is an entry for the
26 unit; and
- 27 (c) if the unit is a Kyoto Australian carbon credit unit:
- 28 (i) the Minister must, by written notice given to the
29 Administrator, direct the Administrator to transfer a
30 Kyoto unit from a Commonwealth holding account to a

- 1 voluntary cancellation account before the end of the
2 true-up period for the relevant commitment period; and
3 (ii) the Administrator must comply with a direction under
4 subparagraph (i).
- 5 (4) The Registry must set out a record of each notice under
6 subsection (1).
7

1 **Part 15—Relinquishment of Australian carbon**
2 **credit units**

3 **Division 1—Introduction**

4 **174 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
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- 11
- If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Administrator, relinquish any or all of those units.
 - An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act.

12 Note 1: A person may voluntarily relinquish Australian carbon credit units in
13 order to satisfy a condition for revocation of a section 27 declaration
14 in relation to an offsets project.

15 Note 2: A person may be required to relinquish Australian carbon credit units
16 under Part 7.
17

1 **Division 2—How Australian carbon credit units are**
2 **relinquished**

3 **175 How Australian carbon credit units are relinquished**

- 4 (1) If a person is the registered holder of one or more Australian
5 carbon credit units, the person may, by electronic notice
6 transmitted to the Administrator, relinquish any or all of those
7 units.
- 8 (2) A notice under subsection (1) must:
- 9 (a) specify the Australian carbon credit unit or units that are
10 being relinquished; and
- 11 (b) if the Australian carbon credit unit or units are being
12 relinquished in order to comply with a requirement under
13 Part 7—specify the requirement to which the relinquishment
14 relates; and
- 15 (c) if the Australian carbon credit unit or units are being
16 voluntarily relinquished in order to satisfy a condition for
17 revocation of a section 27 declaration in relation to an offsets
18 project—set out a statement to that effect; and
- 19 (d) if the Australian carbon credit unit or units are being
20 voluntarily relinquished in order to satisfy a condition for
21 revocation of a subsection 97(2) declaration—set out a
22 statement to that effect; and
- 23 (e) if the Australian carbon credit unit or units are being
24 relinquished in order to comply with an order under
25 subsection 171(2) (fraudulent conduct)—specify the order to
26 which the relinquishment relates; and
- 27 (f) specify the account number or account numbers of the
28 person's Registry account, or the person's Registry accounts,
29 in which there is an entry or entries for the Australian carbon
30 credit unit or units that are being relinquished.
- 31 (3) If:
- 32 (a) an Australian carbon credit unit is relinquished by a person in
33 order to comply with an order under subsection 171(2); and
- 34 (b) the order was made because the person was convicted by a
35 court of an offence that relates to Part 2;

Part 15 Relinquishment of Australian carbon credit units
Division 2 How Australian carbon credit units are relinquished

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- 1 then:
2 (c) the unit is cancelled; and
3 (d) the Administrator must remove the entry for the unit from the
4 person's Registry account in which there is an entry for the
5 unit.
- 6 (4) If:
7 (a) an Australian carbon credit unit is relinquished by a person in
8 order to comply with an order under subsection 171(2); and
9 (b) the order was made because the person was convicted by a
10 court of an offence that does not relate to Part 2;
11 then:
12 (c) the Administrator must transfer the unit from the person's
13 Registry account in which there is an entry for the unit to the
14 Commonwealth relinquished units account; and
15 (d) when the unit is transferred to the Commonwealth
16 relinquished units account, property in the unit is transferred
17 to the Commonwealth.
- 18 (5) If:
19 (a) an Australian carbon credit unit is relinquished by a person in
20 order to comply with a requirement under Part 7; or
21 (b) an Australian carbon credit unit is voluntarily relinquished in
22 order to satisfy a condition for revocation of a section 27
23 declaration in relation to an offsets project; or
24 (c) an Australian carbon credit unit is voluntarily relinquished in
25 order to satisfy a condition for revocation of a subsection
26 97(2) declaration;
27 then:
28 (d) the unit is cancelled; and
29 (e) the Administrator must remove the entry for the unit from the
30 person's Registry account in which there is an entry for the
31 unit.
- 32 (6) The Registry must set out a record of each notice under
33 subsection (1).

1 **176 Deemed relinquishment**

2 *Scope*

3 (1) This section applies if:

- 4 (a) under this Act, a person is subject to a requirement to
5 relinquish a particular number of Australian carbon credit
6 units (the *relinquishment number*); and
7 (b) under section 11, the Administrator is required to issue to the
8 person a particular number of Australian carbon credit units
9 (the *issue number*).

10 *Deemed relinquishment*

11 (2) If the issue number exceeds the relinquishment number:

- 12 (a) the person is taken, immediately after the issue of the units
13 mentioned in paragraph (1)(b) of this section, to have, by
14 electronic notice transmitted to the Administrator under
15 subsection 175(1), relinquished a number of those units equal
16 to the relinquishment number; and
17 (b) that notice is taken to have specified, as the units that are
18 being relinquished, such units as are determined by the
19 Administrator; and
20 (c) that notice is taken to have specified the requirement
21 mentioned in paragraph (1)(a) of this section as the
22 requirement to which the relinquishment relates.

23 (3) If the relinquishment number equals or exceeds the issue number:

- 24 (a) the person is taken, immediately after the issue of the units
25 mentioned in paragraph (1)(b) of this section, to have, by
26 electronic notice transmitted to the Administrator under
27 subsection 175(1), relinquished all of the units mentioned in
28 paragraph (1)(b) of this section; and
29 (b) that notice is taken to have specified, as the units that are
30 being relinquished, all of the units mentioned in
31 paragraph (1)(b); and
32 (c) that notice is taken to have specified the requirement
33 mentioned in paragraph (1)(a) of this section as the
34 requirement to which the relinquishment relates.

Section 177

1 **177 Transfer of certain units instead of relinquishment of Kyoto**
2 **Australian carbon credit units**

3 *Scope*

- 4 (1) This section applies if, under this Act:
- 5 (a) a person is required to relinquish a particular number of
6 Kyoto Australian carbon credit units; or
 - 7 (b) a particular number of Kyoto Australian carbon credit units
8 are being voluntarily relinquished by a person in order to
9 satisfy a condition for revocation of a section 27 declaration
10 in relation to an offsets project; or
 - 11 (c) a particular number of Kyoto Australian carbon credit units
12 are being voluntarily relinquished by a person in order to
13 satisfy a condition for revocation of a subsection 97(2)
14 declaration.

15 *Transfer of certain units instead of relinquishment*

- 16 (2) The person may:
- 17 (a) transfer to the Commonwealth an equal number of substitute
18 units; and
 - 19 (b) by electronic notice transmitted to the Administrator, inform
20 the Administrator that the transfer is instead of the
21 relinquishment of the Kyoto Australian carbon credit units.

22 Note: For *substitute unit*, see subsection (6).

- 23 (3) A notice under subsection (2) must:
- 24 (a) specify the substitute units that are being transferred; and
 - 25 (b) if paragraph (1)(a) applies—specify the requirement
26 concerned; and
 - 27 (c) if paragraph (1)(b) applies—a statement to the effect that the
28 units are being voluntarily relinquished in order to satisfy a
29 condition for revocation of a section 27 declaration in
30 relation to an offsets project; and
 - 31 (d) if paragraph (1)(c) applies—a statement to the effect that the
32 units are being voluntarily relinquished in order to satisfy a
33 condition for revocation of a subsection 97(2) declaration.

- 1 (4) A transfer under subsection (2) must be in accordance with the
2 regulations.

3 *Consequences of transfer*

- 4 (5) If the person transfers the substitute units specified in the notice
5 under subsection (2), this Act (other than subsections 175(3), (4)
6 and (5)) has effect as if the person had relinquished the Kyoto
7 Australian carbon credit units:
8 (a) if paragraph (1)(a) applies—in order to comply with the
9 requirement mentioned in that paragraph; or
10 (b) if paragraph (1)(b) applies—in order to satisfy a condition for
11 revocation of a section 27 declaration in relation to an offsets
12 project; or
13 (c) if paragraph (1)(c) applies—in order to satisfy a condition for
14 revocation of a subsection 97(2) declaration.

15 *Substitute unit*

- 16 (6) For the purposes of this section, each of the following is a
17 **substitute unit**:
18 (a) a certified emission reduction (other than a temporary
19 certified emission reduction or a long-term certified emission
20 reduction);
21 (b) an emission reduction unit;
22 (c) a removal unit;
23 (d) an assigned amount unit issued in Australia;
24 (e) a prescribed eligible carbon unit.
25 (7) Subsection (6) has effect subject to subsection (8).
26 (8) The regulations may provide that a specified unit is not a substitute
27 unit for the purposes of this section.

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

Section 178

1 **178 Transfer of certain units instead of relinquishment of non-Kyoto**
2 **Australian carbon credit units**

3 *Scope*

- 4 (1) This section applies if, under this Act:
- 5 (a) a person is required to relinquish a particular number of
6 non-Kyoto Australian carbon credit units; or
 - 7 (b) a particular number of non-Kyoto Australian carbon credit
8 units are being voluntarily relinquished by a person in order
9 to satisfy a condition for revocation of a section 27
10 declaration in relation to an offsets project; or
 - 11 (c) a particular number of non-Kyoto Australian carbon credit
12 units are being voluntarily relinquished by a person in order
13 to satisfy a condition for revocation of a subsection 97(2)
14 declaration.

15 *Transfer of certain units instead of relinquishment*

- 16 (2) The person may:
- 17 (a) transfer to the Commonwealth an equal number of substitute
18 units; and
 - 19 (b) by electronic notice transmitted to the Administrator, inform
20 the Administrator that the transfer is instead of the
21 relinquishment of the non-Kyoto Australian carbon credit
22 units.

23 Note: For *substitute unit*, see subsection (6).

- 24 (3) A notice under subsection (2) must:
- 25 (a) specify the substitute units that are being transferred; and
 - 26 (b) if paragraph (1)(a) applies—specify the requirement
27 concerned; and
 - 28 (c) if paragraph (1)(b) applies—a statement to the effect that the
29 units are being voluntarily relinquished in order to satisfy a
30 condition for revocation of a section 27 declaration in
31 relation to an offsets project; and
 - 32 (d) if paragraph (1)(c) applies—a statement to the effect that the
33 units are being voluntarily relinquished in order to satisfy a
34 condition for revocation of a subsection 97(2) declaration.

- 1 (4) A transfer under subsection (2) must be in accordance with the
2 regulations.

3 *Consequences of transfer*

- 4 (5) If the person transfers the substitute units specified in the notice
5 under subsection (2), this Act (other than subsections 175(3), (4)
6 and (5)) has effect as if the person had relinquished the non-Kyoto
7 Australian carbon credit units:
8 (a) if paragraph (1)(a) applies—in order to comply with the
9 requirement mentioned in that paragraph; or
10 (b) if paragraph (1)(b) applies—in order to satisfy a condition for
11 revocation of a section 27 declaration in relation to an offsets
12 project; or
13 (c) if paragraph (1)(c) applies—in order to satisfy a condition for
14 revocation of a subsection 97(2) declaration.

15 *Substitute unit*

- 16 (6) For the purposes of this section, each of the following is a
17 **substitute unit**:
18 (a) a Kyoto Australian carbon credit unit;
19 (b) a certified emission reduction (other than a temporary
20 certified emission reduction or a long-term certified emission
21 reduction);
22 (c) an emission reduction unit;
23 (d) a removal unit;
24 (e) an assigned amount unit issued in Australia;
25 (f) a prescribed eligible carbon unit.
26 (7) Subsection (6) has effect subject to subsection (8).
27 (8) The regulations may provide that a specified unit is not a substitute
28 unit for the purposes of this section.

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

31

1 **Division 3—Compliance with relinquishment requirements**

2 **179 Compliance with relinquishment requirements**

3 *Scope*

- 4 (1) This section applies if, under this Act:
- 5 (a) a person is required to relinquish a particular number of
- 6 Australian carbon credit units; and
- 7 (b) the person is required to do so by a particular time (the
- 8 ***compliance deadline***).

9 *No units relinquished*

- 10 (2) If, by the compliance deadline, the person has not relinquished any
- 11 Australian carbon credit units in order to comply with the
- 12 requirement, the person is liable to pay to the Commonwealth, by
- 13 way of penalty, an amount worked out using the formula:

14
$$\frac{\text{Number of units}}{\text{required to be relinquished}} \times \text{Prescribed amount}$$

15 where:

16 ***prescribed amount*** means the greatest of the following amounts:

- 17 (a) \$20;
- 18 (b) if the Australian carbon credit units mentioned in
- 19 paragraph (1)(a) are Kyoto Australian carbon credit units—
- 20 200% of the market value of a Kyoto Australian carbon
- 21 credit unit as at the compliance deadline;
- 22 (c) if the Australian carbon credit units mentioned in
- 23 paragraph (1)(a) are non-Kyoto Australian carbon credit
- 24 units—200% of the market value of a non-Kyoto Australian
- 25 carbon credit unit as at the compliance deadline.

26 *Relinquishment of insufficient units*

- 27 (3) If, by the compliance deadline:
- 28 (a) the person has relinquished one or more Australian carbon
- 29 credit units in order to comply with the requirement; and

- 1 (b) the number of relinquished units is less than the number of
2 units required to be relinquished;
3 the person is liable to pay to the Commonwealth, by way of
4 penalty, an amount worked out using the formula:

5
$$\left(\begin{array}{c} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{c} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \text{Prescribed amount}$$

6 where:

7 **prescribed amount** means the greatest of the following amounts:

- 8 (a) \$20;
9 (b) if the Australian carbon credit units mentioned in
10 paragraph (1)(a) are Kyoto Australian carbon credit units—
11 200% of the market value of a Kyoto Australian carbon
12 credit unit as at the compliance deadline;
13 (c) if the Australian carbon credit units mentioned in
14 paragraph (1)(a) are non-Kyoto Australian carbon credit
15 units—200% of the market value of a non-Kyoto Australian
16 carbon credit unit as at the compliance deadline.

17 *When penalty becomes due and payable*

- 18 (4) An amount payable under this section is due and payable at the end
19 of 30 days after the compliance deadline.

20 *Compliance*

- 21 (5) To avoid doubt, a person may be liable to pay a penalty under this
22 section even if:
23 (a) the person is not the registered holder of any Australian
24 carbon credit units; or
25 (b) the person is not the registered holder of the number of
26 Australian carbon credit units required to be relinquished.

27 *Market value*

- 28 (6) The regulations may provide that, for the purposes of this section,
29 the **market value** of an Australian carbon credit unit is to be
30 ascertained in accordance with the regulations.

Section 180

1 **180 Late payment penalty**

2 *Penalty*

- 3 (1) If an amount payable by a person under section 179 remains
4 unpaid after the time when it became due for payment, the person
5 is liable to pay, by way of penalty, an amount calculated at the rate of:
6 of:
7 (a) 20% per annum; or
8 (b) if a lower rate per annum is specified in the regulations—that
9 lower rate per annum;
10 on the amount unpaid, computed from that time.

11 *Power to remit*

- 12 (2) The Administrator may remit the whole or a part of an amount
13 payable under subsection (1) if:
14 (a) the Administrator is satisfied that the person did not
15 contribute to the delay in payment and has taken reasonable
16 steps to mitigate the causes of the delay; or
17 (b) the Administrator is satisfied:
18 (i) that the person contributed to the delay but has taken
19 reasonable steps to mitigate the causes of the delay; and
20 (ii) having regard to the nature of the reasons that caused
21 the delay, that it would be fair and reasonable to remit
22 some or all of the amount; or
23 (c) the Administrator is satisfied that there are special
24 circumstances that make it reasonable to remit some or all of
25 the amount.
- 26 (3) The Administrator may exercise the power conferred by
27 subsection (2):
28 (a) on written application being made to the Administrator by a
29 person; or
30 (b) on the Administrator's own initiative.

31 *Refusal*

- 32 (4) If:
-

Section 181

- 1 (a) the Administrator decides to refuse to remit the whole or a
2 part of an amount payable under subsection (1); and
3 (b) the Administrator made the decision in response to an
4 application;
5 the Administrator must give written notice of the decision to the
6 applicant.

7 **181 Recovery of penalties**

- 8 An amount payable under section 179 or 180:
9 (a) is a debt due to the Commonwealth; and
10 (b) may be recovered by the Administrator, on behalf of the
11 Commonwealth, by action in a court of competent
12 jurisdiction.

13 **182 Set-off**

- 14 If:
15 (a) an amount (the *first amount*) is payable under section 179 or
16 180 by a person; and
17 (b) the following conditions are satisfied in relation to another
18 amount (the *second amount*):
19 (i) the amount is payable by the Commonwealth to the
20 person;
21 (ii) the amount is of a kind specified in the regulations;
22 the Administrator may, on behalf of the Commonwealth, set off the
23 whole or a part of the first amount against the whole or a part of
24 the second amount.

25 **183 Refund of overpayments**

- 26 *Refund*
27 (1) If either of the following amounts has been overpaid by a person,
28 the amount overpaid must be refunded by the Commonwealth:
29 (a) an amount payable under section 179;
30 (b) an amount payable under section 180.

Part 15 Relinquishment of Australian carbon credit units

Division 3 Compliance with relinquishment requirements

Section 183

1 Note: For appropriation, see section 28 of the *Financial Management and*
2 *Accountability Act 1997*.

3 *Interest on overpayment*

4 (2) If:

5 (a) an amount overpaid by a person is refunded by the
6 Commonwealth under subsection (1); and

7 (b) the overpayment is attributable, in whole or in part, to an
8 error made by the Administrator;

9 interest calculated in accordance with subsection (3) is payable by
10 the Commonwealth to the person in respect of the amount
11 refunded.

12 (3) Interest payable to a person under subsection (2) in respect of an
13 amount refunded to the person is to be calculated:

14 (a) in respect of the period that:

15 (i) began when the overpaid amount was paid to the
16 Commonwealth; and

17 (ii) ended when the amount was refunded; and

18 (b) at the base interest rate (within the meaning of section 8AAD
19 of the *Taxation Administration Act 1953*).

20 (4) The Consolidated Revenue Fund is appropriated for the purposes
21 of making payments of interest under subsection (2).
22

Part 16—Information-gathering powers**184 Simplified outline**

The following is a simplified outline of this Part:

- The Administrator may obtain information or documents.

185 Administrator may obtain information or documents*Scope*

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

Requirement

- (2) The Administrator may, by written notice given to the person, require the person:
- (a) to give to the Administrator, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Administrator, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Administrator, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

Section 186

1 *Ancillary contraventions*

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

11 *Civil penalty provisions*

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

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

14 provisions.

15 *No limitation*

- 16 (7) This section is not limited by any other provision of this Act that
- 17 relates to the powers of the Administrator to obtain information or
- 18 documents.

19 **186 Copying documents—compensation**

20 A person is entitled to be paid by the Administrator, on behalf of

21 the Commonwealth, reasonable compensation for complying with

22 a requirement covered by paragraph 185(2)(c).

23 **187 Copies of documents**

- 24 (1) The Administrator may:
- 25 (a) inspect a document or copy produced under subsection
- 26 185(2); and
- 27 (b) make and retain copies of, or take and retain extracts from,
- 28 such a document.

Section 188

- 1 (2) The Administrator may retain possession of a copy of a document
2 produced in accordance with a requirement covered by paragraph
3 185(2)(c).

188 Administrator may retain documents

- 4
5 (1) The Administrator may take, and retain for as long as is necessary,
6 possession of a document produced under subsection 185(2).
7 (2) The person otherwise entitled to possession of the document is
8 entitled to be supplied, as soon as practicable, with a copy certified
9 by the Administrator to be a true copy.
10 (3) The certified copy must be received in all courts and tribunals as
11 evidence as if it were the original.
12 (4) Until a certified copy is supplied, the Administrator must, at such
13 times and places as the Administrator thinks appropriate, permit
14 the person otherwise entitled to possession of the document, or a
15 person authorised by that person, to inspect and make copies of, or
16 take extracts from, the document.

189 Self-incrimination

- 17
18 (1) A person is not excused from giving information or producing a
19 document under section 185 on the ground that the information or
20 the production of the document might tend to incriminate the
21 person or expose the person to a penalty.
22 (2) However, in the case of an individual:
23 (a) the information given or the document produced; or
24 (b) giving the information or producing the document; or
25 (c) any information, document or thing obtained as a direct or
26 indirect consequence of giving the information or producing
27 the document;
28 is not admissible in evidence against the individual:
29 (d) in civil proceedings for the recovery of a penalty (other than
30 proceedings for the recovery of a penalty under section 179
31 or 180); or

Part 16 Information-gathering powers

Section 189

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(e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

1 **Part 17—Record-keeping and project monitoring**
2 **requirements**

3 **Division 1—Introduction**

4 **190 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- 7 • The regulations may require a person to:
 - 8 (a) make a record of information; and
 - 9 (b) retain the record.
 - 10 • A person is subject to record-keeping requirements in relation to the preparation of an offsets report.
 - 11 • A project proponent must comply with record-keeping and project monitoring requirements imposed by a methodology determination.
- 12
13
14

Section 191

1 **Division 2—Record-keeping requirements**

2 **191 Record-keeping requirements—general**

- 3 (1) The regulations may require a person to:
- 4 (a) make a record of specified information, where the
- 5 information is relevant to this Act; and
- 6 (b) retain:
- 7 (i) the record; or
- 8 (ii) a copy of the record;
- 9 for 7 years after the making of the record.
- 10 (2) If a person is subject to a requirement under regulations made for
- 11 the purposes of subsection (1), the person must comply with that
- 12 requirement.

13 *Ancillary contraventions*

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

23 *Civil penalty provisions*

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

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

26 provisions.

27 *Other provisions do not limit this section*

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

1 **192 Record-keeping requirements—preparation of offsets report**

2 *Scope*

- 3 (1) This section applies if a person:
4 (a) made a record of particular information; and
5 (b) used the information to prepare an offsets report.

6 *Record-keeping requirements*

- 7 (2) The regulations may require the person to retain:
8 (a) the record; or
9 (b) a copy of the record;
10 for 7 years after the offsets report was given to the Administrator.
- 11 (3) If a person is subject to a requirement under regulations made for
12 the purposes of subsection (2), the person must comply with that
13 requirement.

14 *Ancillary contraventions*

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

24 *Civil penalty provisions*

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

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

Section 193

1 **193 Record-keeping requirements—methodology determinations**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) a person is the project proponent for an eligible offsets
- 5 project; and
- 6 (b) under the applicable methodology determination, the person
- 7 is subject to a record-keeping requirement relating to the
- 8 project.

9 *Record-keeping requirement*

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

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

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

24 provisions.

25

1 **Division 3—Project monitoring requirements**

2 **194 Project monitoring requirements—methodology determinations**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a person is the project proponent for an eligible offsets
 - 6 project; and
 - 7 (b) under the applicable methodology determination, the person
 - 8 is subject to a requirement to monitor the project.

9 *Project monitoring requirement*

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

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

23 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty
24 provisions.
25

1 **Part 18—Monitoring powers**

2 **Division 1—Simplified outline**

3 **195 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
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- 16
- 17
- An inspector may enter premises for the purpose of:
 - (a) determining whether this Act or the associated provisions have been complied with; or
 - (b) substantiating information provided under this Act or the associated provisions.
 - Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
 - An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.
 - The occupier of the premises has certain rights and responsibilities.

1 **Division 2—Appointment of inspectors and issue of**
2 **identity cards**

3 **196 Appointment of inspectors**

- 4 (1) The Administrator may, in writing, appoint:
5 (a) a person who:
6 (i) is an SES employee, or acting SES employee, in the
7 Department; or
8 (ii) is an APS employee who holds or performs the duties of
9 an Executive Level 1 or 2 position, or an equivalent
10 position, in the Department; or
11 (b) a member or special member of the Australian Federal
12 Police;
13 as an inspector for the purposes of this Act.
- 14 (2) The Administrator must not appoint a person as an inspector unless
15 the Administrator is satisfied that the person has suitable
16 qualifications and experience to properly exercise the powers of an
17 inspector.
- 18 (3) An inspector must, in exercising powers as an inspector, comply
19 with any directions of the Administrator.
- 20 (4) If a direction is given under subsection (3) in writing, the direction
21 is not a legislative instrument.

22 **197 Identity cards**

- 23 (1) The Administrator must issue an identity card to an inspector.

24 *Form of identity card*

- 25 (2) The identity card must:
26 (a) be in the form prescribed by the regulations; and
27 (b) contain a recent photograph of the inspector.

28 *Offence*

- 29 (3) A person commits an offence if:
-

Part 18 Monitoring powers

Division 2 Appointment of inspectors and issue of identity cards

Section 197

- 1 (a) the person has been issued with an identity card; and
2 (b) the person ceases to be an inspector; and
3 (c) the person does not, as soon as practicable after so ceasing,
4 return the identity card to the Administrator.

5 Penalty: 1 penalty unit.

- 6 (4) An offence against subsection (3) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

8 *Defence—card lost or destroyed*

- 9 (5) Subsection (3) does not apply if the identity card was lost or
10 destroyed.

11 Note: A defendant bears an evidential burden in relation to the matter in this
12 subsection: see subsection 13.3(3) of the *Criminal Code*.

13 *Inspector must carry card*

- 14 (6) An inspector must carry his or her identity card at all times when
15 exercising powers as an inspector.
16

1 **Division 3—Powers of inspectors**

2 **Subdivision A—Monitoring powers**

3 **198 Inspector may enter premises by consent or under a warrant**

4 (1) For the purpose of:

5 (a) determining whether this Act or the associated provisions
6 have been, or are being, complied with; or

7 (b) substantiating information provided under this Act or the
8 associated provisions;

9 an inspector may:

10 (c) enter any premises; and

11 (d) exercise the monitoring powers set out in section 199.

12 (2) However, an inspector is not authorised to enter the premises
13 unless:

14 (a) the occupier of the premises has consented to the entry and
15 the inspector has shown his or her identity card if required by
16 the occupier; or

17 (b) the entry is made under a monitoring warrant.

18 Note: If entry to the premises is with the occupier's consent, the inspector
19 must leave the premises if the consent ceases to have effect: see
20 section 203.

21 **199 Monitoring powers of inspectors**

22 (1) The following are the *monitoring powers* that an inspector may
23 exercise in relation to premises under section 198:

24 (a) the power to search the premises and any thing on the
25 premises;

26 (b) the power to examine any activity conducted on the premises;

27 (c) the power to inspect, examine, take measurements of or
28 conduct tests on any thing on the premises;

29 (d) the power to make any still or moving image or any
30 recording of the premises or any thing on the premises;

31 (e) the power to inspect any document on the premises;

Section 199

- 1 (f) the power to take extracts from, or make copies of, any such
2 document;
- 3 (g) the power to take onto the premises such equipment and
4 materials as the inspector requires for the purpose of
5 exercising powers in relation to the premises;
- 6 (h) the powers set out in subsections (2), (3) and (5).

7 *Operating electronic equipment*

- 8 (2) The monitoring powers include the power to operate electronic
9 equipment on the premises to see whether:
- 10 (a) the equipment; or
11 (b) a disk, tape or other storage device that:
12 (i) is on the premises; and
13 (ii) can be used with the equipment or is associated with it;
14 contains information that is relevant to:
- 15 (c) determining whether this Act or the associated provisions
16 have been, or are being, complied with; or
17 (d) substantiating information provided under this Act or the
18 associated provisions.
- 19 (3) The monitoring powers include the following powers in relation to
20 information described in subsection (2) found in the exercise of the
21 power under that subsection:
- 22 (a) the power to operate electronic equipment on the premises to
23 put the information in documentary form and remove the
24 documents so produced from the premises;
- 25 (b) the power to operate electronic equipment on the premises to
26 transfer the information to a disk, tape or other storage device
27 that:
28 (i) is brought to the premises for the exercise of the power;
29 or
30 (ii) is on the premises and the use of which for that purpose
31 has been agreed in writing by the occupier of the
32 premises;
33 and remove the disk, tape or other storage device from the
34 premises.

Section 199

- 1 (4) An inspector may operate electronic equipment as mentioned in
2 subsection (2) or (3) only if he or she believes on reasonable
3 grounds that the operation of the equipment can be carried out
4 without damage to the equipment.

5 *Securing things if entry to premises is under a monitoring warrant*

- 6 (5) If entry to the premises is under a monitoring warrant, the
7 monitoring powers include the power to secure a thing for a period
8 not exceeding 24 hours if:
9 (a) the thing is found during the exercise of monitoring powers
10 on the premises; and
11 (b) an inspector believes on reasonable grounds that:
12 (i) the thing affords evidence of the commission of an
13 offence against this Act or of an offence against the
14 *Crimes Act 1914* or the *Criminal Code* that relates to
15 this Act; and
16 (ii) it is necessary to secure the thing in order to prevent it
17 from being concealed, lost or destroyed before a warrant
18 to seize the thing is obtained; and
19 (iii) the circumstances are serious and urgent.
- 20 (6) If an inspector believes on reasonable grounds that the thing needs
21 to be secured for more than 24 hours, he or she may apply to a
22 magistrate for an extension of that period.
- 23 (7) The inspector must give notice to the occupier of the premises, or
24 another person who apparently represents the occupier, of his or
25 her intention to apply for an extension. The occupier or other
26 person is entitled to be heard in relation to that application.
- 27 (8) The provisions of this Part relating to the issue of monitoring
28 warrants apply, with such modifications as are necessary, to the
29 issue of an extension.
- 30 (9) The 24 hour period:
31 (a) may be extended more than once; and
32 (b) must not be extended more than 3 times.

Section 200

1 **200 Persons assisting inspectors**

2 *Inspectors may be assisted by other persons*

- 3 (1) An inspector may, in entering premises under section 198 and in
4 exercising monitoring powers in relation to the premises, be
5 assisted by other persons if that assistance is necessary and
6 reasonable. A person giving such assistance is a **person assisting**
7 the inspector.

8 *Powers of a person assisting the inspector*

- 9 (2) A person assisting the inspector may:
10 (a) enter the premises; and
11 (b) exercise monitoring powers in relation to the premises, but
12 only in accordance with a direction given to the person by the
13 inspector.
- 14 (3) A power exercised by a person assisting the inspector as mentioned
15 in subsection (2) is taken for all purposes to have been exercised by
16 the inspector.
- 17 (4) If a direction is given under paragraph (2)(b) in writing, the
18 direction is not a legislative instrument.

19 **Subdivision B—Powers of inspectors to ask questions and seek**
20 **production of documents**

21 **201 Inspector may ask questions and seek production of documents**

22 *Entry with consent*

- 23 (1) If an inspector is authorised to enter premises because the occupier
24 of the premises consented to the entry, the inspector may ask the
25 occupier to:
26 (a) answer any questions relating to the operation of this Act or
27 the associated provisions that are put by the inspector; and
28 (b) produce any document relating to the operation of this Act or
29 the associated provisions that is requested by the inspector.

Section 202

1 *Entry under a monitoring warrant*

- 2 (2) If an inspector is authorised to enter premises by a monitoring
3 warrant, the inspector may require any person on the premises to:
4 (a) answer any questions relating to the operation of this Act or
5 the associated provisions that are put by the inspector; and
6 (b) produce any document relating to the operation of this Act or
7 the associated provisions that is requested by the inspector.

8 *Offence*

- 9 (3) A person commits an offence if:
10 (a) the person is subject to a requirement under subsection (2);
11 and
12 (b) the person fails to comply with the requirement.

13 Penalty: 30 penalty units.

14 **202 Self-incrimination**

- 15 (1) A person is not excused from giving an answer or producing a
16 document under section 201 on the ground that the answer or the
17 production of the document might tend to incriminate the person or
18 expose the person to a penalty.
- 19 (2) However, in the case of an individual:
20 (a) the answer given or the document produced; or
21 (b) giving the answer or producing the document; or
22 (c) any information, document or thing obtained as a direct or
23 indirect consequence of giving the answer or producing the
24 document;
25 is not admissible in evidence against the individual:
26 (d) in civil proceedings for the recovery of a penalty (other than
27 proceedings for the recovery of a penalty under section 179
28 or 180); or
29 (e) in criminal proceedings (other than proceedings for an
30 offence against section 137.1 or 137.2 of the *Criminal Code*
31 that relates to this Part).
32

1 **Division 4—Obligations and incidental powers of**
2 **inspectors**

3 **203 Consent**

- 4 (1) An inspector must, before obtaining the consent of an occupier of
5 premises for the purposes of paragraph 198(2)(a), inform the
6 occupier that the occupier may refuse consent.
- 7 (2) A consent has no effect unless the consent is voluntary.
- 8 (3) A consent may be expressed to be limited to entry during a
9 particular period. If so, the consent has effect for that period unless
10 the consent is withdrawn before the end of that period.
- 11 (4) A consent that is not limited as mentioned in subsection (3) has
12 effect until the consent is withdrawn.
- 13 (5) If an inspector entered premises because of the consent of the
14 occupier of the premises, the inspector, and any person assisting
15 the inspector, must leave the premises if the consent ceases to have
16 effect.

17 **204 Announcement before entry under warrant**

- 18 An inspector must, before entering premises under a monitoring
19 warrant:
- 20 (a) announce that he or she is authorised to enter the premises;
21 and
- 22 (b) show his or her identity card to the occupier of the premises,
23 or to another person who apparently represents the occupier,
24 if the occupier or other person is present at the premises; and
- 25 (c) give any person at the premises an opportunity to allow entry
26 to the premises.

27 **205 Inspector to be in possession of warrant**

- 28 If a monitoring warrant is being executed in relation to premises,
29 an inspector executing the warrant must be in possession of the
30 warrant or a copy of the warrant.

1 **206 Details of warrant etc. to be given to occupier**

2 If:

- 3 (a) a monitoring warrant is being executed in relation to
4 premises; and
5 (b) the occupier of the premises, or another person who
6 apparently represents the occupier, is present at the premises;
7 an inspector executing the warrant must, as soon as practicable:
8 (c) make a copy of the warrant available to the occupier or other
9 person (which need not include the signature of the
10 magistrate who issued it); and
11 (d) inform the occupier or other person of the rights and
12 responsibilities of the occupier or other person under
13 Division 5.

14 **207 Expert assistance to operate electronic equipment**

- 15 (1) This section applies to premises to which a monitoring warrant
16 relates.

17 *Securing equipment*

- 18 (2) If an inspector believes on reasonable grounds that:
19 (a) there is on the premises information that is relevant to:
20 (i) determining whether this Act or the associated
21 provisions have been, or are being, complied with; or
22 (ii) substantiating information provided under this Act or
23 the associated provisions;
24 and that may be accessible by operating electronic equipment
25 on the premises; and
26 (b) expert assistance is required to operate the equipment; and
27 (c) if he or she does not take action under this subsection, the
28 information may be destroyed, altered or otherwise interfered
29 with;
30 he or she may do whatever is necessary to secure the equipment,
31 whether by locking it up, placing a guard or other means.
- 32 (3) The inspector must give notice to the occupier of the premises, or
33 another person who apparently represents the occupier, of his or

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Division 4 Obligations and incidental powers of inspectors

Section 208

1 her intention to secure the equipment and of the fact that the
2 equipment may be secured for up to 24 hours.

3 *Period equipment may be secured*

- 4 (4) The equipment may be secured:
5 (a) until the 24 hour period ends; or
6 (b) until the equipment has been operated by the expert;
7 whichever happens first.

8 *Extensions*

- 9 (5) If an inspector believes on reasonable grounds that the equipment
10 needs to be secured for more than 24 hours, he or she may apply to
11 a magistrate for an extension of that period.
- 12 (6) The inspector must give notice to the occupier of the premises, or
13 another person who apparently represents the occupier, of his or
14 her intention to apply for an extension. The occupier or other
15 person is entitled to be heard in relation to that application.
- 16 (7) The provisions of this Part relating to the issue of monitoring
17 warrants apply, with such modifications as are necessary, to the
18 issue of an extension.
- 19 (8) The 24 hour period:
20 (a) may be extended more than once; and
21 (b) must not be extended more than 3 times.

22 **208 Compensation for damage to electronic equipment**

- 23 (1) This section applies if:
24 (a) as a result of electronic equipment being operated as
25 mentioned in this Part:
26 (i) damage is caused to the equipment; or
27 (ii) the data recorded on the equipment is damaged; or
28 (iii) programs associated with the use of the equipment, or
29 with the use of the data, are damaged or corrupted; and
30 (b) the damage or corruption occurs because:

- 1 (i) insufficient care was exercised in selecting the person
2 who was to operate the equipment; or
3 (ii) insufficient care was exercised by the person operating
4 the equipment.
- 5 (2) The Commonwealth must pay the owner of the equipment, or the
6 user of the data or programs, such reasonable compensation for the
7 damage or corruption as the Commonwealth and the owner or user
8 agree on.
- 9 (3) However, if the owner or user and the Commonwealth fail to
10 agree, the owner or user may institute proceedings in the Federal
11 Court for such reasonable amount of compensation as the Court
12 determines.
- 13 (4) In determining the amount of compensation payable, regard is to
14 be had to whether the occupier of the premises, or the occupier's
15 employees and agents, if they were available at the time, provided
16 any appropriate warning or guidance on the operation of the
17 equipment.
- 18 (5) In this section:
- 19 *damage*, in relation to data, includes damage by erasure of data or
20 addition of other data.
21

Section 209

1 **Division 5—Occupier's rights and responsibilities**

2 **209 Occupier entitled to observe execution of warrant**

- 3 (1) If:
- 4 (a) a monitoring warrant is being executed in relation to
- 5 premises; and
- 6 (b) the occupier of the premises, or another person who
- 7 apparently represents the occupier, is present at the premises;
- 8 the occupier or other person is entitled to observe the execution of
- 9 the warrant.
- 10 (2) The right to observe the execution of the warrant ceases if the
- 11 occupier or other person impedes that execution.
- 12 (3) This section does not prevent the execution of the warrant in 2 or
- 13 more areas of the premises at the same time.

14 **210 Occupier to provide inspector with facilities and assistance**

- 15 (1) The occupier of premises to which a monitoring warrant relates, or
- 16 another person who apparently represents the occupier, must
- 17 provide:
- 18 (a) an inspector executing the warrant; and
- 19 (b) any person assisting the inspector;
- 20 with all reasonable facilities and assistance for the effective
- 21 exercise of their powers.
- 22 (2) A person commits an offence if:
- 23 (a) the person is subject to subsection (1); and
- 24 (b) the person fails to comply with that subsection.

25 Penalty: 30 penalty units.

26

1 **Division 6—Monitoring warrants**

2 **211 Monitoring warrants**

3 *Application for warrant*

- 4 (1) An inspector may apply to a magistrate for a warrant under this
5 section in relation to premises.

6 *Issue of warrant*

- 7 (2) The magistrate may issue the warrant if the magistrate is satisfied,
8 by information on oath or affirmation, that it is reasonably
9 necessary that one or more inspectors should have access to the
10 premises for the purpose of:

- 11 (a) determining whether this Act or the associated provisions
12 have been, or are being, complied with; or
13 (b) substantiating information provided under this Act or the
14 associated provisions.

- 15 (3) However, the magistrate must not issue the warrant unless the
16 inspector or some other person has given to the magistrate, either
17 orally or by affidavit, such further information (if any) as the
18 magistrate requires concerning the grounds on which the issue of
19 the warrant is being sought.

20 *Content of warrant*

- 21 (4) The warrant must:
22 (a) describe the premises to which the warrant relates; and
23 (b) state that the warrant is issued under this section; and
24 (c) state that the warrant is issued for the purpose of:
25 (i) determining whether this Act or the associated
26 provisions have been, or are being, complied with; or
27 (ii) substantiating information provided under this Act or
28 the associated provisions; and
29 (d) authorise one or more inspectors (whether or not named in
30 the warrant) from time to time while the warrant remains in
31 force:

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- 1 (i) to enter the premises; and
2 (ii) to exercise the powers set out in Divisions 3 and 4 in
3 relation to the premises; and
4 (e) state whether the entry is authorised to be made at any time
5 of the day or during specified hours of the day; and
6 (f) specify the day (not more than 6 months after the issue of the
7 warrant) on which the warrant ceases to be in force.
8

1 **Division 7—Powers of magistrates**

2 **212 Powers of magistrates**

3 *Powers conferred personally*

4 (1) A power conferred on a magistrate by this Part is conferred on the
5 magistrate:

- 6 (a) in a personal capacity; and
7 (b) not as a court or a member of a court.

8 *Powers need not be accepted*

9 (2) The magistrate need not accept the power conferred.

10 *Protection and immunity*

11 (3) A magistrate exercising a power conferred by this Part has the
12 same protection and immunity as if he or she were exercising the
13 power:

- 14 (a) as the court of which the magistrate is a member; or
15 (b) as a member of the court of which the magistrate is a
16 member.
17

1 **Part 19—Audits**

2 **Division 1—Introduction**

3 **213 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
- 7
- 8
- | |
|---|
| <ul style="list-style-type: none">• The Administrator may require audits of one or more aspects of a person's compliance with this Act and the regulations to be carried out. |
|---|

1 **Division 2—Audits**

2 **214 Compliance audits**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a person is, or has been, the project proponent for an eligible
 - 6 offsets project; and
 - 7 (b) the Administrator has reasonable grounds to suspect that the
 - 8 person has contravened, is contravening, or is proposing to
 - 9 contravene, this Act or the associated provisions.

10 *Audit*

- 11 (2) The Administrator may, by written notice given to the person,
- 12 require the person to:
- 13 (a) appoint as an audit team leader:
 - 14 (i) a registered greenhouse and energy auditor of the
 - 15 person's choice; or
 - 16 (ii) if the Administrator specifies a registered greenhouse
 - 17 and energy auditor in the notice—that auditor; or
 - 18 (iii) if the Administrator specifies more than one registered
 - 19 greenhouse and energy auditor in the notice—any one
 - 20 of those auditors; and
 - 21 (b) arrange for the audit team leader to carry out an audit on one
 - 22 or more aspects of the person's compliance with this Act or
 - 23 the associated provisions; and
 - 24 (c) arrange for the audit team leader to give the person a written
 - 25 report setting out the results of the audit; and
 - 26 (d) give the Administrator a copy of the audit report on or before
 - 27 the day specified in the notice.

28 Note: For the conduct of an audit under this section, see section 75AA of the
29 *National Greenhouse and Energy Reporting Act 2007*.

- 30 (3) The notice must specify:
- 31 (a) the type of audit to be carried out; and
 - 32 (b) the matters to be covered by the audit; and

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1 (c) the form of the audit report and the kinds of details it is to
2 contain.

3 (4) A person must provide the audit team leader, and any persons
4 assisting the audit team leader, with all reasonable facilities and
5 assistance necessary for the effective exercise of the audit team
6 leader's duties under this Act.

7 (5) If the Administrator gives a person written notice under
8 subsection (2), the person must comply with the requirements of
9 the notice.

10 *Ancillary contraventions*

11 (6) A person must not:

12 (a) aid, abet, counsel or procure a contravention of subsection (4)
13 or (5); or

14 (b) induce, whether by threats or promises or otherwise, a
15 contravention of subsection (4) or (5); or

16 (c) be in any way, directly or indirectly, knowingly concerned in,
17 or party to, a contravention of subsection (4) or (5); or

18 (d) conspire with others to effect a contravention of
19 subsection (4) or (5).

20 *Civil penalty provisions*

21 (7) Subsections (4), (5) and (6) are ***civil penalty provisions***.

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

24 *Reimbursement*

25 (8) If:

26 (a) the Administrator gives a person a notice under
27 subsection (2); and

28 (b) in complying with that notice, the person arranges for an
29 audit team leader to carry out an audit on one or more aspects
30 of the person's compliance with this Act or the associated
31 provisions; and

- 1 (c) the audit report does not indicate that there is evidence of
2 non-compliance by the person with this Act or the associated
3 provisions; and
4 (d) the person requests the Administrator to reimburse the person
5 for reasonable costs incurred by the person in complying with
6 the notice; and
7 (e) the Administrator is satisfied that the person would suffer
8 financial hardship if the person were not reimbursed for those
9 costs;
10 the Administrator may, on behalf of the Commonwealth, reimburse
11 the person for those costs.
- 12 (9) A request under paragraph (8)(d) must:
13 (a) be in writing; and
14 (b) be in a form approved, in writing, by the Administrator; and
15 (c) be accompanied by such information as is specified in the
16 regulations; and
17 (d) be accompanied by such documents (if any) as are specified
18 in the regulations.
- 19 (10) The approved form of request may provide for verification by
20 statutory declaration of statements in requests.

21 **215 Other audits**

22 *Audit*

- 23 (1) If a person is, or has been, the project proponent for an eligible
24 offsets project, the Administrator may appoint a registered
25 greenhouse and energy auditor as an audit team leader to carry out
26 an audit of the person's compliance with one or more aspects of
27 this Act or the associated provisions.
- 28 (2) The Administrator must give written notice to the person of a
29 decision to appoint an audit team leader under subsection (1). The
30 notice must:
31 (a) specify the audit team leader; and
32 (b) specify the period within which the audit is to be undertaken;
33 and

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- 1 (c) specify the type of audit to be carried out; and
2 (d) specify the matters to be covered by the audit; and
3 (e) be given to the person at a reasonable time before the audit is
4 to be undertaken.

5 Note: For the conduct of an audit under this section, see section 75AA of the
6 *National Greenhouse and Energy Reporting Act 2007*.

- 7 (3) The person must provide the audit team leader, and any persons
8 assisting the audit team leader, with all reasonable facilities and
9 assistance necessary for the effective exercise of the audit team
10 leader's duties under this Act.

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

23 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty
24 provisions.
25

1 **Part 20—Liability of executive officers of bodies** 2 **corporate** 3

4 **216 Simplified outline**

5 The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">6 • If a body corporate contravenes a civil penalty provision, and7 an executive officer of the body corporate was involved in the8 contravention, the officer will contravene a civil penalty9 provision. |
|---|

10 **217 Civil penalties for executive officers of bodies corporate**

11 (1) If:

- 12 (a) a body corporate contravenes a civil penalty provision; and
13 (b) an executive officer of the body corporate knew that, or was
14 reckless or negligent as to whether, the contravention would
15 occur; and
16 (c) the officer was in a position to influence the conduct of the
17 body corporate in relation to the contravention; and
18 (d) the officer failed to take all reasonable steps to prevent the
19 contravention;

20 the officer contravenes this subsection.

21 (2) For the purposes of subsection (1), the officer is *reckless* as to
22 whether the contravention would occur if:

- 23 (a) the officer is aware of a substantial risk that the contravention
24 would occur; and
25 (b) having regard to the circumstances known to the officer, it is
26 unjustifiable to take the risk.

27 (3) For the purposes of subsection (1), the officer is *negligent* as to
28 whether the contravention would occur if the officer's conduct
29 involves:

- 30 (a) such a great falling short of the standard of care that a
31 reasonable person would exercise in the circumstances; and

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- 1 (b) such a high risk that the contravention would occur;
2 that the conduct merits the imposition of a pecuniary penalty.

3 *Civil penalty provision*

- 4 (4) Subsection (1) is a *civil penalty provision*.

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

7 **218 Reasonable steps to prevent contravention**

8 (1) For the purposes of section 217, in determining whether an
9 executive officer of a body corporate failed to take all reasonable
10 steps to prevent a contravention, a court may have regard to all
11 relevant matters, including:

- 12 (a) what action (if any) the officer took directed towards
13 ensuring the following (to the extent that the action is
14 relevant to the contravention):
- 15 (i) that the body corporate arranges regular professional
16 assessments of the body corporate's compliance with
17 civil penalty provisions;
 - 18 (ii) that the body corporate implements any appropriate
19 recommendations arising from such an assessment;
 - 20 (iii) that the body corporate's employees, agents and
21 contractors have a reasonable knowledge and
22 understanding of the requirements to comply with civil
23 penalty provisions in so far as those requirements affect
24 the employees, agents or contractors concerned; and
- 25 (b) what action (if any) the officer took when he or she became
26 aware of the contravention.

27 (2) This section does not limit section 217.
28

Part 21—Civil penalty orders

219 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

220 References to Court

In this Part:

Court means:

- the Federal Court; or
- a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

221 Civil penalty orders

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a **civil penalty order**.

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the Court may have regard to all relevant matters, including:
 - the nature and extent of the contravention; and
 - the nature and extent of any loss or damage suffered as a result of the contravention; and
 - the circumstances in which the contravention took place; and
 - whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and

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- 1 (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 (4) The pecuniary penalty payable under subsection (1) by a body
11 corporate must not exceed 10,000 penalty units for each
12 contravention.
- 13 (5) The pecuniary penalty payable under subsection (1) by a person
14 other than a body corporate must not exceed 2,000 penalty units for
15 each contravention.

16 *Civil enforcement of penalty*

- 17 (6) A pecuniary penalty is a civil debt payable to the Commonwealth.
18 The Commonwealth may enforce the civil penalty order as if it
19 were an order made in civil proceedings against the person to
20 recover a debt due by the person. The debt arising from the order is
21 taken to be a judgement debt.

22 **222 Who may apply for a civil penalty order**

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

26 **223 Two or more proceedings may be heard together**

- 27 The Court may direct that 2 or more proceedings for civil penalty
28 orders are to be heard together.

Section 224

1 224 Time limit for application for an order

2 Proceedings for a civil penalty order may be started no later than 6
3 years after the contravention.

4 225 Civil evidence and procedure rules for civil penalty orders

5 The Court must apply the rules of evidence and procedure for civil
6 matters when hearing proceedings for a civil penalty order.

7 226 Civil proceedings after criminal proceedings

8 The Court must not make a civil penalty order against a person for
9 a contravention of a civil penalty provision if the person has been
10 convicted of an offence constituted by conduct that is substantially
11 the same as the conduct constituting the contravention.

12 227 Criminal proceedings during civil proceedings

- 13 (1) Proceedings for a civil penalty order against a person for a
14 contravention of a civil penalty provision are stayed if:
15 (a) criminal proceedings are started or have already been started
16 against the person for an offence; and
17 (b) the offence is constituted by conduct that is substantially the
18 same as the conduct alleged to constitute the contravention.
- 19 (2) The proceedings for the order may be resumed if the person is not
20 convicted of the offence. Otherwise, the proceedings for the order
21 are dismissed.

22 228 Criminal proceedings after civil proceedings

23 Criminal proceedings may be started against a person for conduct
24 that is substantially the same as conduct constituting a
25 contravention of a civil penalty provision regardless of whether a
26 civil penalty order has been made against the person.

Section 229

1 **229 Evidence given in proceedings for a civil penalty order not**
2 **admissible in criminal proceedings**

3 Evidence of information given, or evidence of production of
4 documents, by an individual is not admissible in criminal
5 proceedings against the individual if:

- 6 (a) the individual previously gave the evidence or produced the
7 documents in proceedings for a civil penalty order against the
8 individual for a contravention of a civil penalty provision
9 (whether or not the order was made); and
10 (b) the conduct alleged to constitute the offence is substantially
11 the same as the conduct that was claimed to constitute the
12 contravention.

13 However, this does not apply to a criminal proceeding in respect of
14 the falsity of the evidence given by the individual in the
15 proceedings for the civil penalty order.

16 **230 Mistake of fact**

17 (1) A person is not liable to have a civil penalty order made against the
18 person for a contravention of a civil penalty provision if:

- 19 (a) at or before the time of the conduct constituting the
20 contravention, the person:
21 (i) considered whether or not facts existed; and
22 (ii) was under a mistaken but reasonable belief about those
23 facts; and
24 (b) had those facts existed, the conduct would not have
25 constituted a contravention of the civil penalty provision.

26 (2) For the purposes of subsection (1), a person may be regarded as
27 having considered whether or not facts existed if:

- 28 (a) the person had considered, on a previous occasion, whether
29 those facts existed in the circumstances surrounding that
30 occasion; and
31 (b) the person honestly and reasonably believed that the
32 circumstances surrounding the present occasion were the
33 same, or substantially the same, as those surrounding the
34 previous occasion.

- 1 (3) A person who wishes to rely on subsection (1) or (2) in
2 proceedings for a civil penalty order bears an evidential burden in
3 relation to that matter.

4 **231 State of mind**

5 *Scope*

- 6 (1) This section applies to proceedings for a civil penalty order against
7 a person for a contravention of any of the following civil penalty
8 provisions:
- 9 (a) subsection 76(1);
 - 10 (b) subsection 78(2);
 - 11 (c) subsection 79(2);
 - 12 (d) subsection 80(2);
 - 13 (e) subsection 81(2);
 - 14 (f) subsection 82(2);
 - 15 (g) subsection 82(3);
 - 16 (h) subsection 83(2);
 - 17 (i) subsection 84(2);
 - 18 (j) subsection 85(5);
 - 19 (k) subsection 97(9);
 - 20 (l) subsection 97(10);
 - 21 (m) subsection 185(4);
 - 22 (n) subsection 191(2);
 - 23 (o) subsection 192(3);
 - 24 (p) subsection 193(2);
 - 25 (q) subsection 194(2);
 - 26 (r) subsection 214(4);
 - 27 (s) subsection 214(5);
 - 28 (t) subsection 215(3).

29 *State of mind*

- 30 (2) In the proceedings, it is not necessary to prove:
- 31 (a) the person's intention; or
 - 32 (b) the person's knowledge; or

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- 1 (c) the person's recklessness; or
2 (d) the person's negligence; or
3 (e) any other state of mind of the person.

4 (3) Subsection (2) does not affect the operation of section 230.

5 **232 Continuing contraventions**

6 (1) If an act or thing is required, under a civil penalty provision of this
7 Act, to be done within a particular period, or before a particular
8 time, then the obligation to do that act or thing continues (even if
9 the period has expired or the time has passed) until the act or thing
10 is done.

11 (2) A person who contravenes any of the following civil remedy
12 provisions:

- 13 (a) subsection 76(1);
14 (b) subsection 78(2);
15 (c) subsection 79(2);
16 (d) subsection 80(2);
17 (e) subsection 81(2);
18 (f) subsection 82(2);
19 (g) subsection 82(3);
20 (h) subsection 83(2);
21 (i) subsection 84(2);
22 (j) subsection 85(5);
23 (k) subsection 185(4);
24 (l) subsection 193(2);
25 (m) subsection 194(2);
26 (n) subsection 214(4);
27 (o) subsection 214(5);

28 commits a separate contravention of that provision in respect of
29 each day (including a day of the making of a relevant civil penalty
30 order or any subsequent day) during which the contravention
31 continues.

Section 232

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- (3) The pecuniary penalty payable under subsection 221(1) for such a separate contravention in respect of a particular day must not exceed:
- (a) in the case of a contravention of subsection 185(4)—10% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted; or
 - (b) otherwise—5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

Section 233

1 **Part 22—Offences relating to administrative**
2 **penalties**
3

4 **233 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- A person must not enter into a scheme:
 - 7 (a) with the intention, knowledge or belief that the
8 scheme will secure or achieve the result that a
9 body corporate or trust will be unable to pay an
10 administrative penalty payable under this Act; or
 - 11 (b) if it would be reasonable to conclude that the
12 person entered into the scheme for the sole or
13 dominant purpose of securing or achieving the
14 result that a body corporate or trust will be unable
15 to pay an administrative penalty payable under this
16 Act.

17 **234 Scheme to avoid existing liability to pay administrative penalty**

18 *Intention*

- 19 (1) A person commits an offence if:
20 (a) a penalty is due and payable by a body corporate or trust
21 under section 179; and
22 (b) at or after the time when the penalty became due and
23 payable, the person entered into a scheme; and
24 (c) the person entered into the scheme with the intention of
25 securing or achieving the result, either generally or for a
26 limited period, that the body corporate or trust:
27 (i) will be unable; or
28 (ii) will be likely to be unable; or
29 (iii) will continue to be unable; or
30 (iv) will be likely to continue to be unable;

1 having regard to the other debts of the body corporate or
2 trust, to pay the penalty.

3 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

4 (2) For the purposes of subsection (1), it is immaterial whether the
5 body corporate or the trustee of the trust is:

- 6 (a) the person mentioned in subsection (1); or
7 (b) a party to the scheme.

8 *Knowledge or belief*

9 (3) A person commits an offence if:

- 10 (a) a penalty is due and payable by a body corporate or trust
11 under section 179; and
12 (b) at or after the time when the penalty became due and
13 payable, the person entered into a scheme; and
14 (c) the person entered into the scheme with the knowledge or
15 belief that the scheme will, or will be likely to, secure or
16 achieve the result, either generally or for a limited period,
17 that the body corporate or trust:
18 (i) will be unable; or
19 (ii) will be likely to be unable; or
20 (iii) will continue to be unable; or
21 (iv) will be likely to continue to be unable;
22 having regard to the other debts of the body corporate or
23 trust, to pay the penalty.

24 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

25 (4) For the purposes of subsection (3), it is immaterial whether the
26 body corporate or the trustee of the trust is:

- 27 (a) the person mentioned in subsection (3); or
28 (b) a party to the scheme.

29 *Objective purpose*

30 (5) A person (the ***first person***) commits an offence if:

- 31 (a) a penalty is due and payable by a body corporate or trust
32 under section 179; and
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- 1 (b) at or after the time when the penalty became due and
2 payable, the first person entered into a scheme; and
3 (c) having regard to:
4 (i) the manner in which the scheme was entered into; and
5 (ii) the form and substance of the scheme, including any
6 legal rights and obligations involved in the scheme and
7 the economic and commercial substance of the scheme;
8 and
9 (iii) the timing of the scheme;
10 it would be reasonable to conclude that the first person
11 entered into the scheme for the sole or dominant purpose of
12 securing or achieving the result, either generally or for a
13 limited period, that the body corporate or trust:
14 (iv) will be unable; or
15 (v) will be likely to be unable; or
16 (vi) will continue to be unable; or
17 (vii) will be likely to continue to be unable;
18 to pay the penalty.

19 Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- 20 (6) For the purposes of subsection (5), it is immaterial whether the
21 body corporate or the trustee of the trust is:
22 (a) the first person; or
23 (b) a party to the scheme.

24 **235 Scheme to avoid future liability to pay administrative penalty**

25 *Intention*

- 26 (1) A person commits an offence if:
27 (a) a penalty is due and payable by a body corporate or trust
28 under section 179; and
29 (b) before the penalty became due and payable, the person
30 entered into a scheme; and
31 (c) the person entered into the scheme with the intention of
32 securing or achieving the result, either generally or for a
33 limited period, that, in the event that the body corporate or

1 trust were to become liable to pay the penalty, the body
 2 corporate or trust:
 3 (i) will be unable; or
 4 (ii) will be likely to be unable; or
 5 (iii) will continue to be unable; or
 6 (iv) will be likely to continue to be unable;
 7 having regard to the other debts of the body corporate or
 8 trust, to pay the penalty.

9 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- 10 (2) For the purposes of subsection (1), it is immaterial whether the
 11 body corporate or the trustee of the trust is:
 12 (a) the person mentioned in subsection (1); or
 13 (b) a party to the scheme.

14 *Knowledge or belief*

- 15 (3) A person commits an offence if:
 16 (a) a penalty is due and payable by a body corporate or trust
 17 under section 179; and
 18 (b) before the penalty became due and payable, the person
 19 entered into a scheme; and
 20 (c) the person entered into the scheme with the knowledge or
 21 belief that the scheme will, or will be likely to, secure or
 22 achieve the result, either generally or for a limited period,
 23 that, in the event that the body corporate or trust were to
 24 become liable to pay the penalty, the body corporate or trust:
 25 (i) will be unable; or
 26 (ii) will be likely to be unable; or
 27 (iii) will continue to be unable; or
 28 (iv) will be likely to continue to be unable;
 29 having regard to the other debts of the body corporate or
 30 trust, to pay the penalty.

31 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- 32 (4) For the purposes of subsection (3), it is immaterial whether the
 33 body corporate or the trustee of the trust is:

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- 1 (a) the person mentioned in subsection (3); or
2 (b) a party to the scheme.

3 *Objective purpose*

- 4 (5) A person (the *first person*) commits an offence if:
5 (a) a penalty is due and payable by a body corporate or trust
6 under section 179; and
7 (b) before the penalty became due and payable, the first person
8 entered into a scheme; and
9 (c) having regard to:
10 (i) the manner in which the scheme was entered into; and
11 (ii) the form and substance of the scheme, including any
12 legal rights and obligations involved in the scheme and
13 the economic and commercial substance of the scheme;
14 and
15 (iii) the timing of the scheme;
16 it would be reasonable to conclude that the first person
17 entered into the scheme for the sole or dominant purpose of
18 securing or achieving the result, either generally or for a
19 limited period, that, in the event that the body corporate or
20 trust were to become liable to pay the penalty, the body
21 corporate or trust:
22 (iv) will be unable; or
23 (v) will be likely to be unable; or
24 (vi) will continue to be unable; or
25 (vii) will be likely to continue to be unable;
26 to pay the penalty.

27 Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- 28 (6) For the purposes of subsection (5), it is immaterial whether the
29 body corporate or the trustee of the trust is:
30 (a) the first person; or
31 (b) a party to the scheme.
32

1 **Part 23—Enforceable undertakings**

3 **236 Simplified outline**

4 The following is a simplified outline of this Part:

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| <p>5 • A person may give the Administrator an enforceable
6 undertaking about compliance with this Act or the associated
7 provisions.</p> |
|--|

8 **237 Acceptance of undertakings**

- 9 (1) The Administrator may accept any of the following undertakings:
- 10 (a) a written undertaking given by a person that the person will,
11 in order to comply with this Act or the associated provisions,
12 take specified action;
- 13 (b) a written undertaking given by a person that the person will,
14 in order to comply with this Act or the associated provisions,
15 refrain from taking specified action;
- 16 (c) a written undertaking given by a person that the person will
17 take specified action directed towards ensuring that the
18 person does not contravene this Act or the associated
19 provisions, or is unlikely to contravene this Act or the
20 associated provisions, in the future.
- 21 (2) The undertaking must be expressed to be an undertaking under this
22 section.
- 23 (3) The person may withdraw or vary the undertaking at any time, but
24 only with the consent of the Administrator.
- 25 (4) The Administrator may, by written notice given to the person,
26 cancel the undertaking.
- 27 (5) The Administrator must publish the undertaking on the
28 Administrator's website.

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1 **238 Enforcement of undertakings**

2 (1) If:

- 3 (a) a person has given an undertaking under section 237; and
4 (b) the undertaking has not been withdrawn or cancelled; and
5 (c) the Administrator considers that the person has breached the
6 undertaking;

7 the Administrator may apply to the Federal Court for an order
8 under subsection (2) of this section.

9 (2) If the Federal Court is satisfied that the person has breached the
10 undertaking, the court may make any or all of the following orders:

- 11 (a) an order directing the person to comply with the undertaking;
12 (b) an order directing the person to pay to the Administrator, on
13 behalf of the Commonwealth, an amount up to the amount of
14 any financial benefit that the person has obtained directly or
15 indirectly and that is reasonably attributable to the breach;
16 (c) any order that the court considers appropriate directing the
17 person to compensate any other person who has suffered loss
18 or damage as a result of the breach;
19 (d) any other order that the court considers appropriate.
20

1 **Part 24—Review of decisions**

2 **Division 1—Introduction**

3 **239 Simplified outline**

4 The following is a simplified outline of this Part:

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- Certain decisions of delegates of the Administrator may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the Administrator.
 - Certain decisions of the Administrator may be reviewed by the Administrative Appeals Tribunal.
 - Certain decisions of the Domestic Offsets Integrity Committee may be reviewed by the Administrative Appeals Tribunal.

Section 240

1 **Division 2—Decisions of the Administrator**

2 **240 Reviewable decisions**

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

5

Reviewable decisions	
Item	Decision
1	A decision to refuse to issue a certificate of entitlement under section 15.
2	A decision under subsection 15(3) to state that a specified number is the unit entitlement in respect of a certificate of entitlement.
3	A decision to refuse to declare that an offsets project is an eligible offsets project under section 27.
4	A decision, under regulations made for the purposes of subsection 29(1), to vary an eligible offsets project declaration.
5	A decision, under regulations made for the purposes of any of the following provisions, to refuse to vary an eligible offsets project declaration: (a) subsection 29(1); (b) subsection 30(1); (c) subsection 31(2).
6	A decision, under regulations made for the purposes of any of the following provisions, to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1); (c) subsection 34(1); (d) subsection 35(1); (e) subsection 36(1); (f) subsection 37(1); (g) subsection 38(1); (h) subsection 139(1).
7	A decision, under regulations made for the purposes of either of the following provisions, to refuse to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1).

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Reviewable decisions

Item	Decision
8	A decision to make a determination under section 57 or 58.
9	A decision to refuse to recognise a person as a recognised offsets entity under section 64.
10	A decision under section 65 to cancel a person's recognition as a recognised offsets entity.
11	A decision under section 74 to determine a subsequent crediting period for an eligible offsets project.
12	A decision under section 74 to refuse to determine a subsequent crediting period for an eligible offsets project.
13	A decision under section 88, 89, 90 or 91 to require a person to relinquish a specified number of Australian carbon credit units.
14	A decision to refuse to make a determination under section 95.
15	A decision to make a declaration under subsection 97(2).
16	A decision under section 98 to vary a carbon maintenance obligation declaration.
17	A decision under section 98 to refuse to vary a carbon maintenance obligation declaration.
18	A decision under section 99 to refuse to revoke a carbon maintenance obligation declaration.
19	A decision under section 130 to refuse to approve the application of a methodology determination to an eligible offsets project.
20	A decision to refuse to extend a period under subsection 153(5).
21	A decision under section 169 to refuse a request not to set out the project area or project areas for an eligible offsets project in the Register of Offsets Projects.
22	A decision to refuse to remit the whole or a part of an amount under subsection 180(2).

1 **241 Applications for reconsideration of decisions made by delegates**
2 **of the Administrator**

3 *Scope*

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

Section 242

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

19 **242 Reconsideration by the Administrator**

- 20 (1) Upon receiving such an application, the Administrator must:
- 21 (a) reconsider the decision; and
22 (b) affirm, vary or revoke the decision.
- 23 (2) The Administrator's decision on reconsideration of a decision has
24 effect as if it had been made under the provision under which the
25 original decision was made.
- 26 (3) The Administrator must give to the applicant a written notice
27 stating the Administrator's decision on the reconsideration.
- 28 (4) Within 28 days after making the decision on the reconsideration,
29 the Administrator must give the applicant a written statement of the
30 Administrator's reasons for the decision.

1 **243 Deadline for reconsideration**

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

9 **244 Review by the Administrative Appeals Tribunal**

- 10 (1) Applications may be made to the Administrative Appeals Tribunal
11 to review a reviewable decision if the Administrator has affirmed
12 or varied the decision under section 242.
- 13 (2) Applications may be made to the Administrative Appeals Tribunal
14 to review a reviewable decision if the decision was not made by a
15 delegate of the Administrator.

16 **245 Stay of proceedings for the recovery of an administrative
17 penalty**

18 *Scope*

- 19 (1) This section applies if:
- 20 (a) a notice was given under section 88, 89, 90 or 91 in relation
21 to a project that is or was an eligible offsets project; and
22 (b) the notice required a person to relinquish a particular number
23 of Australian carbon credit units; and
24 (c) the person did not comply with the requirement within 90
25 days after the notice was given; and
26 (d) proceedings for the recovery of the penalty payable under
27 section 179 in respect of the non-compliance with the
28 requirement (including any late payment penalty payable
29 under section 180 in relation to the section 179 penalty) are
30 before a court; and
31 (e) any of the following subparagraphs applies:

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- 1 (i) the decision to require the person to relinquish a
2 specified number of Australian carbon credit units is
3 being reconsidered by the Administrator under
4 section 242;
- 5 (ii) the decision to require the person to relinquish a
6 specified number of Australian carbon credit units has
7 been affirmed or varied by the Administrator under
8 section 242, and the decision as so affirmed or varied is
9 the subject of an application for review by the
10 Administrative Appeals Tribunal;
- 11 (iii) the decision to require the person to relinquish a
12 specified number of Australian carbon credit units is the
13 subject of an application for review by the
14 Administrative Appeals Tribunal.

15 *Stay of proceedings*

- 16 (2) The court may stay the proceedings until:
- 17 (a) if subparagraph (1)(e)(i) applies—the Administrator notifies
18 the applicant for reconsideration of the Administrator’s
19 decision on the reconsideration; or
- 20 (b) if subparagraph (1)(e)(ii) or (iii) applies—the review by the
21 Administrative Appeals Tribunal (including any court
22 proceedings arising out of the review) has been finalised.
- 23 (3) This section does not limit the power of:
- 24 (a) a court; or
25 (b) a Judge; or
26 (c) a magistrate;
- 27 under any other law to order a stay of proceedings.
28

1 **Division 3—Decisions of the Domestic Offsets Integrity**
2 **Committee**

3 **245A Review by the Administrative Appeals Tribunal**

4 Applications may be made to the Administrative Appeals Tribunal
5 for review of any of the following decisions of the Domestic
6 Offsets Integrity Committee:

- 7 (a) a decision under section 112 to refuse to endorse a proposal
8 for a methodology determination;
9 (b) a decision under section 120 to refuse to endorse a proposal
10 for the variation of a methodology determination.
11

1 **Part 25—Carbon Credits Administrator**
2

3 **246 Carbon Credits Administrator**

4 (1) There is to be a Carbon Credits Administrator.

5 Note: In this Act, *Administrator* means the Carbon Credits Administrator—
6 see section 5.

7 (2) The Administrator is to be a person who is:

- 8 (a) an SES employee in the Department; and
9 (b) specified in a written instrument made by the Secretary.

10 (3) An instrument under paragraph (2)(b) is not a legislative
11 instrument.

12 **247 Functions of the Administrator**

13 The Administrator has the following functions:

- 14 (a) such functions as are conferred on the Administrator by this
15 Act or the regulations;
16 (b) such functions as are conferred on the Administrator by the
17 *Australian National Registry of Emissions Units Act 2011* or
18 regulations under that Act;
19 (c) such functions as are conferred on the Administrator by any
20 other law of the Commonwealth;
21 (d) to do anything incidental to or conducive to the performance
22 of any of the above functions.

23 **248 Acting Administrator**

24 (1) The Secretary may, by written instrument, appoint a person to act
25 as the Administrator:

- 26 (a) during a vacancy in the office of the Administrator (whether
27 or not an appointment has previously been made to the
28 office); or
29 (b) during any period, or during all periods, when the
30 Administrator:
31 (i) is absent from duty or Australia; or
-

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- 1 (ii) is, for any reason, unable to perform the duties of the
2 office.
- 3 (2) A person is not eligible for appointment to act as the Administrator
4 unless the person is eligible for appointment as the Administrator.
- 5 (3) Anything done by or in relation to a person purporting to act under
6 an appointment is not invalid merely because:
- 7 (a) the occasion for the appointment had not arisen; or
8 (b) there was a defect or irregularity in connection with the
9 appointment; or
10 (c) the appointment had ceased to have effect; or
11 (d) the occasion to act had not arisen or had ceased.
- 12 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

249 Delegation by the Administrator

- 13
- 14 (1) The Administrator may, by writing, delegate any or all of the
15 Administrator's functions or powers to:
- 16 (a) an SES employee, or acting SES employee, in the
17 Department; or
18 (b) an APS employee who holds or performs the duties of an
19 Executive Level 2 position, or an equivalent position, in the
20 Department.
- 21 (2) A delegate must comply with any written directions of the
22 Administrator.
- 23 (3) Subsection (1) does not apply to a power to make, vary or revoke a
24 legislative instrument.

**250 Administrator to be assisted by APS employees in the
Department**

25
26
27 The Administrator is to be assisted by APS employees in the
28 Department who are made available for the purpose by the
29 Secretary.

Section 251

1 **251 Other persons assisting the Administrator**

2 The Administrator may also be assisted:
3 (a) by officers and employees of Agencies (within the meaning
4 of the *Public Service Act 1999*) other than the Department; or
5 (b) by officers and employees of authorities of the
6 Commonwealth; or
7 (c) by officers and employees of a State or Territory; or
8 (d) by officers and employees of authorities of a State or
9 Territory;
10 whose services are made available to the Administrator in
11 connection with the performance of any of his or her functions.

12 **252 Consultants**

- 13 (1) The Administrator may, on behalf of the Commonwealth, engage
14 persons having suitable qualifications and experience as
15 consultants to the Administrator.
16 (2) The consultants are to be engaged on the terms and conditions that
17 the Administrator determines in writing.

18 **253 Minister may give directions to the Administrator**

- 19 (1) The Minister may, by legislative instrument, give directions to the
20 Administrator in relation to the performance of his or her
21 functions.

22 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
23 *Interpretation Act 1901*.

24 Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative*
25 *Instruments Act 2003* do not apply to the direction (see sections 44
26 and 54 of that Act).

- 27 (2) A direction under subsection (1) must be of a general nature only.
28 (3) The Administrator must comply with a direction under
29 subsection (1).
30

1 **Part 26—Domestic Offsets Integrity Committee**

2 **Division 1—Establishment and functions of the Domestic**
3 **Offsets Integrity Committee**

4 **254 Establishment of the Domestic Offsets Integrity Committee**

5 The Domestic Offsets Integrity Committee is established.

6 **255 Functions of the Domestic Offsets Integrity Committee**

7 The Domestic Offsets Integrity Committee has the following
8 functions:

- 9 (a) the functions that are conferred on it by this Act and the
10 regulations;
- 11 (b) to advise the Minister about matters that:
12 (i) relate to offsets projects; and
13 (ii) are referred to the Committee by the Minister;
- 14 (c) to advise the Secretary about matters that:
15 (i) relate to offsets projects; and
16 (ii) are referred to the Committee by the Secretary;
- 17 (d) to do anything incidental to or conducive to the performance
18 of the above functions.
19

Section 256

1 **Division 2—Membership of the Domestic Offsets Integrity**
2 **Committee**

3 **256 Membership of the Domestic Offsets Integrity Committee**

4 The Domestic Offsets Integrity Committee consists of the
5 following members:

- 6 (a) a Chair;
7 (b) at least 4, and not more than 5, other members.

8 **257 Appointment of Domestic Offsets Integrity Committee members**

- 9 (1) Each Domestic Offsets Integrity Committee member is to be
10 appointed by the Minister by written instrument.

11 Note: A Domestic Offsets Integrity Committee member is eligible for
12 reappointment: see the *Acts Interpretation Act 1901*.

- 13 (2) A person is not eligible for appointment as a Domestic Offsets
14 Integrity Committee member unless the Minister is satisfied that
15 the person has:

- 16 (a) substantial experience or knowledge; and
17 (b) significant standing;

18 in at least one field of expertise that is relevant to the functions of
19 the Domestic Offsets Integrity Committee.

- 20 (3) The Minister must ensure that:

- 21 (a) the Chair of the Domestic Offsets Integrity Committee is not
22 a person covered by subsection (4); and
23 (b) a majority of the other Domestic Offsets Integrity Committee
24 members are not persons covered by subsection (4).

- 25 (4) This subsection applies to the following persons:

- 26 (a) an employee of the Commonwealth;
27 (b) an employee of an authority of the Commonwealth;
28 (c) a person who holds a full-time office under a law of the
29 Commonwealth.

- 30 (5) The Minister must ensure that one Domestic Offsets Integrity
31 Committee member:

- 1 (a) is an SES employee in the Department; or
2 (b) holds or performs the duties of an Executive Level 2 position,
3 or an equivalent position, in the Department.
- 4 (6) The Minister must ensure that one Domestic Offsets Integrity
5 Committee member is an officer of the Commonwealth Scientific
6 and Industrial Research Organisation nominated by the Chief
7 Executive of the Commonwealth Scientific and Industrial Research
8 Organisation.
- 9 (7) A Domestic Offsets Integrity Committee member holds office on a
10 part-time basis.

11 **258 Period for appointment for Domestic Offsets Integrity**
12 **Committee members**

13 A Domestic Offsets Integrity Committee member holds office for
14 the period specified in the instrument of appointment. The period
15 must not exceed 5 years.

16 Note: For re-appointment, see the *Acts Interpretation Act 1901*.

17 **259 Acting Domestic Offsets Integrity Committee members**

18 *Acting Chair of Domestic Offsets Integrity Committee*

- 19 (1) The Minister may appoint a Domestic Offsets Integrity Committee
20 member to act as the Chair of the Domestic Offsets Integrity
21 Committee:
- 22 (a) during a vacancy in the office of the Domestic Offsets
23 Integrity Committee Chair (whether or not an appointment
24 has previously been made to the office); or
- 25 (b) during any period, or during all periods, when the Chair of
26 the Domestic Offsets Integrity Committee:
- 27 (i) is absent from duty or from Australia; or
28 (ii) is, for any reason, unable to perform the duties of the
29 office.

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1 *Acting Domestic Offsets Integrity Committee member (other than*
2 *the Chair)*

3 (2) The Minister may appoint a person to act as a Domestic Offsets
4 Integrity Committee member (other than the Chair of the Domestic
5 Offsets Integrity Committee):

6 (a) during a vacancy in the office of a Domestic Offsets Integrity
7 Committee member (other than the Chair of the Domestic
8 Offsets Integrity Committee), whether or not an appointment
9 has previously been made to the office; or

10 (b) during any period, or during all periods, when a Domestic
11 Offsets Integrity Committee member (other than the Chair of
12 the Domestic Offsets Integrity Committee):

13 (i) is absent from duty or Australia; or

14 (ii) is, for any reason, unable to perform the duties of the
15 office.

16 *Eligibility*

17 (3) A person is not eligible for appointment to act as:

18 (a) the Chair of the Domestic Offsets Integrity Committee; or

19 (b) a Domestic Offsets Integrity Committee member (other than
20 the Chair of the Domestic Offsets Integrity Committee);

21 unless the person is eligible for appointment as a Domestic Offsets
22 Integrity Committee member.

23 Note: See subsection 257(2).

24 *Validation*

25 (4) Anything done by or in relation to a person purporting to act under
26 an appointment is not invalid merely because:

27 (a) the occasion for the appointment had not arisen; or

28 (b) there was a defect or irregularity in connection with the
29 appointment; or

30 (c) the appointment ceased to have effect; or

31 (d) the occasion to act had not arisen or had ceased.

32 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

1 **260 Procedures**

- 2 (1) The regulations may prescribe the procedures to be followed at or
3 in relation to meetings of the Domestic Offsets Integrity
4 Committee, including matters relating to the following:
- 5 (a) the convening of meetings of the Domestic Offsets Integrity
6 Committee;
 - 7 (b) the number of Domestic Offsets Integrity Committee
8 members who are to constitute a quorum;
 - 9 (c) the selection of a Domestic Offsets Integrity Committee
10 member to preside at meetings of the Domestic Offsets
11 Integrity Committee in the absence of the Chair of the
12 Domestic Offsets Integrity Committee;
 - 13 (d) the manner in which questions arising at a meeting of the
14 Domestic Offsets Integrity Committee are to be decided.
- 15 (2) A resolution is taken to have been passed at a meeting of the
16 Domestic Offsets Integrity Committee if:
- 17 (a) without meeting, a majority of Domestic Offsets Integrity
18 Committee members indicate agreement with the resolution
19 in accordance with the method determined by the Domestic
20 Offsets Integrity Committee under subsection (3); and
 - 21 (b) all Domestic Offsets Integrity Committee members were
22 informed of the proposed resolution, or reasonable efforts
23 had been made to inform all Domestic Offsets Integrity
24 Committee members of the proposed resolution.
- 25 (3) Subsection (2) applies only if the Domestic Offsets Integrity
26 Committee:
- 27 (a) determines that it applies; and
 - 28 (b) determines the method by which Domestic Offsets Integrity
29 Committee members are to indicate agreement with
30 resolutions.
- 31 (4) If a Domestic Offsets Integrity Committee member is an APS
32 employee in the Department, the member:
- 33 (a) is not entitled to vote for a resolution at a meeting of the
34 Domestic Offsets Integrity Committee; and

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- 1 (b) is not entitled to indicate agreement with a resolution as
2 mentioned in paragraph (2)(a); and
3 (c) is not to be counted for the purposes of determining whether
4 a majority of Domestic Offsets Integrity Committee
5 members:
6 (i) have voted for a resolution at a meeting of the Domestic
7 Offsets Integrity Committee; or
8 (ii) have indicated agreement with a resolution as
9 mentioned in paragraph (2)(a).

10 **261 Disclosure of interests to the Minister**

11 A Domestic Offsets Integrity Committee member must give
12 written notice to the Minister of all interests, pecuniary or
13 otherwise, that the member has or acquires and that conflict or
14 could conflict with the proper performance of the member's
15 functions.

16 **262 Disclosure of interests to Domestic Offsets Integrity Committee**

- 17 (1) A Domestic Offsets Integrity Committee member who has an
18 interest, pecuniary or otherwise, in a matter being considered or
19 about to be considered by the Domestic Offsets Integrity
20 Committee must disclose the nature of the interest to a meeting of
21 the Domestic Offsets Integrity Committee.
22 (2) The disclosure must be made as soon as possible after the relevant
23 facts have come to the Domestic Offsets Integrity Committee
24 member's knowledge.
25 (3) The disclosure must be recorded in the minutes of the meeting of
26 the Domestic Offsets Integrity Committee.
27 (4) Unless the Domestic Offsets Integrity Committee otherwise
28 determines, the Domestic Offsets Integrity Committee member:
29 (a) must not be present during any deliberation by the Domestic
30 Offsets Integrity Committee on the matter; and
31 (b) must not take part in any decision of the Domestic Offsets
32 Integrity Committee with respect to the matter.

- 1 (5) For the purposes of making a determination under subsection (4),
2 the Domestic Offsets Integrity Committee member:
3 (a) must not be present during any deliberation of the Domestic
4 Offsets Integrity Committee for the purpose of making the
5 determination; and
6 (b) must not take part in making the determination.
- 7 (6) A determination under subsection (4) must be recorded in the
8 minutes of the meeting of the Domestic Offsets Integrity
9 Committee.

10 **263 Outside employment**

11 A Domestic Offsets Integrity Committee member must not engage
12 in any paid employment that conflicts or may conflict with the
13 proper performance of his or her duties.

14 **264 Remuneration and allowances**

- 15 (1) A Domestic Offsets Integrity Committee member is to be paid the
16 remuneration that is determined by the Remuneration Tribunal. If
17 no determination of that remuneration by the Tribunal is in
18 operation, the member is to be paid the remuneration that is
19 prescribed.
- 20 (2) A Domestic Offsets Integrity Committee member is to be paid the
21 allowances that are prescribed.
- 22 (3) This section has effect subject to the *Remuneration Tribunal Act*
23 *1973*.

24 **265 Leave of absence**

- 25 (1) The Minister may grant leave of absence to the Chair of the
26 Domestic Offsets Integrity Committee on the terms and conditions
27 that the Minister determines.
- 28 (2) The Chair of the Domestic Offsets Integrity Committee may grant
29 leave of absence to a Domestic Offsets Integrity Committee
30 member on the terms and conditions that the Chair determines.

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1 **266 Resignation**

- 2 (1) A Domestic Offsets Integrity Committee member may resign his or
3 her appointment by giving the Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.

7 **267 Termination of appointment**

- 8 (1) The Minister may terminate the appointment of a Domestic Offsets
9 Integrity Committee member for misbehaviour or physical or
10 mental incapacity.
- 11 (2) The Minister may terminate the appointment of a Domestic Offsets
12 Integrity Committee member if:
- 13 (a) the member:
- 14 (i) becomes bankrupt; or
15 (ii) applies to take the benefit of any law for the relief of
16 bankrupt or insolvent debtors; or
17 (iii) compounds with his or her creditors; or
18 (iv) makes an assignment of remuneration for the benefit of
19 his or her creditors; or
- 20 (b) the member is absent, except on leave of absence, for 3
21 consecutive meetings of the Domestic Offsets Integrity
22 Committee; or
- 23 (c) the member engages in paid employment that conflicts or
24 may conflict with the proper performance of his or her duties
25 (see section 263); or
- 26 (d) the member fails, without reasonable excuse, to comply with
27 section 261 or 262.
- 28 (3) The Minister may terminate the appointment of the Chair of the
29 Domestic Offsets Integrity Committee if the Chair is:
- 30 (a) an employee of the Commonwealth; or
31 (b) an employee of an authority of the Commonwealth; or
32 (c) a person who holds a full-time office under a law of the
33 Commonwealth.

- 1 (4) The Minister may terminate the appointment of a Domestic Offsets
2 Integrity Committee member if the Minister is of the opinion that
3 the performance of the member has been unsatisfactory.

4 **268 Other terms and conditions**

5 A Domestic Offsets Integrity Committee member holds office on
6 the terms and conditions (if any) in relation to matters not covered
7 by this Act that are determined by the Minister.

8 **269 Assistance to Domestic Offsets Integrity Committee**

- 9 (1) Any or all of the following bodies:
10 (a) the Administrator;
11 (b) the Department;
12 (c) any other Department, agency or authority of the
13 Commonwealth;
14 may assist the Domestic Offsets Integrity Committee in the
15 performance of its functions.
- 16 (2) The assistance may include the following:
17 (a) the provision of information;
18 (b) the provision of advice;
19 (c) the making available of resources and facilities (including
20 secretariat services and clerical assistance).
- 21 (3) If an officer or employee of a body mentioned in subsection (1)
22 assists the Domestic Offsets Integrity Committee, the officer or
23 employee is taken, for the purposes of this Act, to be a person
24 assisting the Domestic Offsets Integrity Committee under this
25 section.
26

1 **Part 27—Secrecy**
2

3 **270 Secrecy**

- 4 (1) A person commits an offence if:
5 (a) the person is, or has been, an entrusted public official; and
6 (b) the person has obtained protected information in his or her
7 capacity as an entrusted public official; and
8 (c) the person:
9 (i) discloses the information to another person; or
10 (ii) uses the information.

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

12 *Exceptions*

- 13 (2) Each of the following is an exception to the prohibition in
14 subsection (1):
15 (a) the disclosure or use is authorised by a provision of this Part;
16 (b) the disclosure or use is in compliance with a requirement
17 under:
18 (i) a law of the Commonwealth; or
19 (ii) a prescribed law of a State or a Territory.

20 Note: A defendant bears an evidential burden in relation to a matter in
21 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- 22 (3) Except where it is necessary to do so for the purposes of giving
23 effect to this Act or a legislative instrument under this Act, an
24 entrusted public official is not to be required:
25 (a) to produce to a court or tribunal a document containing
26 protected information; or
27 (b) to disclose protected information to a court or tribunal.

28 **271 Disclosure or use for the purposes of this Act or a legislative**
29 **instrument under this Act**

30 An entrusted public official may disclose or use protected
31 information if:

- 1 (a) the disclosure or use is for the purposes of this Act or a
- 2 legislative instrument under this Act; or
- 3 (b) the disclosure or use is for the purposes of the *Australian*
- 4 *National Registry of Emissions Units Act 2011* or a
- 5 legislative instrument under that Act;
- 6 (c) the disclosure or use is for the purposes of the performance of
- 7 the functions of the Administrator or the Domestic Offsets
- 8 Integrity Committee under this Act or a legislative instrument
- 9 under this Act; or
- 10 (d) the disclosure or use is in the course of the entrusted public
- 11 official's employment or service as an entrusted public
- 12 official.

13 **272 Disclosure to the Minister**

14 An entrusted public official may disclose protected information to
 15 the Minister.

16 **273 Disclosure to the Secretary etc.**

17 An entrusted public official may disclose protected information to:

- 18 (a) the Secretary; or
- 19 (b) an officer of the Department who is authorised by the
- 20 Secretary, in writing, for the purposes of this section;
- 21 if the disclosure is for the purposes of:
- 22 (c) advising the Minister; or
- 23 (d) facilitating Australia's compliance with its international
- 24 obligations under:
 - 25 (i) the Climate Change Convention; or
 - 26 (ii) the Kyoto Protocol; or
 - 27 (ii) an international agreement (if any) that is the successor
 - 28 (whether immediate or otherwise) to the Kyoto
 - 29 Protocol; or
- 30 (e) facilitating the development of an international agreement (if
- 31 any) that is to be the successor (whether immediate or
- 32 otherwise) to the Kyoto Protocol.

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1 **274 Disclosure or use for purposes of development of methodology**
2 **determinations etc.**

- 3 (1) The Administrator may disclose or use protected information that
4 relates to a particular offsets project if:
- 5 (a) under section 27, the Administrator has declared the offsets
6 project to be an eligible offsets project; and
 - 7 (b) more than 7 years have passed since the application under
8 section 22 was made for the declaration; and
 - 9 (c) the information was:
 - 10 (i) contained in the application; or
 - 11 (ii) given in connection with the application; or
 - 12 (iii) contained in an offsets report about the project; and
 - 13 (d) the disclosure or use is for the purposes of facilitating the
14 development of either or both of the following:
 - 15 (i) one or more methodology determinations;
 - 16 (ii) one or more proposals for methodology determinations.
- 17 (2) The Administrator may disclose or use protected information if:
- 18 (a) the information was:
 - 19 (i) contained in an application under section 108 for
20 endorsement of a specified proposal for a methodology
21 determination; or
 - 22 (ii) contained in an application under section 116 for
23 endorsement of a specified proposal for the variation of
24 a methodology determination; or
 - 25 (iii) given in connection with an application covered by
26 subparagraph (i) or (ii); and
 - 27 (b) more than 7 years have passed since the application was
28 made; and
 - 29 (c) the disclosure or use is for the purposes of facilitating the
30 development of either or both of the following:
 - 31 (i) one or more methodology determinations;
 - 32 (ii) one or more proposals for methodology determinations.
- 33 (3) Subsections (1) and (2) do not apply to personal information
34 (within the meaning of the *Privacy Act 1988*).

275 Disclosure to a Royal Commission

- (1) An entrusted public official may disclose protected information to a Royal Commission.
- (2) The Administrator may, by writing, impose conditions to be complied with in relation to protected Administrator information disclosed under subsection (1) by:
 - (a) the Administrator; or
 - (b) a delegate of the Administrator; or
 - (c) a person assisting the Administrator under section 250; or
 - (d) a person whose services are made available to the Administrator under section 251; or
 - (e) a person engaged as a consultant under section 252; or
 - (f) an audit team leader; or
 - (g) a person assisting an audit team leader.
- (3) The Chair of the Domestic Offsets Integrity Committee may, by writing, impose conditions to be complied with in relation to protected DOIC information disclosed under subsection (1) by:
 - (a) the Chair; or
 - (b) a Domestic Offsets Integrity Committee member; or
 - (c) a person assisting the Domestic Offsets Integrity Committee under section 269.
- (4) An instrument under subsection (2) or (3) is not a legislative instrument.

276 Disclosure to certain persons and bodies

Scope

- (1) This section applies if the Administrator is satisfied that particular protected Administrator information will enable or assist any of the following persons or bodies:
 - (a) the Greenhouse and Energy Data Officer;
 - (b) Australian Carbon Trust Limited (ACN 141 478 748);
 - (c) a prescribed professional disciplinary body;

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- 1 (d) a person or body responsible for the administration of a
2 scheme that involves the issue of prescribed eligible carbon
3 units;
4 to perform or exercise any of the functions or powers of the person
5 or body.

6 *Disclosure*

- 7 (2) The Administrator may disclose that protected Administrator
8 information to the person or body concerned.
- 9 (3) If any of the following individuals:
10 (a) a delegate of the Administrator;
11 (b) an individual assisting the Administrator under section 250;
12 (c) an individual whose services are made available to the
13 Administrator under section 251;
14 (d) an individual engaged as a consultant under section 252;
15 (e) an individual who is an audit team leader;
16 (f) an individual assisting an audit team leader;
17 is authorised by the Administrator, in writing, for the purposes of
18 this section, the individual may disclose that protected
19 Administrator information to the person or body concerned.

20 *Secondary disclosure and use*

- 21 (4) A person commits an offence if:
22 (a) the person is:
23 (i) a prescribed professional disciplinary body; or
24 (ii) a member of a prescribed professional disciplinary
25 body; and
26 (b) protected Administrator information has been disclosed
27 under subsection (2) or (3) to the body; and
28 (c) the person:
29 (i) discloses the information to another person; or
30 (ii) uses the information.

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

- 32 (5) Subsection (4) does not apply if:

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- 1 (a) the disclosure or use is with the consent of the Administrator;
- 2 and
- 3 (a) the disclosure or use is for the purpose of:
 - 4 (i) deciding whether or not to take disciplinary or other
 - 5 action; or
 - 6 (ii) taking that action.

7 Note: A defendant bears an evidential burden in relation to a matter in
 8 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

9 *Conditions*

- 10 (6) The Administrator may, by writing, impose conditions to be
- 11 complied with in relation to protected Administrator information
- 12 disclosed under subsection (2) or (3).
- 13 (7) A person commits an offence if:
 - 14 (a) the person is subject to a condition under subsection (6); and
 - 15 (b) the person engages in conduct; and
 - 16 (c) the person's conduct breaches the condition.
- 17 Penalty: Imprisonment for 2 years or 120 penalty units, or both.
- 18 (8) An instrument under subsection (6) is not a legislative instrument.

19 **277 Disclosure to certain financial bodies**

20 *Scope*

- 21 (1) This section applies if the Administrator is satisfied that particular
- 22 protected Administrator information will enable or assist a body
- 23 corporate that:
 - 24 (a) either:
 - 25 (i) conducts, or is involved in the supervision of, a
 - 26 financial market; or
 - 27 (ii) is a body corporate that holds an Australian CS facility
 - 28 licence; and
 - 29 (b) is specified in the regulations;
 - 30 to monitor compliance with, enforce, or perform functions or
 - 31 exercise powers under:

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- 1 (c) the *Corporations Act 2001*; or
2 (d) the business law of a State or Territory; or
3 (e) the business law of a foreign country; or
4 (f) the operating rules (if any) of the body corporate.

5 *Disclosure*

- 6 (2) The Administrator may disclose that protected Administrator
7 information to the body corporate.
- 8 (3) If any of the following individuals:
9 (a) a delegate of the Administrator;
10 (b) an individual assisting the Administrator under section 250;
11 (c) an individual whose services are made available to the
12 Administrator under section 251;
13 (d) an individual engaged as a consultant under section 252;
14 (e) an individual who is an audit team leader;
15 (f) an individual assisting an audit team leader;
16 is authorised by the Administrator, in writing, for the purposes of
17 this section, the individual may disclose that protected
18 Administrator information to the body corporate.

19 *Secondary disclosure and use*

- 20 (4) A person commits an offence if:
21 (a) the person is:
22 (i) a body corporate; or
23 (ii) an officer, employee or agent of a body corporate; and
24 (b) protected Administrator information has been disclosed
25 under subsection (2) or (3) to the body corporate; and
26 (c) the person:
27 (i) discloses the information to another person; or
28 (ii) uses the information.

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

- 30 (5) Subsection (4) does not apply if:
31 (a) the disclosure or use is with the consent of the Administrator;
32 and

- 1 (b) the disclosure or use is for the purpose of monitoring
 2 compliance with, enforcing, or performing functions or
 3 exercising powers under:
 4 (i) the *Corporations Act 2001*; or
 5 (ii) the business law of a State or Territory; or
 6 (iii) the business law of a foreign country; or
 7 (iv) the operating rules (if any) of the body corporate.

8 Note: A defendant bears an evidential burden in relation to a matter in
 9 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

10 *Conditions*

- 11 (6) The Administrator may, by writing, impose conditions to be
 12 complied with by the body corporate and its officers, employees
 13 and agents in relation to protected Administrator information
 14 disclosed to the body corporate under subsection (2) or (3).
 15 (7) A person commits an offence if:
 16 (a) the person is subject to a condition under subsection (6); and
 17 (b) the person engages in conduct; and
 18 (c) the person's conduct breaches the condition.

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

- 20 (8) An instrument under subsection (6) is not a legislative instrument.

21 *Meaning of expressions*

- 22 (9) In this section, the following expressions have the same meanings
 23 as in the *Corporations Act 2001*:
 24 (a) *Australian CS facility licence*;
 25 (b) *financial market*;
 26 (c) *officer*;
 27 (d) *operating rules*.

28 **278 Disclosure with consent**

29 An entrusted public official may disclose protected information
 30 that relates to the affairs of a person if:

- 31 (a) the person has consented to the disclosure; and

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1 (b) the disclosure is in accordance with that consent.

2 **279 Disclosure to reduce threat to life or health**

3 An entrusted public official may disclose protected information if:

- 4 (a) the entrusted public official believes on reasonable grounds
5 that the disclosure is necessary to prevent or lessen a serious
6 and imminent threat to the life or health of an individual; and
7 (b) the disclosure is for the purposes of preventing or lessening
8 that threat.

9 **280 Disclosure of publicly available information**

10 An entrusted public official may disclose protected information if
11 it is already publicly available.

12 **281 Disclosure of summaries or statistics**

13 Any of the following persons:

- 14 (a) the Administrator;
15 (b) a delegate of the Administrator;
16 (c) a person assisting the Administrator under section 250;
17 (d) a person whose services are made available to the
18 Administrator under section 251;
19 (e) a person engaged as a consultant under section 252;
20 (f) an audit team leader;
21 (g) a person assisting an audit team leader;

22 may disclose:

- 23 (h) summaries of protected Administrator information; or
24 (i) statistics derived from protected Administrator information;
25 if those summaries or statistics, as the case may be, are not likely
26 to enable the identification of a person.

**282 Disclosure for purposes of law enforcement—protected
Administrator information**

Scope

- (1) This section applies if the Administrator is satisfied that disclosure of particular protected Administrator information is reasonably necessary for:
- (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (2) The Administrator may disclose that protected Administrator information to:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.
- (3) If any of the following individuals:
- (a) a delegate of the Administrator;
 - (b) an individual assisting the Administrator under section 250;
 - (c) an individual whose services are made available to the Administrator under section 251;
 - (d) an individual engaged as a consultant under section 252;
 - (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;
- is authorised by the Administrator, in writing, for the purposes of this section, the individual may disclose that protected Administrator information to:
- (g) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (h) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

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Secondary disclosure and use

- 1
- 2 (4) A person commits an offence if:
- 3 (a) the person is, or has been, an employee or officer of:
- 4 (i) a Department, agency or authority of the
- 5 Commonwealth, a State or a Territory; or
- 6 (ii) an Australian police force; and
- 7 (b) protected Administrator information has been disclosed
- 8 under subsection (2) or (3) to the Department, agency,
- 9 authority or police force, as the case may be; and
- 10 (c) the person has obtained the information in the person's
- 11 capacity as an employee or officer of the Department,
- 12 agency, authority or police force, as the case may be; and
- 13 (d) the person:
- 14 (i) discloses the information to another person; or
- 15 (ii) uses the information.

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

- 17 (5) Subsection (4) does not apply if:
- 18 (a) the disclosure or use is with the consent of the Administrator;
- 19 and
- 20 (b) the disclosure or use is for the purpose of:
- 21 (i) enforcing the criminal law; or
- 22 (ii) enforcing a law imposing a pecuniary penalty; or
- 23 (iii) protecting the public revenue.

24 Note: A defendant bears an evidential burden in relation to a matter in

25 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

26 *Conditions*

- 27 (6) The Administrator may, by writing, impose conditions to be
- 28 complied with in relation to protected Administrator information
- 29 disclosed under subsection (2) or (3).
- 30 (7) A person commits an offence if:
- 31 (a) the person is subject to a condition under subsection (6); and
- 32 (b) the person engages in conduct; and
- 33 (c) the person's conduct breaches the condition.

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

2 (8) An instrument under subsection (6) is not a legislative instrument.

3 **283 Disclosure for purposes of law enforcement—protected DOIC**
 4 **information**

5 *Scope*

6 (1) This section applies if the Chair of the Domestic Offsets Integrity
 7 Committee is satisfied that disclosure of particular protected DOIC
 8 information is reasonably necessary for:

- 9 (a) the enforcement of the criminal law; or
- 10 (b) the enforcement of a law imposing a pecuniary penalty; or
- 11 (c) the protection of the public revenue.

12 *Disclosure*

13 (2) The Chair of the Domestic Offsets Integrity Committee may
 14 disclose that protected DOIC information to:

- 15 (a) a Department, agency or authority of the Commonwealth, a
 16 State or a Territory; or
- 17 (b) an Australian police force;
 18 whose functions include that enforcement or protection, for the
 19 purposes of that enforcement or protection.

20 (3) If any of the following individuals:

- 21 (a) a Domestic Offsets Integrity Committee member;
- 22 (b) an individual assisting the Domestic Offsets Integrity
 23 Committee under section 269;

24 is authorised by the Chair of the Domestic Offsets Integrity
 25 Committee, in writing, for the purposes of this section, the
 26 individual may disclose that protected DOIC information to:

- 27 (c) a Department, agency or authority of the Commonwealth, a
 28 State or a Territory; or
- 29 (d) an Australian police force;
 30 whose functions include that enforcement or protection, for the
 31 purposes of that enforcement or protection.

Section 283

Secondary disclosure and use

- 1
- 2 (4) A person commits an offence if:
- 3 (a) the person is, or has been, an employee or officer of:
- 4 (i) a Department, agency or authority of the
- 5 Commonwealth, a State or a Territory; or
- 6 (ii) an Australian police force; and
- 7 (b) protected DOIC information has been disclosed under
- 8 subsection (2) or (3) to the Department, agency, authority or
- 9 police force, as the case may be; and
- 10 (c) the person has obtained the information in the person's
- 11 capacity as an employee or officer of the Department,
- 12 agency, authority or police force, as the case may be; and
- 13 (d) the person:
- 14 (i) discloses the information to another person; or
- 15 (ii) uses the information.

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

- 17 (5) Subsection (4) does not apply if:
- 18 (a) the disclosure or use is with the consent of the Chair of the
- 19 Domestic Offsets Integrity Committee; and
- 20 (b) the disclosure or use is for the purpose of:
- 21 (i) enforcing the criminal law; or
- 22 (ii) enforcing a law imposing a pecuniary penalty; or
- 23 (iii) protecting the public revenue.

24 Note: A defendant bears an evidential burden in relation to a matter in

25 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

26 *Conditions*

- 27 (6) The Chair of the Domestic Offsets Integrity Committee may, by
- 28 writing, impose conditions to be complied with in relation to
- 29 protected DOIC information disclosed under subsection (2) or (3).
- 30 (7) A person commits an offence if:
- 31 (a) the person is subject to a condition under subsection (6); and
- 32 (b) the person engages in conduct; and
- 33 (c) the person's conduct breaches the condition.

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

2 (8) An instrument under subsection (6) is not a legislative instrument.

3 **284 Disclosure for purposes of review of Act**

4 An entrusted public official may disclose protected information to
5 a person if:

6 (a) the person is conducting a review under section 306; and

7 (b) the disclosure is for the purposes of that review.

8 **285 Disclosure for purposes of review of compliance with Australia’s**
9 **international obligations**

10 (1) The Administrator may disclose protected Administrator
11 information to another person for the purpose of facilitating a
12 review of Australia’s compliance with its international obligations
13 relating to reporting of greenhouse gas emissions.

14 (2) In this section:

15 *emission* of greenhouse gas has the same meaning as in the
16 *National Greenhouse and Energy Reporting Act 2007*.
17

1
2

Part 28—Miscellaneous

3

286 Miscellaneous functions of the Administrator

4

The Administrator has the following functions:

5

(a) to monitor compliance with this Act and the associated provisions;

6

7

(b) to promote compliance with this Act and the associated provisions;

8

9

(c) to conduct and/or co-ordinate education programs about this Act and the associated provisions;

10

11

(d) to advise the Minister on matters relating to this Act and the associated provisions;

12

13

(e) to advise and assist persons in relation to their obligations under this Act and the associated provisions;

14

15

(f) to advise and assist prospective applicants in connection with ensuring that applications are in accordance with this Act;

16

17

(g) to advise and assist the representatives of persons in relation to compliance by persons with this Act and the associated provisions;

18

19

20

(h) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about co-operative arrangements for matters relating to this Act and the associated provisions;

21

22

23

(i) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act and the associated provisions.

24

25

26

287 Computerised decision-making

27

(1) The Administrator may, by legislative instrument, arrange for the use, under the Administrator's control, of computer programs for any purposes for which the Administrator may, or must, under this Act or the regulations:

28

29

30

31

(a) make a decision; or

32

(b) exercise any power or comply with any obligation; or

33

(c) do anything else related to making a decision or exercising a power or complying with an obligation.

34

Section 288

- 1 (2) For the purposes of this Act and the regulations, the Administrator
2 is taken to have:
3 (a) made a decision; or
4 (b) exercised a power or complied with an obligation; or
5 (c) done something else related to the making of a decision or
6 the exercise of a power or the compliance with an obligation;
7 that was made, exercised, complied with or done by the operation
8 of a computer program under such an arrangement.

9 288 Administrator's power to require further information*10 Applications*

- 11 (1) If:
12 (a) a person makes an application to the Administrator under this
13 Act or the regulations; and
14 (b) the Administrator exercises a power, under another provision
15 of this Act or the regulations, to require the applicant to give
16 the Administrator further information in connection with the
17 application;
18 the Administrator:
19 (c) must ensure that the further information is relevant to the
20 matter to which the application relates; and
21 (d) must ensure that the power is exercised in a reasonable way.

22 Requests

- 23 (2) If:
24 (a) a person makes a request to the Administrator under this Act;
25 and
26 (b) the Administrator exercises a power, under another provision
27 of this Act, to require the person to give the Administrator
28 further information in connection with the request;
29 the Administrator:
30 (c) must ensure that the further information is relevant to the
31 matter to which the request relates; and
32 (d) must ensure that the power is exercised in a reasonable way.

Section 289

1 **289 Domestic Offsets Integrity Committee’s power to require**
2 **further information**

3 If:

- 4 (a) a person makes an application to the Domestic Offsets
5 Integrity Committee under this Act or the regulations; and
6 (b) the Domestic Offsets Integrity Committee exercises a power,
7 under another provision of this Act or the regulations, to
8 require the applicant to give the Domestic Offsets Integrity
9 Committee further information in connection with the
10 application;

11 the Domestic Offsets Integrity Committee:

- 12 (c) must ensure that the further information is relevant to the
13 matter to which the application relates; and
14 (d) must ensure that the power is exercised in a reasonable way.

15 **290 Actions may be taken by an agent of a project proponent**

- 16 (1) The principles of agency apply in relation to the taking, by a
17 project proponent for an eligible offsets project, of any of the
18 following actions under this Act or the regulations:
19 (a) making an application;
20 (b) giving information in connection with an application;
21 (c) withdrawing an application;
22 (d) giving a report;
23 (e) giving a notice (including an electronic notice);
24 (f) making a submission;
25 (g) making a request;
26 (h) giving information in connection with a request.
- 27 (2) For example, the project proponent may authorise another person
28 to be the project proponent’s agent for the purposes of making an
29 application under this Act or the regulations on the project
30 proponent’s behalf.
- 31 (3) To avoid doubt, this section does not, by implication, limit the
32 application of the principles of agency to other matters arising
33 under this Act or the regulations.

Section 291

291 Delegation by the Minister

- 1
- 2 (1) The Minister may, by writing, delegate any or all of his or her
3 functions or powers under this Act or the regulations to:
4 (a) the Secretary; or
5 (b) an SES employee, or acting SES employee, in the
6 Department.

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

- 9 (2) In exercising powers under a delegation, the delegate must comply
10 with any directions of the Minister.

- 11 (3) Subsection (1) does not apply to a power to make, vary or revoke a
12 legislative instrument.

292 Delegation by a State Minister or a Territory Minister

- 13
- 14 (1) A Minister of a State or Territory may, by writing, delegate any or
15 all of his or her functions or powers under this Act to a person
16 who:
17 (a) is an officer or employee of the State or Territory, as the case
18 may be; and
19 (b) holds or performs the duties of an office or position that is
20 equivalent to a position occupied by an SES employee in the
21 Australian Public Service.

- 22 (2) In exercising powers under a delegation, the delegate must comply
23 with any directions of the Minister of the State or the Minister of
24 the Territory, as the case may be.

293 Delegation by the Secretary

- 25
- 26 (1) The Secretary may, by writing, delegate any or all of his or her
27 functions or powers under this Act to an SES employee, or acting
28 SES employee, in the Department.

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

- 31 (2) In exercising powers under a delegation, the delegate must comply
32 with any directions of the Secretary.

Section 294

1 **294 Concurrent operation of State and Territory laws**

2 This Act is not intended to exclude or limit the operation of a law
3 of a State or Territory that is capable of operating concurrently
4 with this Act.

5 **295 Law relating to legal professional privilege not affected**

6 This Act does not affect the law relating to legal professional
7 privilege.

8 **296 Arrangements with States and Territories**

9 *States*

- 10 (1) The Minister may make arrangements with a Minister of a State
11 with respect to the administration of this Act, including:
- 12 (a) arrangements for the performance of the functions of a
13 magistrate under this Act by a magistrate of that State; and
 - 14 (b) arrangements for the exercise of the powers conferred by
15 section 39 on relevant land registration officials of that State;
16 and
 - 17 (c) arrangements for the exercise of the powers conferred by
18 section 40 on relevant land registration officials of that State.
- 19 (2) The Minister may arrange with a Minister of a State with whom an
20 arrangement is in force under subsection (1) for the variation or
21 revocation of the arrangement.

22 *Australian Capital Territory*

- 23 (3) The Minister may make arrangements with a Minister of the
24 Australian Capital Territory with respect to the administration of
25 this Act, including:
- 26 (a) arrangements for the performance of the functions of a
27 magistrate under this Act by a magistrate of the Australian
28 Capital Territory; and
 - 29 (b) arrangements for the exercise of the powers conferred by
30 section 39 on relevant land registration officials of the
31 Australian Capital Territory; and

Section 296

1 (c) arrangements for the exercise of the powers conferred by
2 section 40 on relevant land registration officials of the
3 Australian Capital Territory.

4 (4) The Minister may arrange with a Minister of the Australian Capital
5 Territory for the variation or revocation of an arrangement in force
6 under subsection (3).

7 *Northern Territory*

8 (5) The Minister may make arrangements with a Minister of the
9 Northern Territory with respect to the administration of this Act,
10 including:

11 (a) arrangements for the performance of the functions of a
12 magistrate under this Act by a magistrate of the Northern
13 Territory; and

14 (b) arrangements for the exercise of the powers conferred by
15 section 39 on relevant land registration officials of the
16 Northern Territory; and

17 (c) arrangements for the exercise of the powers conferred by
18 section 40 on relevant land registration officials of the
19 Northern Territory.

20 (6) The Minister may arrange with a Minister of the Northern Territory
21 for the variation or revocation of an arrangement in force under
22 subsection (5).

23 *Norfolk Island*

24 (7) The Minister may make arrangements with a Minister of Norfolk
25 Island with respect to the administration of this Act, including:

26 (a) arrangements for the performance of the functions of a
27 magistrate under this Act by a magistrate of Norfolk Island;
28 and

29 (b) arrangements for the exercise of the powers conferred by
30 section 39 on relevant land registration officials of Norfolk
31 Island; and

32 (c) arrangements for the exercise of the powers conferred by
33 section 40 on relevant land registration officials of Norfolk
34 Island.

Section 297

1 (8) The Minister may arrange with a Minister of Norfolk Island for the
2 variation or revocation of an arrangement in force under
3 subsection (7).

4 *Gazettal*

5 (9) A copy of each instrument by which an arrangement under this
6 section is made, varied or revoked is to be published in the *Gazette*.

7 *Instrument is not a legislative instrument*

8 (10) An instrument by which an arrangement under this section is made,
9 varied or revoked is not a legislative instrument.

10 **297 Liability for damages**

11 None of the following:

- 12 (a) the Minister;
13 (b) a delegate of the Minister;
14 (c) the Secretary;
15 (d) a delegate of the Secretary;
16 (e) the Administrator;
17 (f) a delegate of the Administrator;
18 (g) an audit team leader;
19 (h) a Domestic Offsets Integrity Committee member;
20 is liable to an action or other proceeding for damages for, or in
21 relation to, an act or matter in good faith done or omitted to be
22 done:
23 (i) in the performance or purported performance of any function;
24 or
25 (j) in the exercise or purported exercise of any power;
26 conferred by this Act or the associated provisions.

27 **298 Executive power of the Commonwealth**

28 This Act does not, by implication, limit the executive power of the
29 Commonwealth.

299 Notional payments by the Commonwealth

- 1
- 2 (1) The purpose of this section is to ensure that amounts payable under
3 this Act or the regulations are notionally payable by the
4 Commonwealth (or parts of the Commonwealth).
- 5 (2) The Minister responsible for administering the *Financial*
6 *Management and Accountability Act 1997* may give written
7 directions for the purposes of this section, including directions
8 relating to the transfer of amounts within, or between, accounts
9 operated by the Commonwealth.

300 Compensation for acquisition of property

- 10
- 11 (1) If the operation of this Act or the regulations would result in an
12 acquisition of property from a person otherwise than on just terms,
13 the Commonwealth is liable to pay a reasonable amount of
14 compensation to the person.
- 15 (2) If the Commonwealth and the person do not agree on the amount
16 of the compensation, the person may institute proceedings in a
17 court of competent jurisdiction for the recovery from the
18 Commonwealth of such reasonable amount of compensation as the
19 court determines.
- 20 (3) In this section:
- 21 *acquisition of property* has the same meaning as in paragraph
22 51(xxxi) of the Constitution.
- 23 *just terms* has the same meaning as in paragraph 51(xxxi) of the
24 Constitution.

301 Native title rights not affected

25

26 This Act does not affect the operation of the *Native Title Act 1993*.

302 Racial Discrimination Act not affected

27

28 This Act does not affect the operation of the *Racial Discrimination*
29 *Act 1975*.

Section 303

1 **303 Additional effect of this Act and the regulations—introduced**
2 **animal emissions avoidance projects**

- 3 (1) Without limiting their effect apart from this section, this Act and
4 the regulations also have effect as provided by this section.
- 5 (2) This Act and the regulations also have the effect they would have if
6 each reference in this Act and the regulations to an introduced
7 animal emissions avoidance project were, by express provision,
8 confined to an introduced animal emissions avoidance project that:
9 (a) contributes; or
10 (b) is likely to contribute;
11 to the fulfilment of Australia’s obligations under paragraph (h) of
12 Article 8 of the Biodiversity Convention.

13 **304 Prescribing matters by reference to other instruments**

- 14 (1) The regulations may make provision in relation to a matter by
15 applying, adopting or incorporating, with or without modification,
16 a matter contained in an instrument or writing:
17 (a) as in force or existing at a particular time; or
18 (b) as in force or existing from time to time.
- 19 (2) Subsection (1) has effect despite anything in subsection 14(2) of
20 the *Legislative Instruments Act 2003*.
- 21 (3) If the regulations make provision in relation to a matter by
22 applying, adopting or incorporating, with or without modification,
23 a matter contained in an instrument or writing, the Administrator
24 must ensure that the text of the matter applied, adopted or
25 incorporated is published on the Administrator’s website.
- 26 (4) Subsection (3) does not apply if the publication would infringe
27 copyright.

28 **305 Administrative decisions under the regulations**

29 The regulations may make provision in relation to a matter by
30 conferring a power to make a decision of an administrative
31 character on the Administrator.

306 Reviews of operation of this Act etc.

- 1
- 2 (1) The Minister must cause to be conducted reviews of the operation
3 of:
4 (a) this Act; and
5 (b) the regulations; and
6 (c) other instruments made under this Act.

Public consultation

- 7
- 8 (2) A review under subsection (1) must make provision for public
9 consultation.

Report

- 10
- 11 (3) The Minister must cause to be prepared a report of a review under
12 subsection (1).
- 13 (4) The Minister must cause copies of a report under subsection (3) to
14 be tabled in each House of the Parliament within 15 sitting days of
15 that House after the completion of the preparation of the report.

First review

- 16
- 17 (5) The report of the first review under subsection (1) must be tabled
18 under subsection (4) before the end of 31 December 2014.

Subsequent reviews

- 19
- 20 (6) The report of each subsequent review under subsection (1) must be
21 tabled under subsection (4) within 3 years after the report of the
22 previous review was tabled under subsection (4).

307 Regulations

- 23
- 24 The Governor-General may make regulations prescribing matters:
25 (a) required or permitted by this Act to be prescribed; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Act.