



# **Clean Energy Act 2011**

**No. 131, 2011**

**An Act to encourage the use of clean energy, and  
for other purposes**

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



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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	2
3 Objects .....	5
4 Simplified outline .....	5
5 Definitions .....	7
6 When supply of natural gas occurs .....	23
7 Electronic notice transmitted to the Regulator .....	23
8 Crown to be bound .....	24
9 Extension to external Territories .....	24
10 Extension to exclusive economic zone and continental shelf .....	25
11 Extension to Joint Petroleum Development Area .....	25
12 Application to foreign ships .....	25
<b>Part 2—Carbon pollution cap</b>	<b>26</b>
13 Simplified outline .....	26
14 Carbon pollution cap .....	26
15 Disallowance of regulations .....	28
16 When regulations must be tabled .....	29
17 Default carbon pollution cap for 2015-16 .....	31
18 Default carbon pollution cap for a later flexible charge year .....	31
<b>Part 3—Liable entities</b>	<b>33</b>
<b>Division 1—Introduction</b>	<b>33</b>
19 Simplified outline .....	33
<b>Division 2—Direct emitters of greenhouse gases</b>	<b>36</b>
<b>Subdivision A—General rules</b>	<b>36</b>
20 Liable entity—person who has operational control of a facility .....	36
21 Liable entity—participant in designated joint venture .....	39
22 Liable entity—holder of a liability transfer certificate .....	42
<b>Subdivision B—Landfill facilities</b>	<b>45</b>
23 Liable entity for landfill emissions—person who has operational control of a landfill facility .....	45
24 Liable entity for landfill emissions—participant in designated joint venture .....	49
25 Liable entity for landfill emissions—holder of a liability transfer certificate .....	53

---

<b>Subdivision C—Adjustment of provisional emissions number in relation to a facility in the Joint Petroleum Development Area or the Greater Sunrise unit area</b>	<b>56</b>
26 Joint Petroleum Development Area—adjustment of provisional emissions number .....	56
27 Joint Petroleum Development Area/Greater Sunrise unit area—adjustment of provisional emissions number .....	57
28 Greater Sunrise unit area—adjustment of provisional emissions number .....	58
<b>Subdivision D—Anti-avoidance</b>	<b>59</b>
29 Anti-avoidance .....	59
<b>Subdivision E—Covered emissions from the operation of a facility</b>	<b>60</b>
30 Covered emissions from the operation of a facility .....	60
31 Measurement of covered emissions from the operation of a facility.....	64
<b>Subdivision F—Emissions from the operation of a landfill facility</b>	<b>64</b>
32 Legacy emissions from the operation of a landfill facility.....	64
32A Exempt landfill emissions .....	65
<b>Division 3—Natural gas</b>	<b>66</b>
33 Liable entity—supply of natural gas.....	66
35 Liable entity—supply of natural gas to a person who quotes the person’s OTN .....	67
36 Liable entity—supply of natural gas to a person who misuses the person’s OTN .....	70
36A Extended meaning of use.....	71
<b>Division 4—Obligation transfer numbers</b>	<b>72</b>
<b>Subdivision A—Issue of obligation transfer numbers</b>	<b>72</b>
37 Issue of OTN .....	72
38 Application for OTN .....	72
39 Further information .....	72
40 Issue of OTN as the result of an application.....	73
41 Issue of OTN on the Regulator’s own initiative .....	74
42 Surrender of OTN.....	74
43 Cancellation of OTN .....	75
43A Publication of list of OTNs that have been cancelled or surrendered .....	75
44 OTN is not transferable .....	75
45 OTN Register .....	75
46 Evidentiary provisions.....	77

---

---

47	Notification of change of name or address of OTN holder or natural gas supplier.....	78
<b>Subdivision B—Method of quotation of obligation transfer numbers</b>		79
48	Quotation of OTN.....	79
49	Effect of withdrawal of quotation of OTN .....	79
50	Withdrawal of quotation of OTN if OTN is cancelled or surrendered .....	80
51	Withdrawal of quotation of OTN by OTN holder .....	80
52	Withdrawal of quotation of OTN by agreement .....	80
53	Validation of quotation of OTN .....	81
54	Effect of surrender or cancellation of OTN—grace period for quotation in relation to a single supply .....	82
55	Effect of surrender or cancellation of OTN—grace period for quotation in relation to a class of supplies .....	82
<b>Subdivision C—Quotation of obligation transfer numbers</b>		83
55A	Large gas consuming facility.....	83
55B	Quotation of OTN—large gas consuming facility .....	84
56	Quotation of OTN—large user of natural gas.....	84
57	Quotation of OTN—use of natural gas as a feedstock.....	86
58	Quotation of OTN—use of natural gas in manufacturing compressed natural gas, liquefied natural gas or liquid petroleum gas .....	87
58A	Extended meaning of use.....	88
<b>Subdivision D—General provisions</b>		89
59	Acceptance of quotation of OTN in relation to a single supply .....	89
60	Acceptance of quotation of OTN in relation to a class of supplies.....	90
62	False or misleading declaration .....	92
63	Misuse of OTN .....	92
64	Quotation of bogus OTN .....	93
<b>Division 5—Designated joint ventures</b>		95
<b>Subdivision A—Mandatory designated joint venture</b>		95
65	Mandatory designated joint venture .....	95
66	Notification.....	95
<b>Subdivision B—Declared designated joint venture</b>		98
67	Joint venture declaration test .....	98
67A	Relevant operator.....	98
68	Application for declaration .....	98
69	Further information .....	99

---

---

70	Making of declaration.....	99
71	Duration of declaration.....	101
71A	Notification.....	102
72	Revocation of declaration.....	102
<b>Subdivision C—Participating percentage determination</b>		<b>103</b>
73	Provisional application for participating percentage determination.....	103
74	Application for participating percentage determination.....	104
75	Further information .....	104
76	Participating percentage determination made in response to an application .....	105
77	Participating percentage determination made on the Regulator’s own initiative .....	106
78	Criteria for making participating percentage determination .....	106
78A	Duration of determinations .....	108
79	Replacement determinations.....	109
<b>Division 6—Liability transfer certificates</b>		<b>110</b>
<b>Subdivision A—Transfer of liability to another member of a corporate group</b>		<b>110</b>
80	Corporate group transfer test .....	110
81	Application for liability transfer certificate .....	110
82	Further information .....	111
83	Issue of liability transfer certificate .....	111
<b>Subdivision B—Transfer of liability to a person who has financial control of a facility</b>		<b>112</b>
84	Financial control transfer test .....	112
85	Application for liability transfer certificate .....	113
86	Further information .....	114
87	Issue of liability transfer certificate .....	114
<b>Subdivision C—Other provisions</b>		<b>116</b>
88	Duration of liability transfer certificate .....	116
89	Surrender of liability transfer certificate.....	117
90	Cancellation of liability transfer certificate .....	118
91	Liability transfer certificate is not transferable .....	120
92	Financial control.....	120
<b>Division 7—Opt-in Scheme</b>		<b>122</b>
92A	Opt-in Scheme.....	122
92B	Reduction of provisional emissions number.....	124
92C	Reporting requirement.....	124
92D	Record-keeping requirement .....	125

---

---

92E	Other matters .....	125
92F	Ancillary or incidental provisions.....	125
92G	Commissioner of Taxation and Chief Executive Officer of Customs to be notified of declaration .....	126
<b>Part 4—Carbon units</b>		<b>127</b>
<b>Division 1—Introduction</b>		<b>127</b>
93	Simplified outline .....	127
<b>Division 2—Issue of carbon units</b>		<b>129</b>
94	Issue of carbon units.....	129
95	Identification number .....	129
96	Vintage year .....	129
97	When carbon units may be issued.....	129
98	How carbon units are to be issued .....	129
99	Circumstances in which carbon units may be issued .....	130
100	Issue of carbon units for a fixed charge .....	130
100A	Extension of issue period.....	135
101	Limit on issue of carbon units .....	136
102	Carbon units—total number .....	136
<b>Division 3—Property in, and transfer of, carbon units</b>		<b>138</b>
103	A carbon unit is personal property.....	138
103A	Ownership of carbon unit .....	138
104	Transfer of carbon units.....	138
105	Transmission of carbon units by assignment .....	139
106	Transmission of carbon units by operation of law etc. ....	140
107	Transfer of carbon units to another Registry account held by the transferor.....	142
108	Outgoing international transfers of carbon units.....	143
109	Incoming international transfers of carbon units .....	144
109A	Registration of equitable interests in relation to a carbon unit.....	144
110	Equitable interests in relation to a carbon unit.....	145
<b>Division 4—Auctions of carbon units</b>		<b>146</b>
111	Issue of carbon units as the result of an auction .....	146
112	Secondary market auctions of relinquished carbon units.....	149
113	Policies, procedures and rules for auctioning carbon units.....	149
114	Benchmark average auction charge .....	151
<b>Division 5—Special provisions relating to free carbon units</b>		<b>154</b>
115	Cancellation of certain unused free carbon units .....	154
116	Buy-back of certain free carbon units.....	154
116A	Extension of buy-back period .....	156

---

---

<b>Part 5—Emissions number</b>	157
117 Simplified outline .....	157
118 Emissions number .....	157
119 Assessment of emissions number—incorrect report given by liable entity .....	158
120 Assessment of emissions number—no report given by liable entity .....	159
<b>Part 6—Surrender of eligible emissions units</b>	162
<b>Division 1—Introduction</b>	162
121 Simplified outline .....	162
<b>Division 2—How eligible emissions units are surrendered</b>	164
122 How eligible emissions units are surrendered.....	164
123 Surrender restrictions.....	166
124 Charge on surrender of eligible international emissions units .....	167
<b>Division 3—Unit shortfalls</b>	168
<b>Subdivision A—Fixed charge years</b>	168
125 Provisional unit shortfall .....	168
126 Interim emissions number .....	170
127 Adjustment of total interim emissions numbers .....	172
128 Final unit shortfall .....	173
129 Estimation error unit shortfall.....	176
130 Remission of unit shortfall charge imposed on estimation error unit shortfall.....	178
131 Surplus and estimation error adjustment number .....	179
132 Refund—surplus surrender.....	181
<b>Subdivision B—Flexible charge years</b>	181
133 Unit shortfall.....	181
<b>Division 4—Unit shortfall charge</b>	186
134 When unit shortfall charge becomes due and payable .....	186
134A Remission of unit shortfall charge—voluntary disclosure by liable entity of incorrect emissions number .....	186
135 Late payment penalty .....	189
136 Recovery of unit shortfall charge and late payment penalty .....	190
137 Set-off.....	190
138 Liability transfer certificate—statutory guarantee .....	191
140 Refund of overpayments.....	192

---



---

<b>Division 5—Assessment of unit shortfall and unit shortfall charge</b>	193
141 Assessment of unit shortfall and unit shortfall charge .....	193
<b>Division 6—Extension of surrender deadline</b>	195
142 Extension of surrender deadline .....	195
<b>Part 7—Jobs and Competitiveness Program</b>	197
<b>Division 1—Introduction</b>	197
143 Aim and objects .....	197
144 Simplified outline .....	198
<b>Division 2—Formulation of the Jobs and Competitiveness Program</b>	200
145 Jobs and Competitiveness Program .....	200
146 Relinquishment requirement.....	201
147 Reporting requirement.....	201
148 Record-keeping requirement .....	202
149 Other matters .....	202
150 Ancillary or incidental provisions.....	203
<b>Division 3—Compliance with reporting and record-keeping requirements under the Jobs and Competitiveness Program</b>	204
151 Compliance with reporting and record-keeping requirements .....	204
<b>Division 4—Special information-gathering powers</b>	205
152 Minister may obtain information .....	205
153 No assistance for 2 eligible financial years if corporation refuses or fails to comply with request for information .....	206
154 Disclosure of information to the Regulator .....	206
<b>Division 5—Productivity Commission inquiries</b>	208
155 Productivity Commission inquiries .....	208
156 Matters to which the Productivity Commission must have regard.....	209
157 Report of inquiry .....	212
158 No limit on Productivity Minister’s powers .....	213
<b>Part 8—Coal-fired electricity generation</b>	214
<b>Division 1—Introduction</b>	214
159 Object .....	214
160 Simplified outline .....	214

---

---

<b>Division 2—Issue of free carbon units in respect of generation complexes</b>	216
161 Issue of free carbon units in respect of generation complexes .....	216
<b>Division 3—Certificate of eligibility for coal-fired generation assistance</b>	221
162 Application for certificate of eligibility for coal-fired generation assistance .....	221
163 Form of application .....	222
164 Further information .....	222
165 Issue of certificate of eligibility for coal-fired generation assistance .....	223
166 Criteria for issuing certificate of eligibility for coal-fired generation assistance .....	224
167 Annual assistance factor .....	225
168 Emissions intensity .....	226
<b>Division 4—Power system reliability</b>	227
169 No assistance if generation complex does not pass the power system reliability test .....	227
170 Power system reliability test .....	227
171 Replacement capacity .....	230
172 Nomination of generation units .....	233
173 Validity of nomination .....	236
174 Anticipatory certification—reduction in nameplate rating .....	236
175 Anticipatory certification—cessation of registration as a generator .....	238
176 Intermediary registered as a generator .....	239
<b>Division 5—Clean Energy Investment Plans</b>	240
177 No assistance unless Clean Energy Investment Plan given .....	240
178 Clean Energy Investment Plan .....	240
179 Copy of Clean Energy Investment Plan to be given to the Regulator .....	241
180 Publication of Clean Energy Investment Plan .....	241
<b>Division 6—Closure contracts</b>	242
181 Restrictions on assistance if closure contract has been entered into .....	242
181A Exemptions from power system reliability test and Clean Energy Investment Plan .....	243
<b>Part 9—Publication of information</b>	244
<b>Division 1—Introduction</b>	244
182 Simplified outline .....	244

---

---

<b>Division 2—Information about liable entities</b>	245
183 Liabe Entities Public Information Database .....	245
184 Liabe entities to be entered in the Information Database .....	245
185 Emissions number to be entered in the Information Database .....	246
186 Estimate of total of emissions numbers to be entered in the Information Database .....	247
187 Unit shortfall to be entered in the Information Database .....	247
188 Unpaid unit shortfall charge to be entered in the Information Database .....	248
189 Number of surrendered eligible emissions units to be entered in the Information Database .....	249
190 Relinquishment requirement to be entered in the Information Database .....	249
191 Unpaid administrative penalty to be entered in the Information Database .....	250
192 Number of relinquished units to be entered in the Information Database .....	251
193 Correction and rectification of the Information Database .....	252
<b>Division 3—Information about holders of Registry accounts</b>	253
194 Information about holders of Registry accounts .....	253
<b>Division 4—Information about units</b>	254
195 Information about auction results—general .....	254
196 Information about auction results—last 6 months .....	254
197 Information about issue of carbon units for a fixed charge .....	256
198 Information about issue of free carbon units .....	257
199 Quarterly reports about issue of free carbon units .....	257
200 Information about surrender of borrowed and banked eligible emissions units .....	258
201 Information about total emissions numbers and unit shortfalls .....	258
202 Publication of concise description of the characteristics of carbon units .....	259
<b>Division 5—Information about relinquishment requirements for persons other than liable entities</b>	260
203 Information about relinquishment requirements .....	260
204 Information about unpaid administrative penalties .....	261
205 Information about number of relinquished units .....	261
<b>Division 6—Information about designated large landfill facilities</b>	263
206 Publication of list of designated large landfill facilities .....	263

---

---

<b>Part 10—Fraudulent conduct</b>	264
207 Simplified outline .....	264
208 Units issued as a result of fraudulent conduct—court may order relinquishment.....	264
<b>Part 11—Relinquishment of carbon units</b>	267
<b>Division 1—Introduction</b>	267
209 Simplified outline .....	267
<b>Division 2—How carbon units are relinquished</b>	268
210 How carbon units are relinquished .....	268
211 Deemed relinquishment .....	269
<b>Division 3—Compliance with relinquishment requirements</b>	271
212 Compliance with relinquishment requirements .....	271
213 Late payment penalty .....	273
214 Recovery of penalties .....	274
215 Set-off .....	274
216 Refund of overpayments.....	275
<b>Part 12—Notification of significant holding of carbon units</b>	276
217 Simplified outline .....	276
218 Notification of significant holding of carbon units— controlling corporation of a group .....	276
219 Notification of significant holding of carbon units— non-group entity .....	279
<b>Part 13—Information-gathering powers</b>	282
220 Simplified outline .....	282
221 Regulator may obtain information or documents .....	282
222 Copying documents—compensation .....	283
223 Copies of documents .....	284
224 Regulator may retain documents .....	284
225 Self-incrimination.....	284
<b>Part 14—Record-keeping requirements</b>	286
226 Simplified outline .....	286
227 Record-keeping requirements—general .....	286
228 Record-keeping requirements—quotation of OTN.....	287
<b>Part 15—Monitoring powers</b>	289
<b>Division 1—Simplified outline</b>	289
229 Simplified outline .....	289

---

---

<b>Division 2—Appointment of inspectors and issue of identity cards</b>	290
230 Appointment of inspectors.....	290
231 Identity cards .....	290
<b>Division 3—Powers of inspectors</b>	292
<b>Subdivision A—Monitoring powers</b>	292
232 Inspector may enter premises by consent or under a warrant .....	292
233 Monitoring powers of inspectors .....	292
234 Persons assisting inspectors.....	295
<b>Subdivision B—Powers of inspectors to ask questions and seek production of documents</b>	295
235 Inspector may ask questions and seek production of documents.....	295
236 Self-incrimination.....	296
<b>Division 4—Obligations and incidental powers of inspectors</b>	298
237 Consent.....	298
238 Announcement before entry under warrant .....	298
239 Inspector to be in possession of warrant .....	299
240 Details of warrant etc. to be given to occupier .....	299
241 Expert assistance to operate electronic equipment.....	299
242 Compensation for damage to electronic equipment.....	300
<b>Division 5—Occupier’s rights and responsibilities</b>	302
243 Occupier entitled to observe execution of warrant .....	302
244 Occupier to provide inspector with facilities and assistance.....	302
<b>Division 6—Monitoring warrants</b>	303
245 Monitoring warrants .....	303
<b>Division 7—Powers of magistrates</b>	305
246 Powers of magistrates .....	305
<b>Part 16—Liability of executive officers of bodies corporate</b>	306
247 Simplified outline .....	306
248 Civil penalties for executive officers of bodies corporate.....	306
249 Reasonable steps to prevent contravention .....	307
<b>Part 17—Civil penalty orders</b>	308
250 Simplified outline .....	308
251 References to Court .....	308
252 Civil penalty orders .....	308
253 Who may apply for a civil penalty order .....	310
254 Two or more proceedings may be heard together.....	310

---

---

255	Time limit for application for an order .....	310
256	Civil evidence and procedure rules for civil penalty orders.....	310
257	Civil proceedings after criminal proceedings .....	310
258	Criminal proceedings during civil proceedings .....	310
259	Criminal proceedings after civil proceedings .....	311
260	Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings.....	311
261	Mistake of fact.....	311
262	State of mind .....	312
263	Continuing contraventions.....	313
<b>Part 18—Infringement notices</b>		<b>315</b>
264	Simplified outline .....	315
265	When an infringement notice can be given.....	315
266	Matters to be included in an infringement notice.....	315
267	Amount of penalty .....	316
268	Withdrawal of an infringement notice .....	316
269	What happens if the penalty is paid .....	316
270	Effect of this Part on civil penalty proceedings .....	317
271	Regulations.....	317
<b>Part 19—Offences relating to unit shortfall charge and administrative penalties</b>		<b>318</b>
<b>Division 1—Introduction</b>		<b>318</b>
272	Simplified outline .....	318
<b>Division 2—Offences relating to unit shortfall charge</b>		<b>320</b>
273	Scheme to avoid existing liability to pay unit shortfall charge .....	320
274	Scheme to avoid future liability to pay unit shortfall charge .....	322
<b>Division 3—Offences relating to administrative penalties</b>		<b>325</b>
275	Scheme to avoid existing liability to pay administrative penalty .....	325
276	Scheme to avoid future liability to pay administrative penalty .....	327
<b>Part 20—Enforceable undertakings</b>		<b>330</b>
277	Simplified outline .....	330
278	Acceptance of undertakings.....	330
279	Enforcement of undertakings.....	331
<b>Part 21—Review of decisions</b>		<b>332</b>
280	Simplified outline .....	332
281	Reviewable decisions .....	332

---

---

282	Applications for reconsideration of decisions made by delegates of the Regulator .....	334
283	Reconsideration by the Regulator.....	335
284	Deadline for reconsideration.....	335
285	Review by the Administrative Appeals Tribunal.....	335
286	Stay of proceedings for the recovery of unit shortfall charge or late payment penalty.....	336
<b>Part 22—Reviews by the Climate Change Authority</b>		<b>338</b>
<b>Division 1—Simplified outline</b>		<b>338</b>
287	Simplified outline .....	338
<b>Division 2—Periodic reviews of this Act and the associated provisions</b>		<b>339</b>
288	Periodic reviews of this Act and the associated provisions to be conducted by the Climate Change Authority .....	339
289	Periodic reviews of the level of carbon pollution caps etc.....	341
290	Updated review of the level of the carbon pollution cap for 2020-21.....	343
291	Periodic reviews of progress in achieving Australia’s emission reduction targets and national carbon budget .....	344
292	Report of review .....	345
<b>Division 3—Other reviews</b>		<b>347</b>
293	Reviews of this Act and the associated provisions to be conducted by the Climate Change Authority at the request of the Minister or the Parliament .....	347
294	Report of review .....	349
<b>Part 23—Miscellaneous</b>		<b>351</b>
295	Miscellaneous functions of the Regulator.....	351
296	Computerised decision-making .....	352
297	Regulator’s power to require further information .....	352
297A	Actions may be taken by an agent of a person.....	353
298	Delegation by the Minister .....	354
299	Delegation by a State Minister or a Territory Minister .....	354
300	Delegation by the Secretary.....	354
301	Concurrent operation of State and Territory laws.....	355
302	Law relating to legal professional privilege not affected.....	355
303	Arrangements with States and Territories.....	355
303A	Contracts and arrangements to protect energy security .....	356
303B	Loans to owners etc. of emissions-intensive coal-fired generation complexes .....	357
304	Liability for damages.....	358

---

---

305	Executive power of the Commonwealth.....	359
306	Notional payments by the Commonwealth.....	359
307	Alternative constitutional basis.....	359
308	Compensation for acquisition of property .....	362
309	Prescribing matters by reference to other instruments .....	363
310	Administrative decisions under the regulations .....	363
311	Transitional—definitions.....	363
312	Regulations.....	364





# **Clean Energy Act 2011**

**No. 131, 2011**

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## **An Act to encourage the use of clean energy, and for other purposes**

*[Assented to 18 November 2011]*

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

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

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*Clean Energy Act 2011    No. 131, 2011    1*

## Section 2

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	18 November 2011
2. Sections 3 to 303	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the latest of:</p> <p>(a) the day the <i>Clean Energy Regulator Act 2011</i> receives the Royal Assent; and</p> <p>(b) the day the <i>Clean Energy (Charges—Excise) Act 2011</i> receives the Royal Assent; and</p> <p>(c) the day the <i>Clean Energy (Charges—Customs) Act 2011</i> receives the Royal Assent; and</p> <p>(d) the day the <i>Clean Energy (Unit Issue Charge—Auctions) Act 2011</i> receives the Royal Assent; and</p> <p>(e) the day the <i>Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011</i> receives the Royal Assent; and</p> <p>(f) the day the <i>Clean Energy (Unit Shortfall Charge—General) Act 2011</i> receives the Royal Assent; and</p> <p>(g) the day the <i>Clean Energy (International Unit Surrender Charge) Act 2011</i> receives the Royal Assent; and</p> <p>(h) the day the <i>Clean Energy (Consequential</i></p>	

## Section 2

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Amendments) Act 2011</i> receives the Royal Assent; and	
	(i) the day the <i>Clean Energy (Customs Tariff Amendment) Act 2011</i> receives the Royal Assent; and	
	(j) the day the <i>Clean Energy (Excise Tariff Legislation Amendment) Act 2011</i> receives the Royal Assent; and	
	(k) the day the <i>Clean Energy (Fuel Tax Legislation Amendment) Act 2011</i> receives the Royal Assent; and	
	(l) the day the <i>Clean Energy (Household Assistance Amendments) Act 2011</i> receives the Royal Assent; and	
	(m) the day the <i>Clean Energy (Income Tax Rates Amendments) Act 2011</i> receives the Royal Assent; and	
	(n) the day the <i>Clean Energy (Tax Laws Amendments) Act 2011</i> receives the Royal Assent.	
	However, if the provision(s) do not commence within the period of 6 months beginning on the latest of:	
	(o) the day this Act receives the Royal Assent; and	
	(p) the day the <i>Clean Energy Regulator Act 2011</i> receives the Royal Assent; and	
	(q) the day the <i>Clean Energy (Charges—Excise) Act 2011</i> receives the Royal Assent; and	
	(r) the day the <i>Clean Energy (Charges—Customs) Act 2011</i> receives the Royal Assent; and	
	(s) the day the <i>Clean Energy (Unit Issue Charge—Auctions) Act 2011</i> receives the Royal Assent; and	

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(t) the day the <i>Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011</i> receives the Royal Assent; and	
	(u) the day the <i>Clean Energy (Unit Shortfall Charge—General) Act 2011</i> receives the Royal Assent; and	
	(v) the day the <i>Clean Energy (International Unit Surrender Charge) Act 2011</i> receives the Royal Assent; and	
	(w) the day the <i>Clean Energy (Consequential Amendments) Act 2011</i> receives the Royal Assent; and	
	(x) the day the <i>Clean Energy (Customs Tariff Amendment) Act 2011</i> receives the Royal Assent; and	
	(y) the day the <i>Clean Energy (Excise Tariff Legislation Amendment) Act 2011</i> receives the Royal Assent; and	
	(z) the day the <i>Clean Energy (Fuel Tax Legislation Amendment) Act 2011</i> receives the Royal Assent; and	
	(za) the day the <i>Clean Energy (Household Assistance Amendments) Act 2011</i> receives the Royal Assent; and	
	(zb) the day the <i>Clean Energy (Income Tax Rates Amendments) Act 2011</i> receives the Royal Assent; and	
	(zc) the day the <i>Clean Energy (Tax Laws Amendments) Act 2011</i> receives the Royal Assent;	
	they commence on the day after the end of that period.	
3. Sections 303A and 303B	The day after this Act receives the Royal Assent.	19 November 2011
4. Sections 304 to 312	At the same time as the provision(s) covered by table item 2.	

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**Section 3**

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

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

**3 Objects**

The objects of this Act are as follows:

- (a) to give effect to Australia's obligations under:
  - (i) the Climate Change Convention; and
  - (ii) the Kyoto Protocol;
- (b) to support the development of an effective global response to climate change, consistent with Australia's national interest in ensuring that average global temperatures increase by not more than 2 degrees Celsius above pre-industrial levels;
- (c) to:
  - (i) take action directed towards meeting Australia's long-term target of reducing Australia's net greenhouse gas emissions to 80% below 2000 levels by 2050; and
  - (ii) take that action in a flexible and cost-effective way;
- (d) to put a price on greenhouse gas emissions in a way that:
  - (i) encourages investment in clean energy; and
  - (ii) supports jobs and competitiveness in the economy; and
  - (iii) supports Australia's economic growth while reducing pollution.

**4 Simplified outline**

The following is a simplified outline of this Act:

- This Act sets up a mechanism to deal with climate change by encouraging the use of clean energy.
- The mechanism begins on 1 July 2012, and operates on a financial year basis.

Section 4

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- The mechanism is administered by the Clean Energy Regulator.
- If a person is responsible for covered emissions of greenhouse gas from the operation of a facility, the facility's annual emissions are above a threshold, and the person does not surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the gas, the person is liable to pay unit shortfall charge.
- If a natural gas supplier supplies natural gas, and does not surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the potential greenhouse gas emissions embodied in the natural gas, the supplier is liable to pay unit shortfall charge.
- If a person opts in to the mechanism, the person acquires, manufactures or imports taxable fuel in specified circumstances, and does not surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the potential greenhouse gas emissions embodied in the fuel, the person is liable to pay unit shortfall charge.
- The financial years beginning on 1 July 2012, 1 July 2013 and 1 July 2014 are *fixed charge years*.
- Later financial years are *flexible charge years*.
- In a fixed charge year, carbon units will be issued under this Act for a fixed charge.
- In a flexible charge year, carbon units will be issued under this Act as the result of an auction.
- However, in the flexible charge years beginning on 1 July 2015, 1 July 2016 and 1 July 2017, some carbon units may be issued for a fixed charge (to act as a cap).

## Section 5

- Free carbon units will be issued under the Jobs and Competitiveness Program (which deals with emissions-intensive trade-exposed activities).
- Free carbon units will be issued to coal-fired electricity generators.
- A carbon pollution cap limits the sum of:
  - (a) the total number of auctioned carbon units; and
  - (b) the total number of free carbon units issued in accordance with the Jobs and Competitiveness Program; and
  - (c) the total number of free carbon units issued to coal-fired electricity generators.
- If a carbon unit was not issued for a fixed charge, the unit is transferable.
- The Climate Change Authority will conduct periodic reviews of this Act.

Note: Unit shortfall charge is imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

## 5 Definitions

In this Act:

**ABN** has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

**accept** the quotation of an OTN has the meaning given by section 59 or 60.

Section 5

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

**acquire**, in relation to a carbon unit, includes acquire by way of the issue of the unit.

**applicable identification procedure** has the meaning ascertained in accordance with the regulations.

**appropriate energy market operator**, in relation to a generation complex, means:

- (a) if Australian Energy Market Operator Limited (ACN 072 010 327) performs the functions of the energy market operator in the place where the generation complex is located—Australian Energy Market Operator Limited; and
- (b) if the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* of Western Australia performs the functions of the energy market operator in the place where the generation complex is located—the Independent Market Operator.

**associated provisions** means the following provisions:

- (a) the provisions of the regulations;
- (b) the provisions of the *Clean Energy (Charges—Excise) Act 2011*;
- (c) the provisions of the *Clean Energy (Charges—Customs) Act 2011*;
- (d) the provisions of the *Clean Energy (Unit Issue Charge—Auctions) Act 2011*;
- (e) the provisions of the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*;
- (f) the provisions of the *Clean Energy (Unit Shortfall Charge—General) Act 2011*;
- (g) the provisions of the *Clean Energy (International Unit Surrender Charge) Act 2011*;



## Section 5

- (h) sections 15A, 15AA, 18A, 22A, 22AA, 22B, 22C, 22E and 22F of the *National Greenhouse and Energy Reporting Act 2007*;
- (i) the remaining provisions of the *National Greenhouse and Energy Reporting Act 2007*, in so far as those provisions relate to:
  - (i) this Act; or
  - (ii) the regulations; or
  - (iii) the provisions covered by paragraph (h);
- (j) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:
  - (i) this Act; or
  - (ii) the regulations; or
  - (iii) the provisions of the *National Greenhouse and Energy Reporting Act 2007* covered by paragraph (h) or (i).

Note: The provisions covered by paragraph (h) commence on 1 July 2012.

***auction***, when used in relation to a carbon unit:

- (a) in the case of an auction under section 111—means a process that involves inviting persons to indicate or declare what they would be willing to pay by way of charge for the issue of the unit; or
- (b) in the case of an auction under section 112—means a process that involves inviting persons to indicate or declare what price they would be willing to pay for the acquisition of the unit.

***Australia***, when used in a geographical sense, includes:

- (a) in any case—the external Territories; and
- (b) for the purposes of Part 3 (liable entities) and Part 7 (Jobs and Competitiveness Program)—the exclusive economic zone, the continental shelf and the Joint Petroleum Development Area.

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

Section 5

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**benchmark average auction charge** has the meaning given by section 114.

**biofuel** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**biogas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**biomass** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**business day** means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory.

**carbon budget** means the total amount of net Australian emissions of greenhouse gases during a specified period.

**carbon dioxide equivalence:**

- (a) of an amount of greenhouse gas—has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*; or
- (b) of an amount of potential greenhouse gas emissions embodied in an amount of natural gas—has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*; or
- (c) of an amount of potential greenhouse gas emissions embodied in an amount of taxable fuel of a kind specified in the regulations—has the meaning given by the regulations.

Note: See also section 311 (transitional).

**carbon pollution cap** has the meaning given by section 14, 17 or 18.

**carbon pollution cap number** has the meaning given by section 14, 17 or 18.

**carbon unit** means a unit issued under section 94.

**certificate of eligibility for coal-fired generation assistance** means a certificate issued under section 165.

**charge**, in relation to the issue of a carbon unit, means whichever of the following is applicable:

- (a) charge payable under subsection 100(10);
- (b) charge payable under subsection 111(3);
- (c) charge imposed by whichever of the following is applicable:
  - (i) Part 2 of the *Clean Energy (Charges—Excise) Act 2011*;
  - (ii) Part 2 of the *Clean Energy (Charges—Customs) Act 2011*;
  - (iii) the *Clean Energy (Unit Issue Charge—Auctions) Act 2011*;
  - (iv) the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*.

**civil penalty order** means an order under subsection 252(1).

**civil penalty provision** means:

- (a) a provision of this Act that is declared by this Act to be a civil penalty provision; or
- (b) a provision of a determination under subsection 113(1) that is declared by the determination to be a civil penalty provision.

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

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

**Commonwealth place** has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

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

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

## Section 5

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**compressed natural gas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**controlling corporation** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

**corporate group transfer test** has the meaning given by section 80.

**covered emission** from the operation of a facility has the meaning given by section 30.

**dead organic matter** does not include a fossil fuel.

**declared designated joint venture** has the meaning given by section 70.

**decommissioned underground mine** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

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

**designated joint venture**, in relation to a facility, means:

- (a) a joint venture that is a mandatory designated joint venture for the purposes of the application of this Act to the facility; or
- (b) a joint venture that is a declared designated joint venture for the purposes of the application of this Act to the facility.

**designated large landfill facility**: a landfill facility is a **designated large landfill facility** in relation to an eligible financial year if the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility during the eligible financial year is 25,000 or more. For this purpose, assume that the financial year beginning on 1 July 2011 is an eligible financial year.

***designated opt-in person*** has the meaning given by the Opt-in Scheme.

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

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

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

***eligible Australian carbon credit unit*** means:

- (a) a Kyoto Australian carbon credit unit (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*); or
- (b) a non-Kyoto Australian carbon credit unit (within the meaning of that Act) issued in relation to an eligible offsets project (within the meaning of that Act) for a reporting period (within the meaning of that Act), where:
  - (i) if it were assumed that the reporting period had ended before the Kyoto abatement deadline (within the meaning of that Act), a Kyoto Australian carbon credit unit would have been issued in relation to the project for the reporting period instead of the non-Kyoto Australian carbon credit unit; and
  - (ii) the non-Kyoto Australian carbon credit unit is not of a kind specified in the regulations; or
- (c) an Australian carbon credit unit of a kind specified in the regulations.

Subparagraph (b)(ii) and paragraph (c) do not, by implication, limit the application of subsection 13(3) of the *Legislative Instruments Act 2003* to other instruments under this Act.

***eligible emissions unit*** means:

- (a) a carbon unit; or
- (b) an eligible international emissions unit; or
- (c) an eligible Australian carbon credit unit.

## Section 5

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***eligible financial year*** means:

- (a) the financial year beginning on 1 July 2012; or
- (b) a later financial year.

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

***emissions intensity***, in relation to a generation complex, has the meaning given by whichever of subsection 168(1) or (2) is applicable.

***emissions number*** has the meaning given by section 118.

***emissions number publication time*** of a person for an eligible financial year, means the time when the person's emissions number for the eligible financial year is entered on the Information Database in accordance with subsection 185(2).

***engage in conduct*** means:

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

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

***excise duty*** has the same meaning as in the *Excise Act 1901*.

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

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

***exempt landfill emissions***, in relation to a landfill facility, has the meaning given by section 32A.

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

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

Note: See also section 311 (transitional).

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

**feedstock** means a substance that is converted by a chemical process into another substance that is not a greenhouse gas.

**financial control** has the meaning given by section 92.

**financial control transfer test** has the meaning given by section 84.

**fixed charge year** means:

- (a) the eligible financial year beginning on 1 July 2012; or
- (b) the eligible financial year beginning on 1 July 2013; or
- (c) the eligible financial year beginning on 1 July 2014.

**flexible charge year** means:

- (a) the eligible financial year beginning on 1 July 2015; or
- (b) a later eligible financial year.

**foreign account**, when used in relation to a carbon unit, means an account kept within a foreign registry.

**foreign country** includes a region where:

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

**foreign person** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

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

## Section 5

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**free carbon unit** means a carbon unit issued free of charge.

**fuel tax credit** has the same meaning as in the *Fuel Tax Act 2006*.

**fugitive emissions** has the meaning given by the regulations.

**generation complex** means:

- (a) a generation unit; or
- (b) a set of 2 or more generation units at the same location.

**generation unit** means a generator of electricity, and includes:

- (a) the boiler (if any); and
- (b) any other related equipment essential to the generator's functioning as a generator.

**Greater Sunrise unit area** has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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

Note: See also section 311 (transitional).

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

Note: See also section 311 (transitional).

**GST group** has the same meaning as in the *Fuel Tax Act 2006*.

**GST joint venture** has the same meaning as in the *Fuel Tax Act 2006*.

**hold** an eligible emissions unit: a person **holds** an eligible emissions unit if the person is the registered holder of the unit.

**identification number**, in relation to a carbon unit, has the meaning given by section 95.

**Information Database** means the Liable Entities Public Information Database kept under section 183.

**inspector** means a person appointed as an inspector under section 230.



***interim emissions number*** has the meaning given by section 126.

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

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

***international climate change agreement*** means:

- (a) the Climate Change Convention; or
- (b) any other international agreement, signed on behalf of Australia, that:
  - (i) relates to climate change; and
  - (ii) imposes obligations on Australia to take action to reduce greenhouse gas emissions; or
- (c) an international agreement, signed on behalf of Australia, that:
  - (i) relates to climate change; and
  - (ii) is specified in a legislative instrument made by the Minister for the purposes of this definition.

***issue***, in relation to a carbon unit, means issue under section 94.

***Jobs and Competitiveness Program*** means the program under subsection 145(1).

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

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

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

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

## Section 5

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

**large gas consuming facility** has the meaning given by section 55A.

**legacy emissions**, in relation to a landfill facility, has the meaning given by section 32.

**liability transfer certificate** means a certificate issued under section 83 or 87.

**liable entity** means:

- (a) a person who, under a provision of this Act, is a liable entity;  
or
- (b) a person who, under the Opt-in Scheme, is a liable entity.

**liquefied natural gas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**liquid petroleum fuel** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**liquid petroleum gas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

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

**mandatory designated joint venture** has the meaning given by section 65.

**member**, in relation to a group, has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

**monitoring powers** has the meaning given by section 233.

**monitoring warrant** means a warrant issued under section 245.

**nameplate rating** of a generation complex means:

- (a) if the appropriate energy market operator is Australian Energy Market Operator Limited (ACN 072 010 327)—the maximum generation capacity in megawatts of the generation complex, most recently published by Australian Energy Market Operator Limited; and
- (b) if the appropriate energy market operator is the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* of Western Australia—the maximum generation capacity in megawatts of the generation complex specified in a written determination made by the Regulator for the purposes of this paragraph.

In making a determination under paragraph (b), the Regulator may have regard to any information provided to the Regulator by the Independent Market Operator.

**natural gas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**natural gas supplier** means a person who supplies natural gas.

**natural gas supply pipeline** does not include a pipeline of a kind specified in the regulations.

**non-group entity** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

**obligation transfer number** or **OTN** means an OTN issued under section 40 or 41.

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

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

**operation**, in relation to a facility, has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

## Section 5

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***operational control*** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

***Opt-in Scheme*** means the scheme under subsection 92A(1).

***OTN***: see ***obligation transfer number***.

***OTN Register*** means the register kept under section 45.

***participant***, in relation to a joint venture, means any of the persons who carry on the joint venture.

***participating percentage*** has the meaning given by section 76 or 77.

***participating percentage determination*** means a determination under section 76 or 77.

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

- (a) an individual;
- (b) a body corporate;
- (c) a trust;
- (d) a corporation sole;
- (e) a body politic;
- (f) a local governing body.

***person assisting*** an inspector has the meaning given by section 234.

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

Note: See also section 311 (transitional).

***power system reliability test*** has the meaning given by section 170.

***premises*** includes the following:

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

**Productivity Minister** means the Minister administering the *Productivity Commission Act 1998*.

**provisional emissions number:**

- (a) has the meaning given by Part 3 or the Opt-in Scheme; and
- (b) has a meaning affected by sections 11AA, 11AB, 11B and 11C of the *National Greenhouse and Energy Reporting Act 2007*.

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

**quote**, in relation to an OTN, has the meaning given by section 48.

**registered holder**, in relation to an eligible emissions unit, means the person in whose Registry account there is an entry for the unit.

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

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

**Regulator** means the Clean Energy Regulator.

**relevant operator**, when used in Division 5 of Part 3, has the meaning given by section 67A.

**relinquish**, in relation to a carbon unit, means relinquish under section 210.

**Resources and Energy Minister** means the Minister administering the *Energy Efficiency Opportunities Act 2006*.

**reviewable decision** has the meaning given by section 281.

**scheme**, when used in section 29 or Part 19, means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

## Section 5

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- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

**scope 1 emission** of greenhouse gas has the meaning given by the *National Greenhouse and Energy Reporting Act 2007*.

Note: See also section 311 (transitional).

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

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

**supply** means supply (including re-supply) by way of sale, exchange or gift.

Note: See also section 6 (timing of supply).

**surrender**, in relation to an eligible emissions unit, means surrender under section 122.

**taxable fuel** has the same meaning as in the *Fuel Tax Act 2006*.

**transfer**, in relation to a carbon unit, has the meaning given by section 104.

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

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

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

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

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***unit shortfall*** has the meaning given by section 125, 128, 129 or 133.

***unit shortfall charge*** means charge imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

***vintage year***, in relation to a carbon unit, means the eligible financial year that, in accordance with section 96, is the vintage year of the unit.

***withdrawal***, in relation to natural gas, has the meaning given by the regulations.

## **6 When supply of natural gas occurs**

For the purposes of this Act, the ***supply*** of natural gas occurs:

- (a) if the regulations provide that the supply occurs when the gas passes a point ascertained in accordance with the regulations—when the gas passes that point; or
- (b) if:
  - (i) paragraph (a) does not apply; and
  - (ii) the supply involves physical delivery;when the gas is physically delivered.

## **7 Electronic notice transmitted to the Regulator**

- (1) For the purposes of this Act, a notice is an ***electronic notice transmitted to the Regulator*** if, and only if:
  - (a) the notice is transmitted to the Regulator by means of an electronic communication; and
  - (b) if the Regulator requires that the notice be transmitted, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the Regulator’s requirement has been met; and

## Section 8

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- (c) the notice complies with regulations made for the purposes of subsection (2).
- (2) The regulations may make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of an electronic communication.
- (3) Regulations made for the purposes of subsection (2) may deal with:
  - (a) encryption; and
  - (b) authentication of identity.
- (4) Subsection (3) does not limit subsection (2).
- (5) For the purposes of this Act, if a notice is transmitted to the Regulator by means of an electronic communication, the notice is taken to have been transmitted on the day on which the electronic communication is dispatched.
- (6) Subsection (5) of this section has effect despite section 14A of the *Electronic Transactions Act 1999*.
- (7) This section does not, by implication, limit the regulations that may be made under the *Electronic Transactions Act 1999*.

## 8 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.
- (4) The protection in subsection (2) does not apply to a penalty under section 135, 212 or 213.

## 9 Extension to external Territories

This Act extends to every external Territory.



**10 Extension to exclusive economic zone and continental shelf**

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

**11 Extension to Joint Petroleum Development Area**

This Act extends to the Joint Petroleum Development Area.

Note: See also sections 26 and 27 (adjustment of provisional emissions number).

**12 Application to foreign ships**

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

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

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

## Part 2—Carbon pollution cap

### 13 Simplified outline

The following is a simplified outline of this Part:

- The regulations may declare that:
  - (a) a quantity of greenhouse gas that has a carbon dioxide equivalence of a specified number of tonnes is the ***carbon pollution cap*** for a flexible charge year; and
  - (b) that number is the ***carbon pollution cap number*** for that flexible charge year.

Note: The carbon pollution cap limits the sum of:

- (a) the total number of auctioned carbon units; and
- (b) the total number of free carbon units issued in accordance with the Jobs and Competitiveness Program; and
- (c) the total number of free carbon units issued in accordance with Part 8 (coal-fired electricity generation).

### 14 Carbon pollution cap

#### *Carbon pollution cap*

- (1) The regulations may declare that:
  - (a) a quantity of greenhouse gas that has a carbon dioxide equivalence of a specified number of tonnes is the ***carbon pollution cap*** for a specified flexible charge year; and
  - (b) that number is the ***carbon pollution cap number*** for that flexible charge year.

*Regulations*

- (2) In making a recommendation to the Governor-General about regulations to be made for the purposes of this section, the Minister:
- (a) must have regard to Australia's international obligations under international climate change agreements; and
  - (b) must have regard to the most recent report that:
    - (i) was given to the Minister by the Climate Change Authority under section 292; and
    - (ii) dealt with carbon pollution caps and carbon budgets; and
  - (c) may have regard to the following matters:
    - (i) undertakings relating to the reduction of greenhouse gas emissions that Australia has given under international climate change agreements;
    - (ii) Australia's medium-term and long-term targets for reducing net greenhouse gas emissions;
    - (iii) progress towards reduction of greenhouse gas emissions;
    - (iv) global action to reduce greenhouse gas emissions;
    - (v) estimates of the global greenhouse gas emissions budget;
    - (vi) the economic and social implications associated with various levels of carbon pollution caps;
    - (vii) voluntary action to reduce Australia's greenhouse gas emissions;
    - (viii) estimates of greenhouse gas emissions that are not covered by this Act;
    - (ix) estimates of the number of Australian carbon credit units that are likely to be issued;
    - (x) the extent (if any) of non-compliance with this Act and the associated provisions;
    - (xi) the extent (if any) to which liable entities have failed to surrender sufficient units to avoid liability for unit shortfall charge;

## Section 15

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- (xii) any acquisitions, or proposed acquisitions, by the Commonwealth of eligible international emissions units;
- (xiii) such other matters (if any) as the Minister considers relevant.

### 15 Disallowance of regulations

#### *Scope*

- (1) This section applies to regulations made for the purposes of section 14.

#### *Disallowance*

- (2) Either House of the Parliament may, following a motion upon notice, pass a resolution disallowing the regulations. For the resolution to be effective:
  - (a) the notice must be given in that House within 15 sitting days of that House after the copy of the regulations was tabled in the House under section 38 of the *Legislative Instruments Act 2003*; and
  - (b) the resolution must be passed, in pursuance of the motion, within 15 sitting days of that House after the giving of that notice.
- (3) If neither House passes such a resolution, the regulations take effect on the day immediately after the last day upon which such a resolution could have been passed if it were assumed that notice of a motion to disallow the regulations was given in each House on the last day of the 15 sitting day period of that House mentioned in paragraph (2)(a).
- (4) Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the regulations.

Note 1: The 15 sitting day notice period mentioned in paragraph (2)(a) of this section is the same as the 15 sitting day notice period mentioned in paragraph 42(1)(a) of the *Legislative Instruments Act 2003*.

Note 2: The 15 sitting day disallowance period mentioned in paragraph (2)(b) of this section is the same as the 15 sitting day disallowance period

mentioned in paragraph 42(1)(b) of the *Legislative Instruments Act 2003*.

## **16 When regulations must be tabled**

- (1) The Minister must take all reasonable steps to ensure that a set of regulations that:
  - (a) declares the carbon pollution cap, and the carbon pollution cap number, for the flexible charge year beginning on 1 July 2015; and
  - (b) declares the carbon pollution cap, and the carbon pollution cap number, for each of the next 4 flexible charge years;is tabled in each House of the Parliament under section 38 of the *Legislative Instruments Act 2003* not later than 31 May 2014.
- (2) A set of regulations covered by subsection (1) must not be made, or tabled in a House of the Parliament, after 31 May 2014.
- (3) If, at the start of the month of May that is 14 months before the start of a particular flexible charge year beginning on or after 1 July 2016, no regulations made for the purposes of section 14 have previously taken effect, the Minister must take all reasonable steps to ensure that a set of regulations that:
  - (a) declares the carbon pollution cap, and the carbon pollution cap number, for the flexible charge year; and
  - (b) declares the carbon pollution cap, and the carbon pollution cap number, for each of the next 4 flexible charge years;is tabled in each House of the Parliament under section 38 of the *Legislative Instruments Act 2003* not later than the end of that May.
- (4) A set of regulations covered by subsection (3) must not be made, or tabled in a House of the Parliament, after the end of the May mentioned in that subsection.
- (5) If a set of regulations that:
  - (a) declares the carbon pollution cap, and the carbon pollution cap number, for a particular flexible charge year; and
  - (b) declares the carbon pollution cap, and the carbon pollution cap number, for each of the next 4 flexible charge years;

## Section 16

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has taken effect, the Minister must take all reasonable steps to ensure that:

- (c) regulations declaring the carbon pollution cap, and the carbon pollution cap number, for the flexible charge year (the **relevant flexible charge year**) next following the last flexible charge year covered by paragraph (b) are tabled in each House of the Parliament under section 38 of the *Legislative Instruments Act 2003* at least 5 years before the end of the relevant flexible charge year; and
  - (d) regulations declaring the carbon pollution cap, and the carbon pollution cap number, for a flexible charge year that is later than the relevant flexible charge year are tabled in each House of the Parliament under section 38 of the *Legislative Instruments Act 2003* at least 5 years before the end of the later flexible charge year.
- (6) Regulations covered by paragraph (5)(c) must not be made, or tabled in a House of the Parliament, after the start of the 5-year period mentioned in that paragraph.
- (7) Regulations covered by paragraph (5)(d) must not be made, or tabled in a House of the Parliament, after the start of the 5-year period mentioned in that paragraph.
- (8) If:
- (a) either:
    - (i) a set of regulations covered by subsection (1) or (3) is made; or
    - (ii) regulations covered by paragraph (5)(c) or (d) are made; and
  - (b) on a particular day (the **tabling day**), a copy of the regulations is tabled in a House of the Parliament under section 38 of the *Legislative Instruments Act 2003*;
- then, on or as soon as practicable after the tabling day, the Minister must cause to be tabled in that House a written statement setting out the Minister's reasons for making the recommendation to the Governor-General about those regulations.

**17 Default carbon pollution cap for 2015-16***Scope*

- (1) This section applies if there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for the flexible charge year beginning on 1 July 2015.

*Carbon pollution cap*

- (2) The **carbon pollution cap** for the flexible charge year is a quantity of greenhouse gas that has a carbon dioxide equivalence of a number of tonnes equal to the number worked out using the following formula:

Total emissions numbers for the eligible financial year  
beginning on 1 July 2012      – 38,000,000

where:

***total emissions numbers for the eligible financial year beginning on 1 July 2012*** means the estimate entered in the Information Database under section 186 in relation to the eligible financial year beginning on 1 July 2012.

*Carbon pollution cap number*

- (3) The number worked out using that formula is the **carbon pollution cap number** for the flexible charge year.

**18 Default carbon pollution cap for a later flexible charge year***Scope*

- (1) This section applies if there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for a particular flexible charge year beginning on or after 1 July 2016.

*Carbon pollution cap*

- (2) The **carbon pollution cap** for the flexible charge year is a quantity of greenhouse gas that has a carbon dioxide equivalence of a

Section 18

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number of tonnes equal to the number worked out using the following formula:

Carbon pollution cap number  
for the previous flexible charge year – 12,000,000

*Carbon pollution cap number*

- (3) The number worked out using that formula is the ***carbon pollution cap number*** for the flexible charge year.



## **Part 3—Liable entities**

### **Division 1—Introduction**

#### **19 Simplified outline**

The following is a simplified outline of this Part:

- This Part sets out rules for:
  - (a) identifying the persons who are liable entities for a financial year (liable entities are liable to pay unit shortfall charge if they do not surrender sufficient eligible emissions units); and
  - (b) the provisional emissions numbers of those liable entities (provisional emissions numbers are used to work out the number of eligible emissions units that must be surrendered by a liable entity to avoid being liable to pay unit shortfall charge).
- If a person is responsible for covered emissions of greenhouse gas from the operation of a facility during a financial year:
  - (a) the person is a liable entity for the financial year; and
  - (b) the number of tonnes of carbon dioxide equivalence of the gas is a provisional emissions number of the person for the financial year.
- A person can be responsible for covered emissions of greenhouse gas from the operation of a facility because:
  - (a) the person has operational control of the facility; or

**Section 19**

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- (b) the person is a participant in a designated joint venture that has the facility; or
  - (c) the person is the holder of a liability transfer certificate in relation to the facility.
- A covered emission of greenhouse gas from the operation of a facility is a scope 1 emission (within the meaning of the *National Greenhouse and Energy Reporting Regulations 2008*), but does not include:
  - (a) emissions attributable to the combustion of certain fossil fuels; and
  - (b) emissions attributable to the combustion of biomass, biofuel or biogas; and
  - (c) agricultural emissions; and
  - (d) fugitive emissions from decommissioned underground mines; and
  - (e) emissions from legacy waste; and
  - (f) emissions from closed landfill facilities; and
  - (g) emissions of certain synthetic greenhouse gases.
- If a natural gas supplier supplies natural gas during a financial year:
  - (a) the supplier is a liable entity for the financial year; and
  - (b) the number of tonnes of carbon dioxide equivalence of the potential greenhouse gas emissions embodied in the natural gas is a provisional emissions number of the supplier for the financial year.

Section 19

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- If a natural gas supplier supplies an amount of natural gas to another person (the *recipient*) who quotes the recipient's Obligation Transfer Number (OTN) in relation to the supply, the supply will not count towards the supplier's liability for the financial year.
- If a person (the *OTN holder*) quotes the OTN holder's OTN in relation to the supply of an amount of natural gas, the OTN holder may be a liable entity.
- There is to be an Opt-in Scheme under which a designated opt-in person will be a liable entity because of the acquisition, manufacture or importation of taxable fuel.

## Division 2—Direct emitters of greenhouse gases

### Subdivision A—General rules

#### 20 Liable entity—person who has operational control of a facility

##### *Scope*

- (1) This section applies if:
  - (a) either:
    - (i) a facility (other than a landfill facility) was under the operational control of a person throughout an eligible financial year; or
    - (ii) a facility (other than a landfill facility) was under the operational control of a person for a number of, but not all, days in an eligible financial year (the ***control days***); and
  - (b) either:
    - (i) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; or
    - (ii) the facility is a large gas consuming facility; and
  - (c) the total amount of covered emissions from the operation of the facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the control days; has a carbon dioxide equivalence of a particular number of tonnes.

##### *Provisional emissions number*

- (2) For the purposes of this Act, that number is a ***provisional emissions number*** of the person for the eligible financial year.

*Liable entity*

- (3) For the purposes of this Act, the person is a ***liable entity*** for the eligible financial year.

*Threshold test—whole year*

- (4) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the facility was under the operational control of the person throughout the eligible financial year; and
  - (b) during the eligible financial year, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than 25,000 tonnes.

Note: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the ***control days***); and
  - (b) during the control days, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than the amount worked out using the formula:

$$25,000 \text{ tonnes} \times \frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$$

Note: See also section 29 (anti-avoidance).

*Exemption—designated joint venture*

- (6) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a designated joint venture had the facility, then the facility is taken not to have been under the operational control of the person during the whole or the part, as the case may be, of the eligible financial year.

Section 20

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*Exemption—liability transfer certificate*

- (7) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a liability transfer certificate was in force in relation to the facility, then the facility is taken not to have been under the operational control of the person during the whole or the part, as the case may be, of the eligible financial year.

*OTNs—no double counting*

- (8) If:
- (a) the facility was under the operational control of the person throughout the eligible financial year; and
  - (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the person mentioned in paragraph (a)); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (4)(b).
- (9) If:
- (a) the facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the **control days**); and
  - (b) during the control days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the person mentioned in paragraph (a)); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
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- (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;  
the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
- (e) counts for the purposes of paragraph (5)(b).

## **21 Liabile entity—participant in designated joint venture**

### *Scope*

- (1) This section applies if:
  - (a) either:
    - (i) a designated joint venture had a facility (other than a landfill facility) throughout an eligible financial year; or
    - (ii) a designated joint venture had a facility (other than a landfill facility) for a number of, but not all, days in an eligible financial year (the **control days**); and
  - (b) if subparagraph (a)(i) applies—a person was a participant in the joint venture throughout the eligible financial year; and
  - (c) if subparagraph (a)(ii) applies—a person was a participant in the joint venture during the control days; and
  - (d) either:
    - (i) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; or
    - (ii) the facility is a large gas consuming facility; and
  - (e) the total amount of covered emissions from the operation of the facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the control days; has a carbon dioxide equivalence of a particular number of tonnes.

### *Provisional emissions number*

- (2) For the purposes of this Act, the person's participating percentage of that number is a **provisional emissions number** of the person for the eligible financial year.

**Part 3** Liable entities

**Division 2** Direct emitters of greenhouse gases

**Section 21**

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Note: For *participating percentage*, see section 76 or 77.

*Liable entity*

- (3) For the purposes of this Act, the person is a *liable entity* for the eligible financial year.

*Threshold test—whole year*

- (4) The facility *passes the threshold test* for the eligible financial year if:
- (a) the designated joint venture had the facility throughout the eligible financial year; and
  - (b) during the eligible financial year, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than 25,000 tonnes.

Note: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility *passes the threshold test* for the eligible financial year if:
- (a) the designated joint venture had the facility for a number of, but not all, days in the eligible financial year (the *control days*); and
  - (b) during the control days, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than the amount worked out using the formula:

$$25,000 \text{ tonnes} \times \frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$$

Note: See also section 29 (anti-avoidance).

*Exemption—liability transfer certificate*

- (6) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a liability transfer certificate was in force in relation to the facility, then the designated joint venture is



Section 21

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taken not to have had the facility during the whole or the part, as the case may be, of the eligible financial year.

*OTNs—no double counting*

(7) If:

- (a) a designated joint venture had the facility throughout the eligible financial year; and
- (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
  - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be a participant in the designated joint venture); and
  - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
- (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;

the amount mentioned in paragraph (b):

- (d) does not count for the purposes of subsection (1); and
- (e) counts for the purposes of paragraph (4)(b).

(8) If:

- (a) the designated joint venture had the facility for a number of, but not all, days in the eligible financial year (the **control days**); and
- (b) during the control days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
  - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be a participant in the designated joint venture); and
  - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
- (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;

the amount mentioned in paragraph (b):

- (d) does not count for the purposes of subsection (1); and

**Section 22**

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(e) counts for the purposes of paragraph (5)(b).

*Rounding*

- (9) If the provisional emissions number worked out under subsection (2) is not a whole number, the provisional emissions number is to be rounded to the nearest whole number (with a number ending in .5 to be rounded up). For this purpose, zero is taken to be a whole number.

**22 Liable entity—holder of a liability transfer certificate**

*Scope*

- (1) This section applies if:
- (a) either:
    - (i) a person was the holder of a liability transfer certificate in relation to a facility (other than a landfill facility) throughout an eligible financial year; or
    - (ii) a person was the holder of a liability transfer certificate in relation to a facility (other than a landfill facility) for a number of, but not all, days in an eligible financial year (the *certificate days*); and
  - (b) either:
    - (i) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; or
    - (ii) the facility is a large gas consuming facility; and
  - (c) the total amount of covered emissions from the operation of the facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the certificate days;
- has a carbon dioxide equivalence of a particular number of tonnes.

Section 22

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*Provisional emissions number*

- (2) For the purposes of this Act, that number is a ***provisional emissions number*** of the person for the eligible financial year.

*Liable entity*

- (3) For the purposes of this Act, the person is a ***liable entity*** for the eligible financial year.

*Threshold test—whole year*

- (4) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
  - (b) during the eligible financial year, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than 25,000 tonnes.

Note: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the ***certificate days***); and
  - (b) during the certificate days, the total amount of covered emissions from the operation of the facility had a carbon dioxide equivalence of not less than the amount worked out using the formula:

$$25,000 \text{ tonnes} \times \frac{\text{Number of certificate days}}{\text{Number of days in the eligible financial year}}$$

Note: See also section 29 (anti-avoidance).

*OTNs—no double counting*

- (6) If:

Section 22

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- (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
  - (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the ***recipient***) (who may be the holder); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (4)(b).

(7) If:

- (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the ***certificate days***); and
  - (b) during the certificate days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the ***recipient***) (who may be the holder); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (5)(b).

## **Subdivision B—Landfill facilities**

### **23 Liable entity for landfill emissions—person who has operational control of a landfill facility**

#### *Scope*

- (1) This section applies if:
  - (a) either:
    - (i) a landfill facility was under the operational control of a person throughout an eligible financial year; or
    - (ii) a landfill facility was under the operational control of a person for a number of, but not all, days in an eligible financial year (the ***control days***); and
  - (b) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; and
  - (c) the total amount of covered emissions from the operation of the landfill facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the control days; has a carbon dioxide equivalence of a particular number of tonnes.

#### *Provisional emissions number*

- (2) For the purposes of this Act, that number is a ***provisional emissions number*** of the person for the eligible financial year.

#### *Liable entity*

- (3) For the purposes of this Act, the person is a ***liable entity*** for the eligible financial year.

#### *Threshold test—whole year*

- (4) The facility ***passes the threshold test*** for the eligible financial year if:

Section 23

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- (a) the landfill facility was under the operational control of the person throughout the eligible financial year; and
- (b) during the eligible financial year, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the landfill facility's threshold number for the eligible financial year.

Note 1: For the landfill facility's **threshold number**, see subsection (10).

Note 2: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility **passes the threshold test** for the eligible financial year if:
  - (a) the landfill facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the **control days**); and
  - (b) during the control days, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the number worked out using the formula:

$$\frac{\text{Landfill facility's threshold number for the eligible financial year}}{\text{threshold number for the eligible financial year}} \times \frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$$

Note 1: For the landfill facility's **threshold number**, see subsection (10).

Note 2: See also section 29 (anti-avoidance).

*Exemption—designated joint venture*

- (6) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a designated joint venture had the landfill facility, then the landfill facility is taken not to have been under the operational control of the person during the whole or the part, as the case may be, of the eligible financial year.

*Exemption—liability transfer certificate*

- (7) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a liability transfer certificate was in force in relation to the landfill facility, then the landfill facility is taken not to have been under the operational control of the person during the whole or the part, as the case may be, of the eligible financial year.

*OTNs—no double counting*

- (8) If:
- (a) the landfill facility was under the operational control of the person throughout the eligible financial year; and
  - (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the person mentioned in paragraph (a)); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (4)(b).
- (9) If:
- (a) the landfill facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the **control days**); and
  - (b) during the control days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the person mentioned in paragraph (a)); and

**Section 23**

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- (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (5)(b).

*Threshold number*

- (10) For the purposes of this section, the landfill facility's ***threshold number*** for the eligible financial year is:
- (a) in a case where:
    - (i) at any time during the eligible financial year, the landfill facility is open for the acceptance of a prescribed class of waste; and
    - (ii) at any time during the eligible financial year, the landfill facility is within the prescribed distance of another landfill facility that is open for the acceptance of the same class of waste; and
    - (iii) the other landfill facility is a designated large landfill facility in relation to the previous eligible financial year; and
    - (iv) if a list has been published by the Regulator during the eligible financial year under regulations made for the purposes of section 206—the other landfill facility is specified in the list;
- 10,000; or
- (b) in any other case—25,000.
- (11) For the purposes of subparagraph (10)(a)(ii), distance is to be measured in accordance with the regulations.
- (12) For the purposes of subparagraph (10)(a)(iii), assume that the financial year beginning on 1 July 2011 is an eligible financial year.



## **24 Liable entity for landfill emissions—participant in designated joint venture**

### *Scope*

- (1) This section applies if:
- (a) either:
    - (i) a designated joint venture had a landfill facility throughout an eligible financial year; or
    - (ii) a designated joint venture had a landfill facility for a number of, but not all, days in an eligible financial year (the ***control days***); and
  - (b) if subparagraph (a)(i) applies—a person was a participant in the joint venture throughout the eligible financial year; and
  - (c) if subparagraph (a)(ii) applies—a person was a participant in the joint venture during the control days; and
  - (d) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; and
  - (e) the total amount of covered emissions from the operation of the landfill facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the control days; has a carbon dioxide equivalence of a particular number of tonnes.

### *Provisional emissions number*

- (2) For the purposes of this Act, the person's participating percentage of that number is a ***provisional emissions number*** of the person for the eligible financial year.

Note: For ***participating percentage***, see section 76 or 77.

### *Liable entity*

- (3) For the purposes of this Act, the person is a ***liable entity*** for the eligible financial year.

Section 24

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*Threshold test—whole year*

- (4) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the designated joint venture had the landfill facility throughout the eligible financial year; and
  - (b) during the eligible financial year, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the landfill facility's threshold number for the eligible financial year.

Note 1: For the landfill facility's ***threshold number***, see subsection (9).

Note 2: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility ***passes the threshold test*** for the eligible financial year if:
- (a) the designated joint venture had the landfill facility for a number of, but not all, days in the eligible financial year (the ***control days***); and
  - (b) during the control days, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the number worked out using the formula:

$$\frac{\text{Landfill facility's threshold number for the eligible financial year}}{\text{Number of days in the eligible financial year}} \times \frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$$

Note 1: For the landfill facility's ***threshold number***, see subsection (9).

Note 2: See also section 29 (anti-avoidance).

*Exemption—liability transfer certificate*

- (6) For the purposes of this section, if, throughout the whole or a part of the eligible financial year, a liability transfer certificate was in force in relation to the facility, then the designated joint venture is

taken not to have had the facility during the whole or the part, as the case may be, of the eligible financial year.

*OTNs—no double counting*

(7) If:

- (a) the designated joint venture had the landfill facility throughout the eligible financial year; and
- (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:
  - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be a participant in the designated joint venture); and
  - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
- (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;

the amount mentioned in paragraph (b):

- (d) does not count for the purposes of subsection (1); and
- (e) counts for the purposes of paragraph (4)(b).

(8) If:

- (a) the designated joint venture had the landfill facility for a number of, but not all, days in the eligible financial year (the **control days**); and
- (b) during the control days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:
  - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be a participant in the designated joint venture); and
  - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
- (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;

the amount mentioned in paragraph (b):

- (d) does not count for the purposes of subsection (1); and

Section 24

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(e) counts for the purposes of paragraph (5)(b).

*Threshold number*

(9) For the purposes of this section, the landfill facility's ***threshold number*** for the eligible financial year is:

(a) in a case where:

- (i) at any time during the eligible financial year, the landfill facility is open for the acceptance of a prescribed class of waste; and
- (ii) at any time during the eligible financial year, the landfill facility is within the prescribed distance of another landfill facility that is open for the acceptance of the same class of waste; and
- (iii) the other landfill facility is a designated large landfill facility in relation to the previous eligible financial year; and
- (iv) if a list has been published by the Regulator during the eligible financial year under regulations made for the purposes of section 206—the other landfill facility is specified in the list;

10,000; or

(b) in any other case—25,000.

(10) For the purposes of subparagraph (9)(a)(ii), distance is to be measured in accordance with the regulations.

(11) For the purposes of subparagraph (9)(a)(iii), assume that the financial year beginning on 1 July 2011 is an eligible financial year.

*Rounding*

(12) If the provisional emissions number worked out under subsection (2) is not a whole number, the provisional emissions number is to be rounded to the nearest whole number (with a number ending in .5 to be rounded up). For this purpose, zero is taken to be a whole number.

## **25 Liable entity for landfill emissions—holder of a liability transfer certificate**

### *Scope*

- (1) This section applies if:
- (a) either:
    - (i) a person was the holder of a liability transfer certificate in relation to a landfill facility throughout an eligible financial year; or
    - (ii) a person was the holder of a liability transfer certificate in relation to a landfill facility for a number of, but not all, days in an eligible financial year (the ***certificate days***); and
  - (b) the facility passes the threshold test set out in subsection (4) or (5) for the eligible financial year; and
  - (c) the total amount of covered emissions from the operation of the landfill facility:
    - (i) if subparagraph (a)(i) applies—during the eligible financial year; or
    - (ii) if subparagraph (a)(ii) applies—during the certificate days;has a carbon dioxide equivalence of a particular number of tonnes.

### *Provisional emissions number*

- (2) For the purposes of this Act, that number is a ***provisional emissions number*** of the person for the eligible financial year.

### *Liable entity*

- (3) For the purposes of this Act, the person is a ***liable entity*** for the eligible financial year.

### *Threshold test—whole year*

- (4) The facility ***passes the threshold test*** for the eligible financial year if:

Section 25

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- (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
- (b) during the eligible financial year, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the landfill facility's threshold number for the eligible financial year.

Note 1: For the landfill facility's **threshold number**, see subsection (8).

Note 2: See also section 29 (anti-avoidance).

*Threshold test—control days*

- (5) The facility **passes the threshold test** for the eligible financial year if:
  - (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the **certificate days**); and
  - (b) during the control days, the number of tonnes of the carbon dioxide equivalence of the total amount of covered emissions, legacy emissions and exempt landfill emissions from the operation of the landfill facility is not less than the number worked out using the formula:

$$\text{Landfill facility's threshold number for the eligible financial year} \times \frac{\text{Number of certificate days}}{\text{Number of days in the eligible financial year}}$$

Note 1: For the landfill facility's **threshold number**, see subsection (8).

Note 2: See also section 29 (anti-avoidance).

*OTNs—no double counting*

- (6) If:
  - (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
  - (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:

Section 25

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- (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the holder); and
  - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (4)(b).

(7) If:

- (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the **certificate days**); and
  - (b) during the certificate days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was:
    - (i) supplied by a natural gas supplier to a person (the **recipient**) (who may be the holder); and
    - (ii) withdrawn from a gas supply pipeline for the purposes of the use that resulted in that combustion; and
  - (c) the recipient did not quote the recipient's OTN in relation to the supply of the natural gas;
- the amount mentioned in paragraph (b):
- (d) does not count for the purposes of subsection (1); and
  - (e) counts for the purposes of paragraph (5)(b).

*Threshold number*

- (8) For the purposes of this section, the landfill facility's **threshold number** for the eligible financial year is:
- (a) in a case where:
    - (i) at any time during the eligible financial year, the landfill facility is open for the acceptance of a prescribed class of waste; and
    - (ii) at any time during the eligible financial year, the landfill facility is within the prescribed distance of another

**Section 26**

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landfill facility that is open for the acceptance of the same class of waste; and

- (iii) the other landfill facility is a designated large landfill facility in relation to the previous eligible financial year; and

- (iv) if a list has been published by the Regulator during the eligible financial year under regulations made for the purposes of section 206—the other landfill facility is specified in the list;

10,000; or

- (b) in any other case—25,000.

- (9) For the purposes of subparagraph (8)(a)(ii), distance is to be measured in accordance with the regulations.

- (10) For the purposes of subparagraph (8)(a)(iii), assume that the financial year beginning on 1 July 2011 is an eligible financial year.

**Subdivision C—Adjustment of provisional emissions number in relation to a facility in the Joint Petroleum Development Area or the Greater Sunrise unit area**

**26 Joint Petroleum Development Area—adjustment of provisional emissions number**

*Scope*

- (1) This section applies if there is a provisional emissions number of a person for an eligible financial year in relation to covered emissions from the operation of a facility that is:
  - (a) located in the Joint Petroleum Development Area; and
  - (b) not located in the Greater Sunrise unit area;during a period that is included in, or consists of, the eligible financial year.



*Adjustment*

- (2) For the purposes of this Act, that provisional emissions number is taken to be the number worked out using the formula:

Prescribed percentage  $\times$  Unadjusted provisional emissions number

where:

***prescribed percentage*** means the percentage (not exceeding 100%) specified in the regulations in relation to the facility for the eligible financial year.

***unadjusted provisional emissions number*** means the number that, apart from this subsection, would be the provisional emissions number of the person for the eligible financial year in relation to covered emissions from the operation of the facility during the period.

**27 Joint Petroleum Development Area/Greater Sunrise unit area—  
adjustment of provisional emissions number**

*Scope*

- (1) This section applies if there is a provisional emissions number of a person for an eligible financial year in relation to covered emissions from the operation of a facility that is located in both of the following areas:
- (a) the Joint Petroleum Development Area;
  - (b) the Greater Sunrise unit area;
- during a period that is included in, or consists of, the eligible financial year.

*Adjustment*

- (2) For the purposes of this Act, that provisional emissions number is taken to be the number worked out using the formula:

Prescribed percentage  $\times$  Unadjusted provisional emissions number

where:

Section 28

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***prescribed percentage*** means the percentage (not exceeding 100%) specified in the regulations in relation to the facility for the eligible financial year.

***unadjusted provisional emissions number*** means the number that, apart from this subsection, would be the provisional emissions number of the person for the eligible financial year in relation to covered emissions from the operation of the facility during the period.

**28 Greater Sunrise unit area—adjustment of provisional emissions number**

*Scope*

- (1) This section applies if there is a provisional emissions number of a person for an eligible financial year in relation to covered emissions from the operation of a facility that is:
  - (a) located in the Greater Sunrise unit area; and
  - (b) not located in the Joint Petroleum Development Area;during a period that is included in, or consists of, the eligible financial year.

*Adjustment*

- (2) For the purposes of this Act, that provisional emissions number is taken to be the number worked out using the formula:

Prescribed percentage  $\times$  Unadjusted provisional emissions number

where:

***prescribed percentage*** means the percentage (not exceeding 100%) specified in the regulations in relation to the facility for the eligible financial year.

***unadjusted provisional emissions number*** means the number that, apart from this subsection, would be the provisional emissions number of the person for the eligible financial year in relation to covered emissions from the operation of the facility during the period.

## Subdivision D—Anti-avoidance

### 29 Anti-avoidance

#### *Scope*

- (1) This section applies if:
- (a) at any time after 15 December 2008, one or more persons entered into, commenced to carry out, or carried out, a scheme; and
  - (b) having regard to the following:
    - (i) the manner in which the scheme was entered into or carried out;
    - (ii) the form and substance of the scheme;
    - (iii) the time when the scheme was entered into and the length of the period during which the scheme was carried out;
    - (iv) the result in relation to the operation of this Act that, but for this section, would be achieved by the scheme;
    - (v) whether the scheme involves increasing the number of facilities without achieving any significant reductions in the total amount of covered emissions from the operation of the facilities;
    - (vi) whether the scheme involves establishing a particular number of facilities (instead of a lesser number of facilities) without achieving any significant reductions in the total amount of covered emissions from the operation of the facilities;
- it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of enabling a person to obtain the benefit of one or more threshold provisions in relation to a facility (the *relevant facility*) for an eligible financial year.
- (2) For the purposes of subsection (1), it is immaterial whether the person last mentioned in paragraph (1)(b) is the person, or one of the persons, mentioned in paragraph (1)(a).

**Section 30**

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*Cancellation of benefit of threshold provision*

- (3) The Regulator may, by writing, determine that this Act has, and is taken always to have had, effect, as if the person last mentioned in paragraph (1)(b) were not entitled to obtain the benefit of the relevant threshold provision or provisions in relation to the relevant facility for that eligible financial year.
- (4) If the Regulator makes a determination under subsection (3), the Regulator must publish a copy of the determination on the Regulator's website.
- (5) A determination under subsection (3) is not a legislative instrument.

*Threshold provision*

- (6) For the purposes of this section, each of the following is a ***threshold provision***:
  - (a) subsection 20(4);
  - (b) subsection 20(5);
  - (c) subsection 21(4);
  - (d) subsection 21(5);
  - (e) subsection 22(4);
  - (f) subsection 22(5);
  - (g) subsection 23(4);
  - (h) subsection 23(5);
  - (i) subsection 24(4);
  - (j) subsection 24(5);
  - (k) subsection 25(4);
  - (l) subsection 25(5).

**Subdivision E—Covered emissions from the operation of a facility**

**30 Covered emissions from the operation of a facility**

- (1) For the purposes of this Act, a ***covered emission*** from the operation of a facility is a scope 1 emission of greenhouse gas, where:

- (a) the greenhouse gas is released into the atmosphere as a direct result of the operation of the facility; and
- (b) the greenhouse gas is released in Australia; and
- (c) the Minister has, under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*, determined:
  - (i) methods by which the amounts of the scope 1 emission are to be measured; or
  - (ii) criteria for methods by which the amounts of the scope 1 emission are to be measured.

*Exclusion of emissions from the combustion of certain fuels*

- (2) For the purposes of this Act, a **covered emission** from the operation of a facility does not include emissions attributable to the combustion of:
  - (a) liquid petroleum fuel; or
  - (b) liquid petroleum gas; or
  - (c) liquefied natural gas; or
  - (d) compressed natural gas;that has been subject to:
  - (e) any duty under the *Customs Tariff Act 1995*; or
  - (f) any duty under the *Excise Tariff Act 1921*.
- (3) For the purposes of this Act, a **covered emission** from the operation of a facility does not include emissions attributable to the combustion of:
  - (a) biomass; or
  - (b) biofuel; or
  - (c) biogas.

*Exclusion of agricultural emissions*

- (4) For the purposes of this Act, a **covered emission** from the operation of a facility does not include 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;

**Section 30**

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from the decomposition of:

- (iii) livestock urine; or
- (iv) livestock dung;

(c) an emission of methane from:

- (i) rice fields; or
- (ii) rice plants;

(d) an emission of:

- (i) methane; or
- (ii) nitrous oxide;

from the burning of:

- (iii) savannas; or
- (iv) grasslands;

(e) an emission of:

- (i) methane; or
- (ii) nitrous oxide;

from the burning of:

- (iii) crop stubble in fields; or
- (iv) crop residues in fields; or
- (v) sugar cane before harvest;

(f) an emission of:

- (i) carbon dioxide; or
- (ii) methane; or
- (iii) nitrous oxide;

from soil.

(5) Paragraph (4)(f) does not apply to an emission that is attributable to the operation of a landfill facility.

*Exclusion of other emissions from land*

(6) For the purposes of this Act, a **covered emission** from the operation of a facility does not include emissions:

- (a) that are attributable to changes in the levels of carbon sequestered in:
  - (i) living biomass; or
  - (ii) dead organic matter; or

- (iii) soil; and
  - (b) that are also attributable to:
    - (i) land use; or
    - (ii) changes in land use (including land clearing); or
    - (iii) forestry activities; and
  - (c) that are not emissions to which subsection (4) applies.
- (7) Subsection (6) does not apply to an emission that is attributable to the operation of a landfill facility.

*Exclusion of fugitive emissions from decommissioned underground mines*

- (8) For the purposes of this Act, a **covered emission** from the operation of a facility does not include fugitive emissions from a decommissioned underground mine.

*Exclusion of legacy emissions from landfill facilities*

- (9) For the purposes of this Act, a **covered emission** from the operation of a landfill facility does not include legacy emissions from the operation of the facility.

*Exclusion of exempt landfill emissions from landfill facilities*

- (9A) For the purposes of this Act, a **covered emission** from the operation of a landfill facility does not include exempt landfill emissions from the operation of the facility.

*Exclusion of emissions from closed landfill facilities*

- (10) If:
- (a) a landfill facility has not accepted any waste since the start of 1 July 2012; and
  - (b) an amount of greenhouse gas is emitted from the operation of the facility;
- the amount mentioned in paragraph (b), to the extent to which it is attributable to solid waste, is not a **covered emission** from the operation of the landfill facility.

Section 31

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*Exclusion of emissions of certain synthetic greenhouse gases*

- (11) For the purposes of this Act, a **covered emission** from the operation of a facility does not include any of the following emissions:
- (a) an emission of a hydrofluorocarbon;
  - (b) an emission of sulfur hexafluoride;
  - (c) an emission of a perfluorocarbon.
- (12) Paragraph (11)(c) does not apply to an emission that is attributable to aluminium production.

**31 Measurement of covered emissions from the operation of a facility**

For the purposes of this Act, covered emissions from the operation of a facility are to be measured using:

- (a) methods determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*; or
- (b) methods which meet criteria determined under that subsection;

where the use of those methods satisfies any conditions specified in the determination under that subsection.

**Subdivision F—Emissions from the operation of a landfill facility**

**32 Legacy emissions from the operation of a landfill facility**

For the purposes of this Act, if:

- (a) an amount of greenhouse gas was emitted from the operation of a landfill facility; and
- (b) waste was accepted by the landfill facility before 1 July 2012;

so much of the amount mentioned in paragraph (a) as is, under a determination under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*, taken to be attributable to waste accepted by the facility before 1 July 2012 is a **legacy emission** from the operation of the landfill facility.



### 32A Exempt landfill emissions

For the purposes of this Act, if:

- (a) a person is a liable entity for an eligible financial year (the ***relevant eligible financial year***) under a particular provision of Subdivision B of Division 2 of Part 3 in so far as that provision applies to a particular landfill facility; and
- (b) the landfill facility's threshold number for the relevant eligible financial year is 10,000 for the purposes of that provision; and
- (c) the following conditions are satisfied in relation to each earlier eligible financial year at any time during which the landfill facility was in existence:
  - (i) no person was a liable entity for the earlier eligible financial year under Subdivision B of Division 2 of Part 3 in so far as that Subdivision applies to the landfill facility;
  - (ii) the landfill facility's threshold number for the earlier eligible financial year was 25,000 for the purposes of a provision of that Subdivision; and
- (d) an amount of greenhouse gas was emitted from the operation of the landfill facility during:
  - (i) the relevant eligible financial year; or
  - (ii) a later eligible financial year; and
- (e) waste was accepted by the landfill facility during the period:
  - (i) beginning on 1 July 2012; and
  - (ii) ending immediately before the start of the relevant eligible financial year;

so much of the amount mentioned in paragraph (d) as is, under a determination under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*, taken to be attributable to waste accepted by the facility during the period mentioned in paragraph (e) is an ***exempt landfill emission*** from the operation of the landfill facility.

## Division 3—Natural gas

### 33 Liable entity—supply of natural gas

#### *Preliminary emissions number*

- (1) For the purposes of this section, if:
- (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person; and
  - (b) it may reasonably be expected that the natural gas is wholly or partly for use by the other person; and
  - (c) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
  - (d) the withdrawal takes place in Australia; and
  - (e) the other person did not quote the other person's OTN in relation to the supply mentioned in paragraph (a); and
  - (f) the potential greenhouse gas emissions embodied in the amount mentioned in paragraph (a) have a carbon dioxide equivalence of a particular number of tonnes;
- that number is a ***preliminary emissions number*** of the natural gas supplier for the eligible financial year.

#### *Provisional emissions number and liable entity*

- (2) If the natural gas supplier has, under subsection (1), one or more preliminary emissions numbers for the eligible financial year, then, for the purposes of this Act:
- (a) the sum of the preliminary emissions numbers is a ***provisional emissions number*** of the natural gas supplier for the eligible financial year; and
  - (b) the natural gas supplier is a ***liable entity*** for the eligible financial year.

#### *Reduction of provisional emissions number*

- (3) If:

Section 35

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- (a) the natural gas supplier has, under subsection (2), a provisional emissions number for an eligible financial year; and
  - (b) the natural gas supplier has one or more netted-out numbers for the eligible financial year (see subsection (4));
- the provisional emissions number is to be reduced (but not below zero) by the total of those netted-out numbers.

*Netted-out numbers*

- (4) The regulations may provide that, for the purposes of this section, a number ascertained in accordance with the regulations is a **netted-out number** of a natural gas supplier for an eligible financial year ascertained in accordance with the regulations.

### **35 Liable entity—supply of natural gas to a person who quotes the person’s OTN**

*Preliminary emissions number*

- (1) For the purposes of this section, if:
  - (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the **OTN holder**) who quotes the OTN holder’s OTN in relation to the supply; and
  - (aa) it may reasonably be expected that the natural gas is wholly or partly for use by the OTN holder; and
  - (b) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
  - (c) the withdrawal takes place in Australia; and
  - (d) the potential greenhouse gas emissions embodied in the amount mentioned in paragraph (a) have a carbon dioxide equivalence of a particular number of tonnes;that number is a **preliminary emissions number** of the OTN holder for the eligible financial year.
- (2) If:
  - (a) the OTN holder’s OTN was quoted in relation to the supply of an amount of natural gas to the OTN holder in compliance

**Section 35**

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with section 55B, so far as that section relates to a particular large gas consuming facility; and

- (b) the whole or a part (which whole or part is in this subsection called the ***relevant portion***) of the amount of natural gas is, or is to be, combusted in the operation of the facility; and
- (c) an amount of covered emissions from the operation of the facility is, or will be, attributable to the combustion of the relevant portion;

paragraph (1)(d) has effect as if the amount mentioned in that paragraph did not consist of or include the relevant portion.

*Provisional emissions number and liable entity*

- (3) If the OTN holder has, under subsection (1), one or more preliminary emissions numbers for the eligible financial year, then, for the purposes of this Act:
  - (a) the sum of the preliminary emissions numbers is a ***provisional emissions number*** of the OTN holder for the eligible financial year; and
  - (b) the OTN holder is a ***liable entity*** for the eligible financial year.

*Reduction of provisional emissions number*

- (4) If:
  - (a) the OTN holder has, under subsection (3), a provisional emissions number for an eligible financial year; and
  - (b) the OTN holder has one or more netted-out numbers for the eligible financial year (see subsections (5) to (9));the provisional emissions number is to be reduced (but not below zero) by the total of those netted-out numbers.

*Netted-out numbers*

- (5) For the purposes of this section, if:
  - (a) the OTN holder quotes the OTN holder's OTN in relation to a supply to the OTN holder of an amount of natural gas; and
  - (b) during an eligible financial year, the OTN holder uses the whole or a part (which whole or part is in this subsection

called the **relevant portion**) of the amount mentioned in paragraph (a):

- (i) as feedstock; or
- (ii) in such a way as to not emit any greenhouse gases; and
- (c) the potential greenhouse gas emissions embodied in the relevant portion have a carbon dioxide equivalence of a particular number of tonnes;

the number mentioned in paragraph (c) is a **netted-out number** of the OTN holder for the eligible financial year.

(6) For the purposes of this section, if:

- (a) the OTN holder quotes the OTN holder's OTN in relation to a supply to the OTN holder of an amount of natural gas; and
- (b) during an eligible financial year, an amount of covered emissions from the operation of a facility (other than a large gas consuming facility) was attributable to the combustion of the whole or a part (which whole or part is in this subsection called the **relevant portion**) of the amount mentioned in paragraph (a); and
- (c) the covered emissions mentioned in paragraph (b) count for the purposes of subsection 20(1), 21(1), 22(1), 23(1), 24(1) or 25(1); and
- (d) the potential greenhouse gas emissions embodied in the relevant portion have a carbon dioxide equivalence of a particular number of tonnes;

the number mentioned in paragraph (d) is a **netted-out number** of the OTN holder for the eligible financial year.

(7) For the purposes of this section, if:

- (a) the OTN holder quotes the OTN holder's OTN in relation to a supply to the OTN holder of an amount of natural gas; and
- (b) during an eligible financial year, the OTN holder uses the whole or a part (which whole or part is in this subsection called the **relevant portion**) of the amount mentioned in paragraph (a) to manufacture:
  - (i) compressed natural gas; or
  - (ii) liquefied natural gas; or
  - (iii) liquid petroleum gas; and

Section 36

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- (d) the compressed natural gas, liquefied natural gas or liquid petroleum gas, as the case may be, is entered for home consumption; and
  - (e) excise duty is or was payable by the OTN holder or another person on the compressed natural gas, liquefied natural gas or liquid petroleum gas, as the case may be; and
  - (f) the potential greenhouse gas emissions embodied in the relevant portion have a carbon dioxide equivalence of a particular number of tonnes;
- the number mentioned in paragraph (f) is a **netted-out number** of the OTN holder for the eligible financial year.
- (8) For the purposes of this section, if:
- (a) the OTN holder quotes the OTN holder's OTN in relation to a supply to the OTN holder of an amount of natural gas; and
  - (b) during an eligible financial year, the OTN holder supplies the whole or a part (which whole or part is in this subsection called the **relevant portion**) of the amount mentioned in paragraph (a) to another person; and
  - (c) the potential greenhouse gas emissions embodied in the relevant portion have a carbon dioxide equivalence of a particular number of tonnes;
- the number mentioned in paragraph (c) is a **netted-out number** of the OTN holder for the eligible financial year.
- (9) The regulations may provide that, for the purposes of this section, a number ascertained in accordance with the regulations is a **netted-out number** of an OTN holder for an eligible financial year ascertained in accordance with the regulations.

**36 Liable entity—supply of natural gas to a person who misuses the person's OTN**

*Preliminary emissions number*

- (1) For the purposes of this Act, if:
- (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the **OTN**

Section 36A

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**holder**) who quotes the OTN holder's OTN in relation to the supply; and

- (aa) it may reasonably be expected that the natural gas is wholly or partly for use by the OTN holder; and
- (b) the OTN holder was not permitted or required by this Act to quote the OTN holder's OTN; and
- (c) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
- (d) the withdrawal takes place in Australia; and
- (e) the potential greenhouse gas emissions embodied in the amount mentioned in paragraph (a) have a carbon dioxide equivalence of a particular number of tonnes;

that number is a **preliminary emissions number** of the OTN holder for the eligible financial year.

*Provisional emissions number and liable entity*

- (2) If the OTN holder has, under subsection (1), one or more preliminary emissions numbers for the eligible financial year, then, for the purposes of this Act:
  - (a) the sum of the preliminary emissions numbers is a **provisional emissions number** of the OTN holder for the eligible financial year; and
  - (b) the OTN holder is a **liable entity** for the eligible financial year.

**36A Extended meaning of use**

For the purposes of this Division, if:

- (a) a person (the **first person**) provides an amount of natural gas for use by another person; and
- (b) the provision of the natural gas does not involve a supply of the natural gas;

any use of the natural gas by the other person is taken to be use by the first person.

## **Division 4—Obligation transfer numbers**

### **Subdivision A—Issue of obligation transfer numbers**

#### **37 Issue of OTN**

An OTN may be issued in one of the following ways:

- (a) as the result of an application (see section 40);
- (b) on the Regulator's own initiative (see section 41).

#### **38 Application for OTN**

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

#### **39 Further information**

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



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

#### **40 Issue of OTN as the result of an application**

##### *Scope*

- (1) This section applies if an application under section 38 has been made for an OTN.

##### *Issue of OTN*

- (2) After considering the application, the Regulator may issue an OTN to the applicant.

##### *Criteria for issue of OTN*

- (3) The Regulator must not issue the OTN unless:
  - (a) the Regulator is satisfied that the applicant is, or is likely to be, permitted or required by this Act to quote the person's OTN in relation to the supply to the person of an amount of natural gas; and
  - (b) the Regulator has carried out the applicable identification procedure in respect of the applicant.

##### *Timing*

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
  - (a) if the Regulator requires the applicant to give further information under subsection 39(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

**Section 41**

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*Refusal*

- (5) If the Regulator decides to refuse to issue the OTN, the Regulator must give written notice of the decision to the applicant.

**41 Issue of OTN on the Regulator's own initiative**

*Scope*

- (1) This section applies if:
  - (a) the Regulator is satisfied that a person is, or is likely to be, permitted or required by this Act to quote the person's OTN in relation to the supply to the person of an amount of natural gas; and
  - (b) the Regulator has carried out the applicable identification procedure in respect of the person.

*Issue of OTN*

- (2) The Regulator may, by written notice given to the person, issue an OTN to the person.

**42 Surrender of OTN**

*Scope*

- (1) This section applies if a person is the holder of an OTN.

*Surrender*

- (2) The person may, with the written consent of the Regulator, surrender the OTN.
- (3) The surrender takes effect when the consent is given by the Regulator.

*Refusal*

- (4) If the Regulator decides to refuse to give consent to the surrender of the OTN by the person, the Regulator must give written notice of the refusal to the person.

### **43 Cancellation of OTN**

- (1) If a person holds an OTN, the Regulator may, by written notice given to the person, cancel the OTN.
- (2) The Regulator must not cancel a person's OTN under subsection (1) unless the Regulator is satisfied that:
  - (a) the person is not permitted or required, and is unlikely to be permitted or required, by this Act to quote the OTN in relation to the supply to the person of an amount of natural gas; or
  - (b) the person has breached this Act or an associated provision.
- (3) If:
  - (a) a person has ceased to exist; and
  - (b) immediately before the person ceased to exist, the person held an OTN;the Regulator must cancel the OTN.

### **43A Publication of list of OTNs that have been cancelled or surrendered**

- (1) The Regulator must publish on its website a list of OTNs that have been cancelled or surrendered.
- (2) If an OTN is on the list, the list must set out the time when the cancellation or surrender of the OTN takes effect.

### **44 OTN is not transferable**

An OTN is not transferable.

### **45 OTN Register**

- (1) The Regulator must keep a register, to be known as the OTN Register.
- (2) The OTN Register is to be maintained by electronic means.
- (3) The OTN Register is to be made available for inspection on the Regulator's website.

**Section 45**

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*Entry for an OTN*

- (4) If an OTN is issued to a person, the Regulator must make an entry for the OTN in the OTN Register.
- (5) An entry for a person's OTN must set out:
  - (a) the name of the person; and
  - (b) the person's address last known to the Regulator; and
  - (c) if the person has an ABN—the person's ABN.
- (6) If:
  - (a) there is an entry for a person's OTN in the OTN Register; and
  - (b) the person changes the person's name or address;the Regulator may make the appropriate alteration to the entry.
- (7) If an OTN is surrendered or cancelled, the Regulator must remove the entry for the OTN from the OTN Register when the surrender or cancellation takes effect.

*Entry for a natural gas supplier*

- (8) The OTN Register is to include a list of natural gas suppliers.
- (9) The Regulator must, if requested to do so by a natural gas supplier, make an entry for the natural gas supplier in the list.
- (10) An entry for a natural gas supplier in the list must set out:
  - (a) the name of the natural gas supplier; and
  - (b) the natural gas supplier's address last known to the Regulator; and
  - (c) the natural gas supplier's telephone number; and
  - (d) if the natural gas supplier has a website—the URL of the website; and
  - (e) if the natural gas supplier has an ABN—the ABN; and
  - (f) if the natural gas supplier's willingness to accept quotations of OTNs, in cases where the acceptance is not mandatory, is subject to any conditions—those conditions.
- (11) If:

- (a) there is an entry for a natural gas supplier on the list; and
  - (b) the natural gas supplier changes the natural gas supplier's name or address;the Regulator may make the appropriate alteration to the entry.
- (12) If there is an entry for a natural gas supplier on the list, the Regulator must, at the request of the natural gas supplier, remove the entry from the list.
- (13) If:
  - (a) the Regulator takes any of the following actions:
    - (i) making an entry in the OTN Register under subsection (4);
    - (ii) making an alteration to an entry in the OTN Register under subsection (6);
    - (ii) removing an entry from the OTN Register under subsection (7); and
  - (b) there is an entry for a natural gas supplier in the list;the Regulator must, as soon as practicable after taking the action, notify the natural gas supplier, in writing, of:
  - (c) the taking of the action; and
  - (d) if the action consists of removing an entry from the OTN register under subsection (7) because of the cancellation or surrender of an OTN—the time when the cancellation or surrender took effect.

#### **46 Evidentiary provisions**

- (1) The Regulator may supply a copy of or extract from the OTN Register certified by an official of the Regulator to be a true copy or true extract, as the case may be.

Note: See also section 155 of the *Evidence Act 1995*.
- (2) The Regulator may charge a fee specified in the regulations for supplying a copy or extract under subsection (1).
- (3) A fee specified under subsection (2) must not be such as to amount to taxation.

Section 47

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**47 Notification of change of name or address of OTN holder or natural gas supplier**

*OTN holder*

- (1) If:
- (a) there is an entry for a person's OTN in the OTN Register; and
  - (b) either:
    - (i) there is a change in the name of the person; or
    - (ii) there is a change to the person's address as set out in the OTN Register;
- the person must, within 28 days after the change, notify the Regulator, in writing, of the change.

*Natural gas supplier*

- (2) If:
- (a) there is an entry for a natural gas supplier in the OTN Register; and
  - (b) either:
    - (i) there is a change in the name of the natural gas supplier; or
    - (ii) there is a change to the natural gas supplier's address as set out in the OTN Register;
- the natural gas supplier must, within 28 days after the change, notify the Regulator, in writing, of the change.

*Civil penalty provision*

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

## **Subdivision B—Method of quotation of obligation transfer numbers**

### **48 Quotation of OTN**

- (1) If a person (the **OTN holder**) holds an OTN, the OTN holder makes a **quotation** of the OTN to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier to the OTN holder if:
  - (a) the OTN holder makes a statement to the natural gas supplier in connection with:
    - (i) the supply; or
    - (ii) a class of supplies that includes the supply; and
  - (b) the statement is in writing; and
  - (c) the statement sets out:
    - (i) the words “quotation of OTN” followed by the OTN; and
    - (ii) the name of the OTN holder; and
    - (iii) if the OTN holder has an ABN—the ABN; and
    - (iv) such other information (if any) as is specified in the regulations.
- Note: For example, if the OTN holder’s OTN is 123456, a statement could include the words “quotation of OTN 123456”.
- (2) A statement under subsection (1) may be included in a contract, order or similar document, whether or not in electronic form.
- (3) If the statement under subsection (1) is made in connection with a class of supplies, the OTN holder is taken, for the purposes of this Act, to have made a **quotation** of the OTN to the natural gas supplier in relation to that class of supplies.

### **49 Effect of withdrawal of quotation of OTN**

- If:
- (a) a person has made a quotation of the person’s OTN to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier; and

Section 50

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(b) the quotation is withdrawn before the supply occurred; this Act has, and is taken always to have had, effect as if the person had not quoted the OTN to the natural gas supplier in relation to the supply.

**50 Withdrawal of quotation of OTN if OTN is cancelled or surrendered**

If:

- (a) a person has made a quotation of the person's OTN to a natural gas supplier; and
  - (b) the OTN is cancelled or surrendered;
- the quotation is taken to have been withdrawn when the cancellation or surrender takes effect.

**51 Withdrawal of quotation of OTN by OTN holder**

(1) If:

- (a) a person (the ***OTN holder***) has made a quotation of the OTN holder's OTN to a natural gas supplier in relation to a single supply; and
  - (b) the OTN holder ceases to be permitted or required by this Act to quote the OTN holder's OTN in relation to the supply;
- the OTN holder may, by written notice given to the natural gas supplier, withdraw the quotation of the OTN.

(2) If:

- (a) a person (the ***OTN holder***) has made a quotation of the OTN holder's OTN to a natural gas supplier in relation to a class of supplies; and
  - (b) the OTN holder ceases to be permitted or required by this Act to quote the OTN holder's OTN in relation to those supplies;
- the OTN holder may, by written notice given to the natural gas supplier, withdraw the quotation of the OTN.

**52 Withdrawal of quotation of OTN by agreement**

(1) If:

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- (a) a person (the **OTN holder**) has made a quotation of the OTN holder's OTN to a natural gas supplier in relation to a single supply; and
  - (b) the natural gas supplier was not required by this Act to accept the quotation; and
  - (c) the natural gas supplier agrees to the withdrawal of the quotation;
- the OTN holder may, by written notice given to the natural gas supplier, withdraw the quotation.
- (2) If:
- (a) a person (the **OTN holder**) has made a quotation of the OTN holder's OTN to a natural gas supplier in relation to a class of supplies; and
  - (b) the natural gas supplier was not required by this Act to accept the quotation; and
  - (c) the natural gas supplier agrees to the withdrawal of the quotation;
- the OTN holder may, by written notice given to the natural gas supplier, withdraw the quotation.

### **53 Validation of quotation of OTN**

- (1) If:
- (a) a person (the **OTN holder**) has purported to quote a number as the OTN holder's OTN to a natural gas supplier in relation to the supply of natural gas; and
  - (b) the purported quotation was due to an honest mistake; and
  - (c) the Regulator is satisfied that it would be reasonable to validate the quotation;
- the Regulator may, by writing, determine that this Act (other than this section) has, and is taken always to have had, effect as if the OTN holder had quoted the OTN holder's OTN in relation to the supply.
- (2) The Regulator must give a copy of the determination to:
- (a) the OTN holder; and
  - (b) the natural gas supplier.

**Section 54**

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- (3) A determination made under subsection (1) is not a legislative instrument.

**54 Effect of surrender or cancellation of OTN—grace period for quotation in relation to a single supply**

*Scope*

- (1) This section applies if:
- (a) a person's OTN is surrendered or cancelled; and
  - (b) immediately before the surrender or cancellation took effect, a quotation of the person's OTN was in effect in relation to a single supply; and
  - (c) the quotation had been accepted by the natural gas supplier to whom the quotation was made.

*Grace period*

- (2) If the supply occurs during:
- (a) the 28-day period beginning when the surrender or cancellation took effect; or
  - (b) if the person and the natural gas supplier agree on a shorter period beginning when the surrender or cancellation took effect—that shorter period;
- this Act has effect, in relation to the supply, as if the person had:
- (c) held an OTN; and
  - (d) quoted the OTN in relation to the supply.

**55 Effect of surrender or cancellation of OTN—grace period for quotation in relation to a class of supplies**

*Scope*

- (1) This section applies if:
- (a) a person's OTN is surrendered or cancelled; and
  - (b) immediately before the surrender or cancellation took effect, a quotation of the person's OTN was in effect in relation to a class of supplies; and

Section 55A

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- (c) the quotation had been accepted by the natural gas supplier to whom the quotation was made.

*Grace period*

- (2) This Act has effect, in relation to a supply that:
  - (a) is included in the class of supplies; and
  - (b) occurs during:
    - (i) the 28-day period beginning when the surrender or cancellation took effect; or
    - (ii) if the person and the natural gas supplier agree on a shorter period beginning when the surrender or cancellation took effect—that shorter period;as if the person had:
  - (c) held an OTN; and
  - (d) quoted the OTN in relation to the supply.

**Subdivision C—Quotation of obligation transfer numbers**

**55A Large gas consuming facility**

- (1) For the purposes of this Act, if:
  - (a) a facility passes the threshold test set out in subsection (3) for a financial year; and
  - (b) the financial year began on or after 1 July 2010;then, at all times after the start of the second 1 July that occurs after the end of the financial year, the facility is a ***large gas consuming facility***.
- (2) However, if the conditions specified in the regulations are satisfied in relation to a large gas consuming facility, the facility is taken to cease to be a large gas consuming facility at a time ascertained in accordance with the regulations.
- (3) For the purposes of subsection (1), a facility ***passes the threshold test*** for a financial year if so much of the total amount of covered emissions from the operation of the facility during the financial year as is attributable to the combustion of natural gas has a carbon dioxide equivalence of not less than:

**Section 55B**

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- (a) 25,000 tonnes; or
- (b) if another number of tonnes is specified in the regulations—the specified number of tonnes.

**55B Quotation of OTN—large gas consuming facility**

- (1) If:
  - (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the *recipient*); and
  - (b) it may reasonably be expected that the natural gas is for use in the operation of a large gas consuming facility; and
  - (c) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
  - (d) the withdrawal takes place in Australia;the recipient must quote the recipient's OTN in relation to the supply.
- (2) Before the first occasion on which the recipient quotes the recipient's OTN to the natural gas supplier under this section, the recipient must:
  - (a) give the natural gas supplier written notice of the recipient's intention to quote the recipient's OTN under this section; and
  - (b) do so at least:
    - (i) 28 days; or
    - (ii) if the natural gas supplier and the recipient agree on a lesser number of days—that lesser number of days; before that first occasion.

*Civil penalty provisions*

- (3) Subsections (1) and (2) are *civil penalty provisions*.

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

**56 Quotation of OTN—large user of natural gas**

- (1) If:
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- (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the **recipient**); and
- (aa) it may reasonably be expected that the natural gas is wholly or partly for use by the recipient; and
- (b) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
- (c) the withdrawal takes place in Australia; and
- (e) either:
  - (i) the recipient is an approved person for the purposes of the application of this subsection to the eligible financial year; or
  - (ii) the recipient is a person to whom natural gas is supplied in the circumstances covered by section 55B;

the recipient may quote the recipient's OTN in relation to the supply mentioned in paragraph (a).

Note: For **approved person**, see subsection (5).

*Approved person*

- (2) A person may apply to the Regulator to be an approved person for the purposes of the application of subsection (1) to a specified eligible financial year.
- (3) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by such information as is specified in the regulations; and
  - (d) be accompanied by such documents (if any) as are specified in the regulations.
- (4) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (5) After considering an application under subsection (2), the Regulator may, by written notice given to the applicant, declare that the applicant is an **approved person** for the purposes of the

## Section 57

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application of subsection (1) to the eligible financial year specified in the application.

- (6) The Regulator must not declare that the applicant is an approved person for the purposes of the application of subsection (1) to an eligible financial year unless the Regulator is satisfied that it is likely that so much of the total amount of covered emissions from the operation of an eligible facility of the applicant during the eligible financial year as is attributable to the combustion of natural gas will have a carbon dioxide equivalence of not less than:
  - (a) 25,000 tonnes; or
  - (b) if another number of tonnes is specified in the regulations—the specified number of tonnes.
- (6A) For the purposes of subsection (6), a facility is an *eligible facility* of the applicant if:
  - (a) the facility is under the operational control of the applicant; or
  - (b) the following conditions are satisfied:
    - (i) the facility is under the operational control of another person;
    - (ii) the applicant provides natural gas to the other person for use in the operation of the facility;
    - (iii) the provision of the natural gas does not involve a supply of the natural gas.
- (7) If the Regulator decides to refuse to approve the applicant, the Regulator must give written notice of the decision to the applicant.

### 57 Quotation of OTN—use of natural gas as a feedstock

- (1) If:
  - (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the *recipient*); and
  - (aa) it may reasonably be expected that the natural gas is wholly or partly for use by the recipient; and
  - (b) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and

- (c) the withdrawal takes place in Australia; and
  - (d) it is intended that the whole or a part of that amount will be used as a feedstock;
- the recipient may quote the recipient's OTN in relation to the supply.
- (2) Before the first occasion on which the recipient quotes the recipient's OTN to the natural gas supplier under this section, the recipient must:
  - (a) give the natural gas supplier written notice of the recipient's intention to quote the recipient's OTN under this section; and
  - (b) do so at least:
    - (i) 28 days; or
    - (ii) if the natural gas supplier and the recipient agree on a lesser number of days—that lesser number of days; before that first occasion.

*Civil penalty provision*

- (3) Subsection (2) is a ***civil penalty provision***.

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

**58 Quotation of OTN—use of natural gas in manufacturing compressed natural gas, liquefied natural gas or liquid petroleum gas**

- (1) If:
  - (a) during an eligible financial year, a natural gas supplier supplies an amount of natural gas to another person (the ***recipient***); and
  - (aa) it may reasonably be expected that the natural gas is wholly or partly for use by the recipient; and
  - (b) the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use; and
  - (c) the withdrawal takes place in Australia; and

**Section 58A**

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- (d) the natural gas is to be used, in the course of carrying on a business, to manufacture compressed natural gas, liquefied natural gas or liquid petroleum gas;
- the recipient may quote the recipient's OTN in relation to the supply.
- (2) Before the first occasion on which the recipient quotes the recipient's OTN to the natural gas supplier under this section, the recipient must:
  - (a) give the natural gas supplier written notice of the recipient's intention to quote the recipient's OTN under this section; and
  - (b) do so at least:
    - (i) 28 days; or
    - (ii) if the natural gas supplier and the recipient agree on a lesser number of days—that lesser number of days; before that first occasion.

*Civil penalty provision*

- (3) Subsection (2) is a ***civil penalty provision***.

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

**58A Extended meaning of use**

For the purposes of this Subdivision, if:

- (a) a person (the ***first person***) provides an amount of natural gas for use by another person; and
  - (b) the provision of the natural gas does not involve a supply of the natural gas;
- any use of the natural gas by the other person is taken to be use by the first person.



## **Subdivision D—General provisions**

### **59 Acceptance of quotation of OTN in relation to a single supply**

#### *Scope*

- (1) This section applies if a person (the **OTN holder**) makes a quotation of the OTN holder's OTN to a natural gas supplier in relation to a single supply.

#### *Acceptance of quotation of OTN*

- (2) If the OTN holder is permitted (but not required) by this Act (other than section 57 or 58) to quote the OTN holder's OTN in relation to the supply, the natural gas supplier may, by written notice given to the OTN holder, accept the quotation.
- (3) If:
- (a) the OTN holder is permitted by section 57 or 58 to quote the OTN holder's OTN in relation to the supply; and
  - (b) the OTN holder, by written notice given to the natural gas supplier, declares that the quotation is a quotation under section 57 or 58, as the case may be;
- the natural gas supplier must, by written notice given to the OTN holder, accept the quotation.
- (4) If:
- (a) the OTN holder is required by section 55B to quote the OTN holder's OTN in relation to the supply; and
  - (b) the OTN holder, by written notice given to the natural gas supplier, declares that the quotation is a mandatory quotation under section 55B;
- the natural gas supplier must, by written notice given to the OTN holder, accept the quotation.
- (5) A notice given by the natural gas supplier under subsection (2), (3) or (4) must set out:
- (a) the words "acceptance of quotation of OTN" followed by the OTN; and
  - (b) the name of the OTN holder; and

**Section 60**

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- (c) if the OTN holder has an ABN—the ABN; and
  - (d) a description of the supply; and
  - (e) the name of the natural gas supplier; and
  - (f) if the natural gas supplier has an ABN—the ABN; and
  - (g) such other information (if any) as is specified in the regulations.
- (6) A notice under subsection (2), (3) or (4) may be included in a contract, order or similar document, whether or not in electronic form.
- (7) If the natural gas supplier does not accept the quotation, this Act (other than this section) has effect as if the OTN holder had not quoted the OTN holder's OTN in relation to the supply.

*Civil penalty provisions*

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

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

**60 Acceptance of quotation of OTN in relation to a class of supplies**

*Scope*

- (1) This section applies if a person (the ***OTN holder***) makes a quotation of the OTN holder's OTN to a natural gas supplier in relation to a particular class of supplies.

*Acceptance of quotation of OTN*

- (2) If the OTN holder is permitted (but not required) by this Act (other than section 57 or 58) to quote the OTN holder's OTN in relation to each supply included in the class of supplies, the natural gas supplier may, by written notice given to the OTN holder, accept the quotation.
- (3) If:
  - (a) the OTN holder is permitted by section 57 or 58 to quote the OTN holder's OTN in relation to a supply included in the class of supplies; and

- (b) the OTN holder, by written notice given to the natural gas supplier, declares that the quotation is a quotation under section 57 or 58, as the case may be;  
the natural gas supplier must, by written notice given to the OTN holder, accept the quotation.
- (4) If:
  - (a) the OTN holder is required by section 55B to quote the OTN holder's OTN in relation to a supply included in the class of supplies; and
  - (b) the OTN holder, by written notice given to the natural gas supplier, declares that the quotation is a mandatory quotation under section 55B;  
the natural gas supplier must, by written notice given to the OTN holder, accept the quotation.
- (5) A notice given by the natural gas supplier under subsection (2), (3) or (4) must set out:
  - (a) the words "acceptance of quotation of OTN" followed by the OTN; and
  - (b) the name of the OTN holder; and
  - (c) if the OTN holder has an ABN—the ABN; and
  - (d) a description of the class of supplies; and
  - (e) the name of the natural gas supplier; and
  - (f) if the natural gas supplier has an ABN—the ABN; and
  - (g) such other information (if any) as is specified in the regulations.
- (6) A notice under subsection (2), (3) or (4) may be included in a contract, order or similar document, whether or not in electronic form.
- (7) If the natural gas supplier does not accept the quotation, this Act (other than this section) has effect as if the OTN holder had not quoted the OTN holder's OTN in relation to each supply included in the class of supplies.

*Civil penalty provisions*

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

Section 62

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

**62 False or misleading declaration**

A person commits an offence if:

- (a) the person makes a declaration to another person under paragraph 59(3)(b) or (4)(b) or 60(3)(b) or (4)(b); and
- (b) the declaration is false or misleading.

Penalty: Imprisonment for 12 months.

**63 Misuse of OTN**

- (1) A person must not quote the person's OTN in relation to the supply of natural gas unless the person is permitted or required to do so by this Act.

*Ancillary contraventions*

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

*Civil penalty provisions*

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

*Consequences of misuse of OTN*

- (4) If:
  - (a) a person quotes the person's OTN in relation to the supply of natural gas; and

- (b) the quotation breaches subsection (1); and
  - (c) the quotation was accepted by the person who supplied the natural gas;
- the following provisions have effect:
- (d) the breach does not affect the validity of any transaction;
  - (e) this Part (other than this section and section 36) has effect as if the quotation had been authorised under this Act.

Note: See also section 36.

## 64 Quotation of bogus OTN

### *Quotation of bogus OTN*

- (1) A person must not purport to quote a number as the person's OTN in relation to the supply of natural gas if the number is not the person's OTN.
- (2) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

### *Supply to a person who quotes a bogus OTN*

- (3) A person must not supply natural gas to another person (the **recipient**) if:
  - (a) the recipient purports to quote a number as the recipient's OTN in relation to the supply; and
  - (b) the number is not shown in the OTN Register as the recipient's OTN.
- (4) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (3); or

**Part 3** Liable entities

**Division 4** Obligation transfer numbers

**Section 64**

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- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or
- (d) conspire with others to effect a contravention of subsection (3).

*Civil penalty provisions*

- (5) Subsections (1), (2), (3) and (4) are ***civil penalty provisions***.

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

## **Division 5—Designated joint ventures**

### **Subdivision A—Mandatory designated joint venture**

#### **65 Mandatory designated joint venture**

##### *Scope*

- (1) This section applies if:
  - (a) a joint venture has a facility; and
  - (b) the participants in the joint venture are parties to an agreement that deals with the facility; and
  - (c) 2 or more persons could satisfy paragraph 11(1)(a) of the *National Greenhouse and Energy Reporting Act 2007* in relation to the facility; and
  - (d) no particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) of that Act in relation to the facility; and
  - (e) no declaration under section 55 or 55A of that Act applies in relation to the facility.

##### *Mandatory designated joint venture*

- (2) The joint venture is a ***mandatory designated joint venture*** for the purposes of the application of this Act to the facility.

#### **66 Notification**

##### *Joint ventures in existence on 1 July 2012*

- (1) If:
  - (a) on 1 July 2012, a mandatory designated joint venture is in existence; and
  - (b) it may reasonably be expected that, if the joint venture had been constituted as a company instead of as a joint venture, the company would be a liable entity under Division 2 for the eligible financial year beginning on 1 July 2012 as the result

**Section 66**

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of the emission of greenhouse gas from the operation of a facility of the joint venture;

the participants in the joint venture must:

- (c) jointly notify the Regulator, in writing:
  - (i) that they are participants in the joint venture; and
  - (ii) of the facility; and
- (d) do so before the end of 31 July 2012.

*Joint ventures that come into existence after 1 July 2012*

(2) If:

- (a) at a particular time after 1 July 2012, a mandatory designated joint venture comes into existence; and
- (b) it is reasonable to expect that, assuming that the joint venture had been constituted as a company instead of as a joint venture, the company would be a liable entity under Division 2 for:

- (i) the eligible financial year in which that time occurred; or

- (ii) the next eligible financial year;

because of the emission of greenhouse gas from the operation of a facility of the joint venture;

the participants in the joint venture must:

- (c) jointly notify the Regulator, in writing:
  - (i) that they are participants in the joint venture; and
  - (ii) of the facility; and
- (d) do so within 30 days after becoming such a participant.

*Facilities that become facilities of a mandatory designated joint venture after 1 July 2012*

(3) If:

- (a) at a particular time on or after 1 July 2012, a facility becomes a facility of a mandatory designated joint venture; and
- (b) it is reasonable to expect that, assuming that the joint venture had been constituted as a company instead of as a joint venture, the company would be a liable entity under Division 2 for:



- (i) the eligible financial year in which that time occurred;  
or
- (ii) the next eligible financial year;  
because of the emission of greenhouse gas from the operation  
of the facility;

the participants in the joint venture must:

- (c) jointly notify the Regulator, in writing:
  - (i) that they are participants in the joint venture; and
  - (ii) of the facility; and
- (d) do so within 30 days after that time.

*Mandatory designated joint ventures that cease to exist after 1 July 2012*

(4) If:

- (a) at a particular time after 1 July 2012, a joint venture ceases to be a mandatory designated joint venture; and
- (b) it is reasonable to expect that, assuming that the joint venture had been constituted as a company instead of as a joint venture, the company would be a liable entity under Division 2 for the eligible financial year in which that time occurred because of the emission of greenhouse gas from the operation of a facility of the joint venture;

the participants in the joint venture must:

- (c) jointly notify the Regulator, in writing, of the cessation; and
- (d) do so within 30 days after the cessation.

*Application for participating percentage determination*

- (5) A notification under subsection (1), (2) or (3) in relation to a facility must be accompanied by an application under section 74 for a participating percentage determination for the joint venture in relation to the facility.

*Civil penalty provisions*

- (6) Subsections (1), (2), (3) and (4) are **civil penalty provisions**.

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

## Subdivision B—Declared designated joint venture

### 67 Joint venture declaration test

A joint venture passes the *joint venture declaration test* in relation to a facility if:

- (a) the joint venture has the facility; and
- (b) the participants in the joint venture are parties to an agreement that deals with the facility; and
- (c) the facility is operated exclusively for the joint venture by a person (who may be a participant in the joint venture); and
- (d) none of the participants in the joint venture is an individual; and
- (e) the joint venture is not a mandatory designated joint venture.

#### 67A Relevant operator

For the purposes of this Division, if a joint venture passes the joint venture declaration test in relation to a facility at a particular time, a person who, at that time, operates the facility exclusively for the joint venture is the *relevant operator* of the facility at that time.

### 68 Application for declaration

#### *Scope*

- (1) This section applies if a joint venture passes the joint venture declaration test in relation to a facility.

#### *Application*

- (2) The participants in the joint venture may jointly apply to the Regulator for the declaration of the joint venture as a declared designated joint venture in relation to the facility.
- (3) The participants in the joint venture are not entitled to make an application unless they have the written consent of the relevant operator of the facility.

*Form of application*

- (4) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by:
    - (i) the consent of the relevant operator of the facility to the making of the application; and
    - (ii) such information as is specified in the regulations; and
    - (iii) such documents (if any) as are specified in the regulations.
- (5) The approved form of application may provide for verification by statutory declaration of statements in applications.

**69 Further information**

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

**70 Making of declaration**

*Scope*

- (1) This section applies if an application under section 68 has been made for declaration of a joint venture as a declared designated joint venture in relation to a facility.

Section 70

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*Making of declaration*

- (2) After considering the application, the Regulator may, in writing, declare that the joint venture is a ***declared designated joint venture*** for the purposes of the application of this Act to the facility.

*Criteria*

- (3) The Regulator must not make the declaration unless the Regulator is satisfied that:
- (a) the joint venture passes the joint venture declaration test in relation to the facility; and
  - (b) the applicants have, and are likely to continue to have:
    - (i) the capacity; and
    - (ii) the access to information; and
    - (iii) the financial resources;  
necessary for them to comply with obligations that will be imposed on them by this Act and the associated provisions if the declaration is made; and
  - (c) if a participant in the joint venture has previously been subject to obligations under this Act or the associated provisions—the participant has a satisfactory record of compliance with those obligations; and
  - (d) if the regulations specify one or more other requirements—those requirements are met.

*Timing*

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

*Refusal*

- (5) If the Regulator decides to refuse to make the declaration, the Regulator must give written notice of the decision to the applicants.

**71 Duration of declaration**

- (1) A declaration under section 70 comes into force on the day specified in the declaration as the day on which the declaration is to come into force (the *start day*).
- (2) The start day may be earlier than the day on which the declaration is made, so long as:
  - (a) the start day occurs in the same financial year as the day on which the declaration is made; and
  - (b) each of the following has consented to the specification of the start day:
    - (i) the applicants;
    - (ii) the relevant operator of the facility to which the declaration relates.
- (3) The start day may be later than the day on which the declaration is made, so long as:
  - (a) the start day occurs in:
    - (i) the same financial year as the day on which the declaration is made; or
    - (ii) the next financial year; and
  - (b) each of the following has consented to the specification of the start day:
    - (i) the applicants;
    - (ii) the relevant operator of the facility to which the declaration relates.
- (4) A declaration under section 70 remains in force indefinitely.
- (5) Subsection (4) has effect subject to this Division.

Section 71A

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**71A Notification**

- (1) If:
- (a) a declaration is in force under section 70 in relation to a joint venture and a facility; and
  - (b) the joint venture ceases to pass the joint venture declaration test in relation to the facility;
- the participants in the joint venture must:
- (c) jointly notify the Regulator, in writing, of the cessation; and
  - (d) do so within 30 days after the cessation.

*Civil penalty provision*

- (2) Subsection (1) is a ***civil penalty provision***.

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

**72 Revocation of declaration**

*Scope*

- (1) This section applies if a declaration is in force under section 70 in relation to a joint venture and a facility.

*Revocation on request*

- (2) The Regulator must, by written notice given to the participants in the joint venture, revoke the declaration if:
- (a) the Regulator is requested to do so by the participants in the joint venture; and
  - (b) the participants in the joint venture have the written consent of the relevant operator of the facility to the making of that request.

*Revocation if joint venture declaration test not passed*

- (3) The Regulator must, by written notice given to the participants in the joint venture, revoke the declaration if the Regulator is satisfied that the joint venture does not pass the joint venture declaration test in relation to the facility.

*Revocation if unit shortfall charge not paid*

- (4) If an amount of unit shortfall charge payable by a participant in the joint venture remains unpaid more than 3 months after it became due for payment, the Regulator must, by written notice given to the participants in the joint venture, inform the participants that unless that amount is paid by the start of the next 1 July, the declaration will be revoked.
- (5) If:
  - (a) a notice is given to the participants in the joint venture under subsection (4); and
  - (b) the amount referred to in the notice remains unpaid as at the start of the 1 July referred to in the notice;the Regulator must, by written notice given to the participants, revoke the declaration with effect from the start of that 1 July.

**Subdivision C—Participating percentage determination**

**73 Provisional application for participating percentage determination**

- (1) An application under section 68 must be accompanied by a provisional application for a participating percentage determination for the relevant joint venture in relation to the facility concerned.
- (2) If:
  - (a) a provisional application is made for a participating percentage determination; and
  - (b) a declaration is made under section 70 in relation to the joint venture;the provisional application is to be treated as if it were an application made under section 74 immediately after the section 70 declaration was made.

## **74 Application for participating percentage determination**

### *Scope*

- (1) This section applies if a joint venture is a designated joint venture in relation to a facility.

### *Application*

- (2) The participants in the joint venture may jointly apply to the Regulator for the making of a participating percentage determination for the joint venture in relation to the facility.

### *Form of application*

- (3) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by:
    - (i) such information as is specified in the regulations; and
    - (ii) such documents (if any) as are specified in the regulations.
- (4) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (5) An application may set out:
  - (a) a request that the Regulator make a participating percentage determination in the terms set out in the application; and
  - (b) the reasons for the request.

## **75 Further information**

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



- (a) refuse to consider the application; or
- (b) refuse to take any action, or any further action, in relation to the application.

## **76 Participating percentage determination made in response to an application**

### *Scope*

- (1) This section applies if an application under section 74 has been made for a participating percentage determination for a joint venture in relation to a facility.

### *Making of determination*

- (2) After considering the application, the Regulator must make a determination that provides that, for each participant in the joint venture, a percentage specified in, or ascertained in accordance with, the determination is the *participating percentage* of that participant in relation to the facility.
- (3) Different percentages may be specified in, or ascertained in accordance with, the determination for different participants.
- (4) The total of the percentages specified in, or ascertained in accordance with, the determination must equal 100%.

### *Timing*

- (5) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
  - (a) if the Regulator requires the applicant to give further information under subsection 75(1) in relation to the application—within 30 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 30 days after the application was made.

Section 77

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**77 Participating percentage determination made on the Regulator's own initiative**

*Making of determination*

- (1) The Regulator may, on the Regulator's own initiative, make a determination that provides that, for each participant in a specified designated joint venture, a percentage specified in, or ascertained in accordance with, the determination is the *participating percentage* of that participant in relation to the facility.
- (2) Different percentages may be specified in, or ascertained in accordance with, the determination for different participants.
- (3) The total of the percentages specified in, or ascertained in accordance with, the determination must equal 100%.

*Consultation*

- (4) Before making a determination under subsection (1), the Regulator must:
  - (a) give each participant in the joint venture a copy of a draft of the determination; and
  - (b) invite the participant to make a written submission to the Regulator on the draft within the period specified in the invitation; and
  - (c) have regard to any submission made by the participant within the deadline.
- (5) The period specified in the invitation must not be shorter than 28 days.

**78 Criteria for making participating percentage determination**

*Scope*

- (1) This section applies to the making of a participating percentage determination for a joint venture in relation to a facility.

*Criteria—share of goods*

- (2) If the joint venture operates on the basis that each participant has a share of the goods extracted, produced or manufactured in connection with the operation of the facility, the Regulator must ensure that the participating percentages of the participants in relation to the facility represent each participant's share in those goods.
- (3) However, subsection (2) does not apply if the Regulator is satisfied that another percentage would equally well, or better, represent the way in which the economic benefits from the facility are shared among the participants.

*Criteria—share of access to services*

- (4) If:
  - (a) a joint venture is not operated on the basis that each participant has a share of the goods extracted, produced or manufactured in connection with the operation of the facility; and
  - (b) the joint venture is operated on the basis that each participant has a share of access to services in connection with the operation of the facility;the Regulator must ensure that the participating percentages represent each participant's share of such access.
- (5) However, subsection (4) does not apply if the Regulator is satisfied that another percentage would equally well, or better, represent the way in which the economic benefits from the facility are shared among the participants.

*Criteria—regulations*

- (6) If:
  - (a) a joint venture is not operated on the basis that each participant has a share of the goods extracted, produced or manufactured in connection with the operation of the facility; and

**Section 78A**

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- (b) the joint venture is not operated on the basis that each participant has a share of access to services in connection with the operation of the facility; and
  - (c) the regulations set out rules for the purposes of this subsection;
- the Regulator must comply with those rules.
- (7) However, subsection (6) does not apply if the Regulator is satisfied that another percentage would equally well, or better, represent the way in which the economic benefits from the facility are shared among the participants.

**78A Duration of determinations**

- (1) A participating percentage determination comes into force on the day specified in the determination as the day on which the determination is to come into force (the *start day*).
- (2) If the participating percentage determination is the first participating percentage determination for a joint venture in relation to a facility, the start day must be the day on which the declaration under section 70 in relation to the joint venture comes into force.
- (3) If subsection (2) does not apply in relation to the participating percentage determination, the start day may be earlier than the day on which the determination is made, so long as:
  - (a) the start day occurs in the same financial year as the day on which the determination is made; and
  - (b) if the determination was made in response to an application—each of the following has consented to the specification of the start day:
    - (i) the applicants;
    - (ii) the relevant operator of the facility to which the determination relates.
- (4) If subsection (2) does not apply in relation to the participating percentage determination, the start day may be later than the day on which the determination is made, so long as:
  - (a) the start day occurs in:

- (i) the same financial year as the day on which the determination is made; or
    - (ii) the next financial year; and
  - (b) if the determination was made in response to an application—each of the following has consented to the specification of the start day:
    - (i) the applicants;
    - (ii) the relevant operator of the facility to which the determination relates.
- (5) A participating percentage determination remains in force indefinitely.
- (6) Subsection (5) has effect subject to this Division.

## **79 Replacement determinations**

- (1) The variation of a participating percentage determination is to be achieved by replacing the determination.
- (2) If a participating percentage determination is expressed to replace an existing participating percentage determination, the existing participating percentage determination is taken to have been revoked when the replacement determination comes into force.

## Division 6—Liability transfer certificates

### Subdivision A—Transfer of liability to another member of a corporate group

#### 80 Corporate group transfer test

A company passes the *corporate group transfer test* in relation to a facility if:

- (a) the company is a member of a controlling corporation's group; and
- (b) the company is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and
- (c) the facility is under the operational control of another member of the group.

#### 81 Application for liability transfer certificate

##### *Scope*

- (1) This section applies if a company passes the corporate group transfer test in relation to a facility.

##### *Application*

- (2) The company may apply to the Regulator for the issue to the company of a liability transfer certificate in relation to the facility.
- (3) The company is not entitled to make an application unless the company has the written consent of the member mentioned in paragraph 80(c).

##### *Form of application*

- (4) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by:

- (i) a written statement by the member mentioned in paragraph 80(c) declaring that the member is a member of the controlling corporation's group; and
  - (ii) a written statement by the member mentioned in paragraph 80(c) declaring that the facility is under the operational control of the member; and
  - (iii) the consent of the member mentioned in paragraph 80(c) to the making of the application; and
  - (iv) such information as is specified in the regulations; and
  - (v) such documents (if any) as are specified in the regulations.
- (5) The approved form of application may provide for verification by statutory declaration of statements in applications.

## **82 Further information**

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

## **83 Issue of liability transfer certificate**

### *Scope*

- (1) This section applies if an application under section 81 has been made for a liability transfer certificate in relation to a facility.

### *Issue of certificate*

- (2) After considering the application, the Regulator may issue to the applicant a liability transfer certificate in relation to the facility.

Section 84

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*Criteria for issue of certificate*

- (3) The Regulator must not issue the liability transfer certificate unless the Regulator is satisfied that:
- (a) the applicant passes the corporate group transfer test in relation to the facility; and
  - (b) the applicant has, and is likely to continue to have:
    - (i) the capacity; and
    - (ii) the access to information; and
    - (iii) the financial resources;  
necessary for it to comply with obligations that will be imposed on the applicant by this Act and the associated provisions if the certificate is issued; and
  - (c) if the regulations specify one or more other requirements—those requirements are met.

*Timing*

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requires the applicant to give further information under subsection 82(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

*Refusal*

- (5) If the Regulator decides to refuse to issue the liability transfer certificate, the Regulator must give written notice of the decision to the applicant.

**Subdivision B—Transfer of liability to a person who has financial control of a facility**

**84 Financial control transfer test**

A person (the *first person*) passes the *financial control transfer test* in relation to a facility if:



- (a) the facility is under the operational control of another person (the *operator*); and
- (b) the first person has financial control over the facility; and
- (c) the first person is not an individual; and
- (d) the first person is not a foreign person; and
- (e) if the first person is a member of a controlling corporation's group—the operator is not a member of the group.

Note: For *financial control*, see section 92.

## **85 Application for liability transfer certificate**

### *Scope*

- (1) This section applies if a person passes the financial control transfer test in relation to a facility.

### *Application*

- (2) The person may apply to the Regulator for the issue to the person of a liability transfer certificate in relation to the facility.
- (3) The person is not entitled to make an application unless the person has the written consent of:
  - (a) if the person who has operational control over the facility:
    - (i) is a member of a controlling corporation's group; and
    - (ii) is not the controlling corporation;  
the controlling corporation; or
  - (b) otherwise—the person who has operational control over the facility.
- (4) If the person:
  - (a) is a member of a controlling corporation's group; and
  - (b) is not the controlling corporation of the group;the person is not entitled to make an application unless the person has the written consent of the controlling corporation of the group.

### *Form of application*

- (5) An application must:

**Section 86**

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- (a) be in writing; and
- (b) be in a form approved, in writing, by the Regulator; and
- (c) be accompanied by:
  - (i) if paragraph (3)(a) applies—the consent of the controlling corporation mentioned in paragraph (3)(a) to the making of the application; and
  - (ii) if paragraph (3)(b) applies—the consent of the person mentioned in paragraph (3)(b) to the making of the application; and
  - (iii) if subsection (4) applies—the consent of the controlling corporation mentioned in subsection (4) to the making of the application; and
  - (iv) such information as is specified in the regulations; and
  - (v) such documents (if any) as are specified in the regulations.
- (6) The approved form of application may provide for verification by statutory declaration of statements in applications.

**86 Further information**

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

**87 Issue of liability transfer certificate**

*Scope*

- (1) This section applies if an application under section 85 has been made for a liability transfer certificate in relation to a facility.

*Issue of certificate*

- (2) After considering the application, the Regulator may issue to the applicant a liability transfer certificate in relation to the facility.

*Criteria for issue of certificate*

- (3) The Regulator must not issue the liability transfer certificate unless the Regulator is satisfied that:
- (a) the applicant passes the financial control transfer test in relation to the facility; and
  - (b) the applicant has, and is likely to continue to have:
    - (i) the capacity; and
    - (ii) the access to information; and
    - (iii) the financial resources;  
necessary for it to comply with obligations that will be imposed on the applicant by this Act and the associated provisions if the certificate is issued; and
  - (c) if the regulations specify one or more other requirements—those requirements are met.

*Timing*

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requires the applicant to give further information under subsection 86(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

*Refusal*

- (5) If the Regulator decides to refuse to issue the liability transfer certificate, the Regulator must give written notice of the decision to the applicant.

### Subdivision C—Other provisions

#### 88 Duration of liability transfer certificate

- (1) A liability transfer certificate comes into force on the day specified in the certificate as the day on which the certificate is to come into force (the *start day*).
- (2) The start day may be earlier than the day on which the certificate is issued, so long as:
  - (a) the start day occurs in the same financial year as the day on which the certificate is issued; and
  - (b) each of the following has consented to the specification of the start day:
    - (i) the applicant;
    - (ii) in the case of a certificate issued under section 83, where a person consented under subsection 81(3) to the making of the application for the certificate—the person;
    - (iii) in the case of a certificate issued under section 87, where a controlling corporation consented under paragraph 85(3)(a) to the making of the application for the certificate—the controlling corporation;
    - (iv) in the case of a certificate issued under section 87, where a person consented under paragraph 85(3)(b) to the making of the application for the certificate—the person;
    - (v) in the case of a certificate issued under section 87, where a controlling corporation consented under subsection 85(4) to the making of the application for the certificate—the controlling corporation.
- (3) The start day may be later than the day on which the certificate is issued, so long as:
  - (a) the start day occurs in:
    - (i) the same financial year as the day on which the certificate is issued; or
    - (ii) the next financial year; and

- (b) each of the following has consented to the specification of the start day:
  - (i) the applicant;
  - (ii) in the case of a certificate issued under section 83, where a person consented under subsection 81(3) to the making of the application for the certificate—the person;
  - (iii) in the case of a certificate issued under section 87, where a controlling corporation consented under paragraph 85(3)(a) to the making of the application for the certificate—the controlling corporation;
  - (iv) in the case of a certificate issued under section 87, where a person consented under paragraph 85(3)(b) to the making of the application for the certificate—the person;
  - (v) in the case of a certificate issued under section 87, where a controlling corporation consented under subsection 85(4) to the making of the application for the certificate—the controlling corporation.
- (4) A liability transfer certificate issued remains in force indefinitely.
- (5) Subsection (4) has effect subject to this Division.

## **89 Surrender of liability transfer certificate**

### *Scope*

- (1) This section applies if a person is the holder of a liability transfer certificate in relation to a facility.

### *Surrender*

- (2) The person may, with the written consent of the Regulator, surrender the certificate.
- (3) The surrender takes effect when the consent is given by the Regulator.

**Section 90**

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*Consent to surrender*

- (4) The Regulator must not consent to the surrender of the certificate unless:
- (a) in the case of a certificate issued under section 83, where a person consented under subsection 81(3) to the making of the application for the certificate—the person has agreed to the surrender of the certificate; and
  - (b) in the case of a certificate issued under section 87, where a controlling corporation consented under paragraph 85(3)(a) to the making of the application for the certificate—the controlling corporation has agreed to the surrender of the certificate; and
  - (c) in the case of a certificate issued under section 87, where a person consented under paragraph 85(3)(b) to the making of the application for the certificate—the person has agreed to the surrender of the certificate; and
  - (d) either:
    - (i) the certificate has been in force for at least 4 years; or
    - (ii) the certificate has been in force for less than 4 years, but the Regulator is satisfied that there are special circumstances that warrant the giving of consent to the surrender of the certificate.

*Refusal*

- (5) If the Regulator decides to refuse to give consent to the surrender of the certificate, the Regulator must give written notice of the decision to the person.

**90 Cancellation of liability transfer certificate**

*Scope*

- (1) This section applies if a person is the holder of a liability transfer certificate in relation to a facility.

*Cancellation*

- (2) The Regulator must, by written notice given to the person, cancel the certificate if:
- (a) in a case where the certificate was issued under section 83 to a company that was a member of a controlling corporation's group—the Regulator is satisfied that:
    - (i) the company does not pass the corporate group transfer test in relation to the facility; or
    - (ii) the company is not a member of the controlling corporation's group; or
    - (iii) a person who consented under subsection 81(3) to the making of the application for the certificate is not a member of the group; or
    - (iv) an amount of unit shortfall charge payable by the company remains unpaid more than 30 days after it became due for payment; or
    - (iv) the company has become an externally-administered body corporate; or
    - (v) if the regulations specify one or more other grounds for cancellation—at least one of those grounds is applicable to the company; or
  - (b) in a case where the certificate was issued under section 87 to a person—the Regulator is satisfied that:
    - (i) the person does not pass the financial control transfer test in relation to the facility concerned; or
    - (ii) if a controlling corporation of a group consented under subsection 85(4) to the making of the application for the certificate—the person is not a member of the group; or
    - (iii) an amount of unit shortfall charge payable by the person remains unpaid more than 30 days after it became for payment; or
    - (iv) the person has become an externally-administered body corporate; or
    - (v) if the regulations specify one or more other grounds for cancellation—at least one of those grounds is applicable to the person.

## Section 91

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- (3) If the Regulator cancels the certificate, the Regulator must give written notice of the cancellation to the person who has operational control of the facility.

### 91 Liability transfer certificate is not transferable

A liability transfer certificate is not transferable.

### 92 Financial control

- (1) For the purposes of this Act, if a person (the *operator*) has operational control over a facility, another person (the *second person*) has *financial control* over the facility if:
- (a) under a contract between:
    - (i) the operator; and
    - (ii) the second person;the operator operates the facility on behalf of the second person; or
  - (b) under a contract between:
    - (i) the operator; and
    - (ii) the second person and one or more other persons;the operator operates the facility on behalf of the second person and those other persons; or
  - (c) the second person is able to control the trading or financial relationships of the operator in relation to the facility; or
  - (d) the second person has the economic benefits from the facility; or
  - (e) all of the following conditions are satisfied:
    - (i) the second person is a participant in a joint venture;
    - (ii) there is one other participant in the joint venture;
    - (iii) the second person shares the economic benefits from the facility with the other participant;
    - (iv) the second person's share equals or exceeds the share of the other participant; or
  - (f) all of the following conditions are satisfied:
    - (i) the second person is a participant in a joint venture;



- (ii) there are 2 or more other participants in the joint venture;
    - (iii) the second person shares the economic benefits from the facility with the other participants;
    - (iv) no other participant has a share that exceeds the share of the second person; or
  - (g) all of the following conditions are satisfied:
    - (i) the second person is a partner in a partnership;
    - (ii) there is one other partner in the partnership;
    - (iii) the second person shares the economic benefits from the facility with the other partner;
    - (iv) the second person's share equals or exceeds the share of the other partner; or
  - (h) all of the following conditions are satisfied:
    - (i) the second person is a partner in a partnership;
    - (ii) there are 2 or more other partners in the partnership;
    - (iii) the second person shares the economic benefits from the facility with the other partners;
    - (iv) no other partner has a share that exceeds the share of the second person; or
  - (i) the second person is able to direct or sell the output of the facility; or
  - (j) under the regulations, the second person is taken to have financial control over the facility.
- (2) In determining whether the second person has that financial control, regard must be had to the economic and commercial substance of the matters mentioned in subsection (1).

## Division 7—Opt-in Scheme

### 92A Opt-in Scheme

- (1) The regulations may formulate a scheme (to be known as the ***Opt-in Scheme***) that:
- (a) provides that, if:
    - (i) during an eligible financial year, a person acquires, manufactures or imports an amount of taxable fuel of a kind specified in the scheme; and
    - (ii) an entity is entitled to a fuel tax credit in respect of that acquisition, manufacture or import, as the case may be; and
    - (iii) under the scheme, a person is, as the result of an application made by the person, taken to be a ***designated opt-in person*** in respect of an amount of fuel (the ***opt-in amount***), being some or all of the amount mentioned in subparagraph (i); and
    - (iv) the designated opt-in person passes the eligibility test set out in subsection (4) in respect of that acquisition, manufacture or import, as the case may be; and
    - (v) the conditions (if any) set out in the scheme are satisfied; and
    - (vi) the potential greenhouse gas emissions embodied in the opt-in amount have a carbon dioxide equivalence of a particular number of tonnes;  
then, for the purposes of the scheme, that number is a ***preliminary emissions number*** of the designated opt-in person for the eligible financial year; and
  - (b) provides that if, under the scheme, a designated opt-in person has one or more preliminary emissions numbers for an eligible financial year, then, for the purposes of this Act:
    - (i) the sum of those preliminary emissions numbers is a ***provisional emissions number*** of the designated opt-in person for the eligible financial year; and

Section 92A

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- (ii) the designated opt-in person is a **liable entity** for the eligible financial year.
- (2) It is immaterial whether the entity mentioned in subparagraph (1)(a)(ii) is the person mentioned in subparagraph (1)(a)(i).
- (3) It is immaterial whether the person mentioned in subparagraph (1)(a)(iii) is:
  - (a) the person mentioned in subparagraph (1)(a)(i); or
  - (b) the entity mentioned in subparagraph (1)(a)(ii).
- (4) For the purposes of this section, a designated opt-in person **passes the eligibility test** in respect of an acquisition, manufacture or import of taxable fuel if:
  - (a) in a case where the entity that was entitled to a fuel tax credit in respect of that acquisition, manufacture or import, as the case may be, consists of the members of a GST group mentioned in the table in section 70-5 of the *Fuel Tax Act 2006*—the designated opt-in person is a member of the group; or
  - (b) in a case where the entity that was entitled to a fuel tax credit in respect of that acquisition, manufacture or import, as the case may be, consists of the participants in a GST joint venture mentioned in the table in section 70-5 of the *Fuel Tax Act 2006*—the designated opt-in person is a participant in the GST joint venture; or
  - (c) in any other case—the designated opt-in person is the entity that was entitled to a fuel tax credit in respect of that acquisition, manufacture or import, as the case may be.
- (4A) For the purposes of this section, in determining whether an entity is entitled to a fuel tax credit in respect of the acquisition, manufacture or import of an amount of taxable fuel, disregard section 41-30 of the *Fuel Tax Act 2006*.
- (5) Regulations made for the purposes of subparagraph (1)(a)(iii) may empower the Regulator to declare that a specified person is taken to be a designated opt-in person in respect of an amount of fuel.

**Section 92B**

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- (6) The Minister must take all reasonable steps to ensure that regulations are made for the purposes of subsection (1) before 15 December 2012.
- (7) For the purposes of this section, *eligible financial year* does not include a financial year that begins before 1 July 2013.
- (8) For the purposes of this section, *entity* has the same meaning as in the *Fuel Tax Act 2006*.
- (9) For the purposes of this section, *participant* has the same meaning as in the *Fuel Tax Act 2006*.

**92B Reduction of provisional emissions number**

The Opt-in Scheme may provide that, if:

- (a) a person is a designated opt-in person; and
  - (b) under the scheme, the person has a provisional emissions number for an eligible financial year; and
  - (c) the conditions set out in the scheme are satisfied;
- that provisional emissions number is to be reduced (but not below zero) by a number ascertained in accordance with the scheme.

**92C Reporting requirement**

*Scope*

- (1) This section applies to a person if the person is a designated opt-in person.

*Requirement*

- (2) The Opt-in Scheme may make provision for and in relation to requiring the person to give one or more written reports to the Regulator.
- (3) Subsection (2) does not, by implication, limit subsection 92A(1).

## **92D Record-keeping requirement**

### *Scope*

- (1) This section applies to a person if the person is a designated opt-in person.

### *Requirement*

- (2) The Opt-in Scheme may make provision for and in relation to requiring the person to:
  - (a) make records of information specified in the scheme; and
  - (b) retain such a record, or a copy, for 5 years after the record was made.
- (3) Subsection (2) does not, by implication, limit subsection 92A(1).

## **92E Other matters**

- (1) The Opt-in Scheme may make provision for and in relation to the following matters:
  - (a) the approval by the Regulator of a form of application for a declaration under the scheme;
  - (b) the information (if any) that must accompany such an application;
  - (c) the documents (if any) that must accompany such an application;
  - (d) the fee (if any) that must accompany such an application.
- (2) The Opt-in Scheme may provide for verification by statutory declaration of statements in applications under the scheme.
- (3) A fee under paragraph (1)(d) must not be such as to amount to taxation.
- (4) This section does not, by implication, limit subsection 92A(1).

## **92F Ancillary or incidental provisions**

- (1) The Opt-in Scheme may contain ancillary or incidental provisions.

**Section 92G**

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(2) Subsection (1) does not, by implication, limit subsection 92A(1).

**92G Commissioner of Taxation and Chief Executive Officer of  
Customs to be notified of declaration**

If the Regulator makes a declaration under the Opt-in Scheme, the Regulator must give a copy of the declaration to:

- (a) the Commissioner of Taxation; and
- (b) the Chief Executive Officer of Customs.

## **Part 4—Carbon units**

### **Division 1—Introduction**

#### **93 Simplified outline**

The following is a simplified outline of this Part:

- The Regulator may issue carbon units.
- In a fixed charge year, a carbon unit may be issued for a fixed charge.
- In a flexible charge year, a carbon unit may be issued as the result of an auction.
- However, in the flexible charge years beginning on 1 July 2015, 1 July 2016 and 1 July 2017, some carbon units may be issued for a fixed charge (to act as a cap).
- A carbon pollution cap limits:
  - (a) the total number of auctioned carbon units; and
  - (b) the total number of free carbon units issued in accordance with the Jobs and Competitiveness Program; and
  - (c) the total number of free carbon units issued to coal-fired electricity generators.
- A carbon unit will have a vintage year that consists of a particular financial year.

Section 93

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- If a carbon unit was not issued for a fixed charge, the unit is transferable.
- Entries may be made in Registry accounts for carbon units.



## **Division 2—Issue of carbon units**

### **94 Issue of carbon units**

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

### **95 Identification number**

A carbon unit is to be identified by a unique number, to be known as the *identification number* of the unit.

### **96 Vintage year**

- (1) Each carbon unit has a *vintage year*.
- (2) A *vintage year* must be a particular eligible financial year.
- (3) The identification number of a carbon unit must include digits that represent the *vintage year* of the unit:

### **97 When carbon units may be issued**

The Regulator may issue a carbon unit with a particular vintage year at any time before the end of 1 February next following the vintage year.

Note: For example, the Regulator may, at any time before the end of 1 February 2018, issue a carbon unit with the vintage year beginning on 1 July 2016.

### **98 How carbon units are to be issued**

- (1) The Regulator is to issue a carbon unit to a person by making an entry for the unit in a Registry account kept by the person.
- (2) An entry for a carbon unit in a Registry account is to consist of the identification number of the unit.

**Part 4** Carbon units

**Division 2** Issue of carbon units

**Section 99**

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- (3) The Regulator must not issue a carbon unit to a person unless the person has a Registry account.

**99 Circumstances in which carbon units may be issued**

The Regulator must not issue a carbon unit otherwise than:

- (a) as the result of an auction conducted by the Regulator; or
- (b) in accordance with section 100 (issue of units for a fixed charge); or
- (c) in accordance with the Jobs and Competitiveness Program; or
- (d) in accordance with Part 8 (coal-fired electricity generation).

**100 Issue of carbon units for a fixed charge**

*Application*

- (1) During the issue period set out in an item in the following table, a person may apply to the Regulator for the issue to the person of a specified number of carbon units:
- (a) with a vintage year set out in the item; and
  - (b) for the per unit charge set out in the item;
- so long as:
- (c) the person is a liable entity for the vintage year; and
  - (d) the person has a Registry account.

<b>Issue of carbon units for a fixed charge</b>			
<b>Item</b>	<b>Issue period</b>	<b>Vintage year</b>	<b>Charge per unit</b>
1	The period: (a) beginning at the start of 1 April 2013; and (b) ending at the end of 15 June 2013.	the eligible financial year beginning on 1 July 2012	\$23
2	The period: (a) beginning at the emissions number publication time of the person for the eligible	the eligible financial year beginning on 1 July 2012	\$23

Section 100

<b>Issue of carbon units for a fixed charge</b>			
<b>Item</b>	<b>Issue period</b>	<b>Vintage year</b>	<b>Charge per unit</b>
	financial year beginning on 1 July 2012; and (b) ending at the end of 1 February 2014.		
3	The period: (a) beginning at the start of 1 April 2014; and (b) ending at the end of 15 June 2014.	the eligible financial year beginning on 1 July 2013	\$24.15
4	The period: (a) beginning at the emissions number publication time of the person for the eligible financial year beginning on 1 July 2013; and (b) ending at the end of 1 February 2015.	the eligible financial year beginning on 1 July 2013	\$24.15
5	The period: (a) beginning at the start of 1 April 2015; and (b) ending at the end of 15 June 2015.	the eligible financial year beginning on 1 July 2014	\$25.40
6	The period: (a) beginning at the emissions number publication time of the person for the eligible financial year beginning on 1 July 2014; and (b) ending at the end of 1 February 2016.	the eligible financial year beginning on 1 July 2014	\$25.40
7	The period: (a) beginning at the emissions number publication time of the person for the eligible financial year beginning on 1 July 2015; and	the eligible financial year beginning on 1 July 2015	the amount prescribed by the regulations for the purposes of this table item

**Part 4** Carbon units

**Division 2** Issue of carbon units

Section 100

Issue of carbon units for a fixed charge			
Item	Issue period	Vintage year	Charge per unit
	(b) ending at the end of 1 February 2017.		
8	The period: (a) beginning at the emissions number publication time of the person for the eligible financial year beginning on 1 July 2016; and (b) ending at the end of 1 February 2018.	the eligible financial year beginning on 1 July 2016	the amount obtained by multiplying the per unit charge applicable under item 7 by 1.07625
9	The period: (a) beginning at the emissions number publication time of the person for the eligible financial year beginning on 1 July 2017; and (b) ending at the end of 1 February 2019.	the eligible financial year beginning on 1 July 2017	the amount obtained by multiplying the per unit charge applicable under item 8 by 1.07625

Note: For *emissions number publication time*, see section 5.

- (2) A person is not entitled to make an application during an issue period set out in item 7, 8 or 9 of the table in subsection (1) if no regulations are in force for the purposes of item 7 of the table.

*Maximum number of units—table items 1, 3 and 5*

- (3) An application made during an issue period set out in item 1, 3 or 5 of the table in subsection (1) must not specify a number of carbon units that exceeds the number worked out using the following formula:

$$\begin{array}{rcl} \text{Total of the interim} & & \text{Total number of eligible} \\ \text{emissions numbers of the} & - & \text{emissions units surrendered} \\ \text{person for the vintage year} & & \text{by the person in relation} \\ & & \text{to the vintage year} \end{array}$$

Section 100

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*Maximum number of units—table items 2, 4, 6, 7, 8 and 9*

- (4) An application made during an issue period set out in item 2, 4, 6, 7, 8 or 9 of the table in subsection (1) must not specify a number of carbon units that exceeds the number worked out using the following formula:

$$\begin{array}{rcl} \text{Person's emissions number} & & \text{Total number of eligible emissions units} \\ \text{for the vintage year} & - & \text{surrendered by the person} \\ & & \text{in relation to the vintage year} \end{array}$$

*Form of application*

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

*Issue of units*

- (6) If, during an issue period set out in an item in the table in subsection (1):
- (a) a person has applied for a specified number of carbon units with a particular vintage year; and
  - (b) the person has tendered the total amount of charges payable for, or imposed on, the issue of the units;
- the Regulator must, as soon as practicable, issue to the person that number of carbon units with that vintage year.

*Automatic surrender of units*

- (7) If a carbon unit is issued to a person in accordance with this section:
- (a) immediately after the issue of the unit, the person is taken to have surrendered the unit; and
  - (b) the person is taken to have done so by electronic notice transmitted to the Regulator under subsection 122(1); and
  - (c) the notice is taken to have:
    - (i) specified the unit; and
    - (ii) specified the vintage year of the unit as the eligible financial year to which the surrender relates; and

Section 100

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- (iii) specified the account number of the person's Registry account in which there is an entry for the unit that is being surrendered.

- (8) A carbon unit issued to a person in accordance with this section cannot be transferred or relinquished.

*Publication of fixed charge*

- (9) Before the start of each of the following eligible financial years:
  - (a) the eligible financial year beginning on 1 July 2015;
  - (b) the eligible financial year beginning on 1 July 2016;
  - (c) the eligible financial year beginning on 1 July 2017;the Regulator must publish on its website the per unit charge applicable under subsection (1) for the issue of a carbon unit with a vintage year of that eligible financial year.

*Charge payable*

- (10) If a carbon unit is issued to a person in accordance with this section, the person is liable to pay a charge for the issue of the unit.
- (11) Subsection (10) has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.

Note: See also:

- (a) Part 2 of the *Clean Energy (Charges—Excise) Act 2011*; and
- (b) Part 2 of the *Clean Energy (Charges—Customs) Act 2011*; and
- (c) the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*.

- (12) The amount of charge payable under subsection (10) for the issue of a carbon unit is the amount equal to the per unit charge set out in the application under subsection (1) for the issue of the unit.

*Recovery of charge*

- (13) If a carbon unit is issued in accordance with this section, an amount of charge payable for, or imposed on, the issue of the unit:
  - (a) is a debt due to the Commonwealth; and
  - (b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Section 100A

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*Regulations*

- (14) The Minister must take all reasonable steps to ensure that regulations are made for the purposes of item 7 of the table in subsection (1) before 31 May 2014.
- (15) Regulations must not be made for the purposes of item 7 of the table in subsection (1) on or after 1 June 2015.

**100A Extension of issue period**

*Scope*

- (1) This section applies if the Regulator is satisfied that:
  - (a) 2 or more persons were unable to apply to the Regulator under section 100 for the issue of carbon units during the whole or a part of the last day (the **relevant day**) of an issue period set out in an item in the table in subsection 100(1); and
  - (b) the inability to make the application was attributable to:
    - (i) a fault or malfunction relating to a computer system under the control of the Regulator; or
    - (ii) a fault or malfunction relating to a facility (within the meaning of the *Telecommunications Act 1997*); or
    - (iii) a fault or malfunction relating to a carriage service (within the meaning of that Act) provided to the public; and
  - (c) it would be reasonable to extend the issue period during which the application may be made beyond the relevant day.

*Extension of issue period*

- (2) The Regulator may, by legislative instrument, determine that this Act has effect as if:
  - (a) the reference in the table to the relevant day were a reference to such later day as is specified in the determination; and
  - (b) if the relevant day is a 1 February—the reference in section 97 to that 1 February were a reference to that later day.

**Section 101**

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- (3) If the Regulator makes a determination under this section, the Regulator must publish a copy of the determination on its website.

**101 Limit on issue of carbon units**

- (1) The Regulator must ensure that not more than 15 million carbon units with a particular vintage year are issued as a result of auctions that were conducted by the Regulator during a financial year if:
- (a) the financial year begins more than 12 months before the start of the vintage year; and
  - (b) there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for the vintage year.
- (2) The Regulator must ensure that not more than 15 million carbon units with a particular vintage year are issued as a result of auctions that were conducted by the Regulator during the first 6 months of the financial year immediately preceding the vintage year if there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for the vintage year.

**102 Carbon units—total number**

- (1) The Regulator must ensure that the sum of:
- (a) the total number of carbon units with a particular vintage year that are offered at auctions conducted by the Regulator; and
  - (b) the total number of free carbon units with that vintage year issued in accordance with the Jobs and Competitiveness Program; and
  - (c) the total number of free carbon units with that vintage year issued in accordance with Part 8 (coal-fired electricity generation);
- equals the carbon pollution cap number for that vintage year.
- (2) If a carbon unit is offered at auction on 2 or more occasions, the unit is only counted for the purposes of paragraph (1)(a) on the first of those occasions.



- (3) Paragraph (1)(a) does not apply to an auction conducted under section 112.

## Division 3—Property in, and transfer of, carbon units

### 103 A carbon unit is personal property

A carbon unit is personal property and, subject to sections 105 and 106, is transmissible by assignment, by will and by devolution by operation of law.

#### 103A Ownership of carbon unit

- (1) The registered holder of a carbon unit:
  - (a) is the legal owner of the unit; and
  - (b) may, subject to this Act and the *Australian National Registry of Emissions Units Act 2011*, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1) only protects a person who deals with the registered holder of the unit as a purchaser:
  - (a) in good faith for value; and
  - (b) without notice of any defect in the title of the registered holder.

### 104 Transfer of carbon units

- (1) For the purposes of this Act, if there is an entry for a carbon unit in a Registry account (the ***first Registry account***) kept by a person (the ***first person***):
  - (a) a ***transfer*** of the unit from the first Registry account to a Registry account kept by another person consists of:
    - (i) the removal of the entry for the unit from the first Registry account; and
    - (ii) the making of an entry for the unit in the Registry account kept by the other person; and
  - (b) the ***transfer*** of the unit from the first Registry account to another Registry account kept by the first person consists of:

- (i) the removal of the entry for the unit from the first Registry account; and
    - (ii) the making of an entry for the unit in the other Registry account kept by the first person; and
  - (c) the **transfer** of the unit from the first Registry account to a foreign account kept by another person consists of:
    - (i) the removal of the entry for the unit from the first Registry account; and
    - (ii) the making of an entry for the unit in the foreign account kept by the other person; and
  - (d) the **transfer** of the unit from the first Registry account to a foreign account kept by the first person consists of:
    - (i) the removal of the entry for the unit from the first Registry account; and
    - (ii) the making of an entry for the unit in the foreign account kept by the first person.
- (2) For the purposes of this Act, if there is an entry for a carbon unit in a foreign account, a **transfer** of the unit from the foreign account to a Registry account consists of:
- (a) the removal of the entry for the unit from the foreign account; and
  - (b) the making of an entry for the unit in the Registry account.

### **105 Transmission of carbon units by assignment**

- (1) A transmission by assignment of a carbon unit for which there is an entry in a Registry account is of no force until:
- (a) the transferor, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee; and
  - (b) the Regulator complies with that instruction.
- (2) An instruction under paragraph (1)(a) must set out:
- (a) the account number of the transferor's Registry account; and
  - (b) the account number of the transferee's Registry account.

**Section 106**

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- (3) If the Regulator receives an instruction under paragraph (1)(a), the Regulator must comply with the instruction as soon as practicable after receiving it.
- (4) The Registry must set out a record of each instruction under paragraph (1)(a).
- (5) If the transferor is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the transferor.

**106 Transmission of carbon units by operation of law etc.**

*Scope*

- (1) This section applies if a carbon unit for which there is an entry in a Registry account is transmitted from a person (the *transferor*) to another person (the *transferee*) by any lawful means other than by a transfer under section 105.

*Effect of transmission*

- (2) The transmission is of no force until the Regulator transfers the carbon unit under subsection (9) or (10).

*Declaration of transmission*

- (3) The transferee must, within 90 days after the transmission, give the Regulator:
  - (a) a declaration of transmission; and
  - (b) such evidence of transmission as is specified in the regulations.
- (4) A declaration of transmission must be made in accordance with the regulations.
- (5) If the transferee does not already have a Registry account, the declaration of transmission must be accompanied by a request, under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, for the Regulator to open a Registry account in the name of the transferee.

*Extension of period*

- (6) If the Regulator is satisfied that special circumstances warrant the extension of the 90-day period mentioned in subsection (3), the Regulator may extend that period.
- (7) The Regulator may exercise the power conferred by subsection (6):
  - (a) on written application being made to the Regulator by the transferor or the transferee; or
  - (b) on the Regulator's own initiative.
- (8) If:
  - (a) the Regulator decides to refuse to extend the 90-day period mentioned in subsection (3); and
  - (b) the Regulator made the decision in response to an application by the transferor or the transferee;the Regulator must give written notice of the decision to the transferor or the transferee, as the case may be.

*Transfer of unit—transferee already has a Registry account*

- (9) If the transferee already has a Registry account, the Regulator must, as soon as practicable after receiving the declaration of transmission, transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee.

*Transfer of unit—transferee does not have a Registry account*

- (10) If:
  - (a) the transferee does not already have a Registry account; and
  - (b) in accordance with the request under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, the Regulator has opened a Registry account in the name of the transferee;the Regulator must, as soon as practicable after opening the Registry account, transfer the unit from the relevant Registry account kept by the transferor to the Registry account kept by the transferee.

Section 107

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*Record*

- (11) If the Regulator transfers the unit under subsection (9) or (10), the Registry must set out a record of the declaration of transmission.

*When the transferee is the Commonwealth*

- (12) If the transferee is the Commonwealth, the Minister may give:
- (a) the declaration of transmission; and
  - (b) the evidence mentioned in paragraph (3)(b);
- on behalf of the transferee.

**107 Transfer of carbon units to another Registry account held by the transferor**

*Scope*

- (1) This section applies if:
- (a) a person keeps a Registry account (the ***first Registry account***) in which there is an entry for a carbon unit; and
  - (b) the person, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the first Registry account to another Registry account kept by the person; and
  - (c) the instruction sets out:
    - (i) the account number of the first Registry account; and
    - (ii) the account number of the other Registry account.

*Compliance with instruction*

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

## **108 Outgoing international transfers of carbon units**

- (1) If a person (the *first person*) is the registered holder of one or more carbon units, the person may, by electronic notice transmitted to the Regulator, instruct the Regulator to transfer the units from the relevant Registry account kept by the person (the *first Registry account*) to:
  - (a) a foreign account kept by another person; or
  - (b) a foreign account kept by the first person.
- (2) An instruction under subsection (1) must set out:
  - (a) the account number of the relevant Registry account kept by the first person; and
  - (b) such other information as is specified in the regulations.

### *Compliance with instruction*

- (3) If:
  - (a) the Regulator receives an instruction under subsection (1); and
  - (b) either:
    - (i) the instruction is given on or after 1 July 2018; or
    - (ii) the foreign account is kept within a prescribed foreign registry; and
  - (c) the conditions (if any) specified in the regulations are satisfied; and
  - (d) each of the carbon units has a vintage year that is a flexible charge year;the Regulator must take such steps as are required by the regulations.
- (4) Regulations made for the purposes of subsection (3) may require the Regulator to remove the entry for the unit or units from the relevant Registry account.
- (5) Subsection (4) does not limit subsection (3).
- (6) A foreign registry must not be prescribed for the purposes of subparagraph (3)(b)(ii) unless:

**Part 4** Carbon units

**Division 3** Property in, and transfer of, carbon units

**Section 109**

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- (a) there is in force an international agreement between Australia and the foreign country in which the registry is located; and
  - (b) the agreement deals with the transfer of carbon units to foreign accounts kept within the registry.
- (7) If the Regulator takes steps under subsection (3) in relation to an instruction, the Registry must set out a record of the instruction.
- (8) If the first person is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the first person.

**109 Incoming international transfers of carbon units**

- (1) If:
  - (a) the Regulator receives an instruction for the transfer of a carbon unit from a foreign account; and
  - (b) the conditions (if any) specified in the regulations are satisfied;the Regulator must make an entry for the carbon unit in the relevant Registry account.
- (2) However, the Regulator may refuse to make an entry for the carbon unit in the relevant Registry account if the Regulator has reasonable grounds to suspect that the instruction is fraudulent.
- (3) If the Regulator decides to refuse to make an entry for the carbon unit in the relevant Registry account, the Regulator must give written notice of the decision to the person who gave the instruction.

**109A Registration of equitable interests in relation to a carbon unit**

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



**110 Equitable interests in relation to a carbon unit**

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

## **Division 4—Auctions of carbon units**

### **111 Issue of carbon units as the result of an auction**

#### *Auction*

- (1) The Regulator may issue carbon units as the result of an auction conducted by the Regulator.

#### *Issue of units*

- (2) The Regulator must not issue one or more carbon units to a person as the result of an auction unless:
  - (a) the person has tendered the total amount of charges payable for, or imposed on, the issue of the units; or
  - (b) both:
    - (i) the person has lodged a deposit that relates to the total amount of charges payable for, or imposed on, the issue of the units; and
    - (ii) the person has tendered the balance of the total amount of the charges.

Note: For rules about deposits, see section 113.

#### *Charge payable*

- (3) If a carbon unit is issued to a person as a result of an auction, the person is liable to pay a charge for the issue of the unit.
- (4) Subsection (3) has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.

Note: See also:

- (a) Part 2 of the *Clean Energy (Charges—Excise) Act 2011*; and
- (b) Part 2 of the *Clean Energy (Charges—Customs) Act 2011*; and
- (c) the *Clean Energy (Unit Issue Charge—Auctions) Act 2011*.

*Amount of charge*

- (5) The amount of charge payable under subsection (3) for the issue of a carbon unit is the amount equal to the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit, so long as:
- (a) in a case where:
    - (i) the unit has the vintage year beginning on 1 July 2015; and
    - (ii) regulations are in force for the purposes of section 8 of the *Clean Energy (International Unit Surrender Charge) Act 2011* in relation to the surrender of an eligible international emissions unit in relation to the vintage year;the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit is not less than:
    - (iii) \$15; or
    - (iv) if a greater amount is prescribed for the purposes of this subparagraph—that greater amount; and
  - (b) in a case where:
    - (i) the unit has the vintage year beginning on 1 July 2016; and
    - (ii) regulations are in force for the purposes of section 8 of the *Clean Energy (International Unit Surrender Charge) Act 2011* in relation to the surrender of an eligible international emissions unit in relation to the vintage year;the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit is not less than:
    - (iii) \$16; or
    - (iv) if a greater amount is prescribed for the purposes of this subparagraph—that greater amount; and
  - (c) in a case where:
    - (i) the unit has the vintage year beginning on 1 July 2017; and

**Section 111**

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- (ii) regulations are in force for the purposes of section 8 of the *Clean Energy (International Unit Surrender Charge) Act 2011* in relation to the surrender of an eligible international emissions unit in relation to the vintage year;

the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit is not less than:

- (iii) \$17.05; or

- (iv) if a greater amount is prescribed for the purposes of this subparagraph—that greater amount; and

- (d) in a case where:

- (i) none of the above paragraphs apply; and

- (ii) under the regulations, an amount is taken to be the reserve charge amount in relation to the auction;

the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit is not less than that reserve charge amount.

- (6) Subsection (5) does not apply to an amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit, unless the amount was accepted by the Regulator in the course of the auction.

*Recovery of charge*

- (7) If:

- (a) charge is payable for, or imposed on, the issue of a carbon unit; and

- (b) the unit is issued as the result of an auction;

an amount of charge payable for, or imposed on, the issue of the unit:

- (c) is a debt due to the Commonwealth; and

- (d) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

*Charge must not be arbitrary*

- (8) The Regulator must not perform any of its functions, or exercise any of its powers, in relation to an auction in a way that would contravene the constitutional requirement that taxation must not be arbitrary.

**112 Secondary market auctions of relinquished carbon units**

*Scope*

- (1) This section applies if there is an entry for a carbon unit in the Commonwealth relinquished units account.

*Regulator may auction unit*

- (2) The Regulator may, on behalf of the Commonwealth, auction the unit.

*Combined auctions*

- (3) The Regulator may conduct an auction under this section in combination with an auction mentioned in section 111.

**113 Policies, procedures and rules for auctioning carbon units**

- (1) The Minister may, by legislative instrument, determine the policies, procedures and rules that apply in relation to the auctioning of carbon units by the Regulator.
- (2) A determination under subsection (1) may deal with any or all of the following matters:
  - (a) the types of auction;
  - (b) the timing of auctions;
  - (c) advertising of auctions;
  - (d) participants in auctions;
  - (e) fees for participants in auctions;
  - (f) proxy bidding;
  - (g) representatives of participants in auctions;

**Section 113**

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- (h) the minimum number of carbon units to which a bid may relate;
  - (i) variation of bids;
  - (j) the total number of carbon units with a particular vintage year that are to be offered at a particular auction under section 111;
  - (k) limits on the total number of carbon units with a particular vintage year that may be acquired by a person as a result of a particular auction;
  - (l) limits on the total number of carbon units with a particular vintage year that may be acquired by the members of a controlling corporation's group as a result of a particular auction;
  - (m) in the case of an auction under section 112—reserve prices (if any);
  - (n) deposits (if any) to be lodged by participants in auctions;
  - (o) the refund or forfeiture of such deposits;
  - (p) guarantees (if any) to be given in respect of payment obligations that are incurred by participants in auctions;
  - (q) securities (if any) to be lodged in respect of payment obligations that are incurred by participants in auctions;
  - (r) in the case of an auction under section 111—timing and methods of payment of charges;
  - (s) in the case of an auction under section 112—timing and methods of payment of prices.
- (3) Subsection (2) does not limit subsection (1).
- (4) A fee specified under paragraph (2)(e) must not be such as to amount to taxation.
- (5) A determination under subsection (1) may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.
- (6) A determination under subsection (1) may:
- (a) empower the Regulator to disqualify a person from participating in auctions; and

- (b) provide that the Regulator, in exercising such a power, may have regard to:
  - (i) the person's record in relation to compliance with the determination; and
  - (ii) such other matters (if any) as are specified in the determination; and
  - (iii) such other matters (if any) as the Regulator considers relevant.
- (7) Subsection (6) does not limit subsection (5).
- (8) To avoid doubt, a determination under subsection (1) is taken to be a law for the purposes of section 28 of the *Financial Management and Accountability Act 1997*.
- (9) To avoid doubt, the Regulator may auction carbon units even if no determination is in force under subsection (1).

#### **114 Benchmark average auction charge**

- (1) For the purposes of this Act, the ***benchmark average auction charge*** for a financial year is whichever is the greater of the following amounts:
  - (a) the amount calculated under subsection (2) in relation to the financial year;
  - (b) the amount calculated under subsection (3) in relation to the financial year.

##### *Average auction charge—all auctions*

- (2) The amount calculated under this subsection in relation to a financial year is the amount worked out using the formula:

$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

where:

Section 114

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***number of units issued as the result of auctions*** means the total number of carbon units that were issued as the result of auctions conducted by the Regulator during the financial year.

***total auction proceeds*** means the total amount paid or payable by way of charges for the issue of carbon units that were issued as the result of auctions conducted by the Regulator during the financial year.

***Average auction charge—last auction***

- (3) The amount calculated under this subsection in relation to a financial year is the amount worked out using the formula:

$$\frac{\text{Proceeds of the last auction}}{\text{Number of units issued as a result of the last auction}}$$

where:

***number of units issued as a result of the last auction*** means the number of carbon units that:

- (a) have a vintage year of that financial year; and
- (b) were issued as a result of the last auction of carbon units with that vintage year that was conducted by the Regulator during the financial year.

***proceeds of the last auction*** means the total amount paid or payable by way of charges for the issue of carbon units that:

- (a) have a vintage year of that financial year; and
- (b) were issued as a result of the last auction of carbon units with that vintage year that was conducted by the Regulator during the financial year.

***Regulator to calculate and publish benchmark average auction charge***

- (4) As soon as practicable after the end of each financial year, the Regulator must:
- (a) calculate the benchmark average auction charge for the financial year; and



- (b) publish on its website a notice setting out the results of that calculation.

## **Division 5—Special provisions relating to free carbon units**

### **115 Cancellation of certain unused free carbon units**

#### *Scope*

- (1) This section applies if:
  - (a) a carbon unit was issued:
    - (i) in accordance with the Jobs and Competitiveness Program; or
    - (ii) in accordance with Part 8 (coal-fired electricity generation); and
  - (b) the unit has a vintage year that is a fixed charge year; and
  - (c) there was an entry for the unit in a person's Registry account at the end of 1 February next following that fixed charge year.

#### *Cancellation of unit*

- (2) The Regulator must cancel the unit.
- (3) The Regulator must remove the entry for the unit from the person's Registry account.
- (4) The Registry must set out a record of each cancellation under subsection (2).

### **116 Buy-back of certain free carbon units**

#### *Scope*

- (1) This section applies if a person is the registered holder of one or more carbon units that:
  - (a) were issued:
    - (i) in accordance with the Jobs and Competitiveness Program; or
    - (ii) in accordance with Part 8 (coal-fired electricity generation); and

- (b) have a vintage year that is a fixed charge year.

*Buy-back*

- (2) During the period:

- (a) beginning at the start of 1 September in that fixed charge year; and
- (b) ending at the end of 1 February next following that fixed charge year;

the person may, by electronic notice transmitted to the Regulator, request the Regulator to cancel the unit or units in exchange for the payment to the person of the amount (the ***buy-back amount***) worked out using the formula:

$\text{Fixed charge} \times \text{Factor specified in the regulations} \times \text{Number of units}$

where:

***fixed charge*** means the per unit charge applicable under subsection 100(1) for the issue of a carbon unit with a vintage year of that fixed charge year.

- (3) If the Regulator receives a request under subsection (2) from a person in relation to one or more carbon units, the Regulator must:
- (a) on a day ascertained in accordance with the regulations:
    - (i) cancel the unit or units; and
    - (ii) remove the entries for the unit or units from the person's Registry account in which there is an entry for the unit or units; and
  - (b) on or as soon as practicable after that day, on behalf of the Commonwealth, pay the buy-back amount to the person.
- (4) The Registry must set out a record of each cancellation under subsection (3).
- (5) The Consolidated Revenue Fund is appropriated for the purposes of making payments under this section.

Section 116A

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**116A Extension of buy-back period**

*Scope*

- (1) This section applies if the Regulator is satisfied that:
  - (a) 2 or more persons were unable to make a request under subsection 116(2) during the whole or a part of 1 February next following a fixed charge year; and
  - (b) the inability to make the request was attributable to:
    - (i) a fault or malfunction relating to a computer system under the control of the Regulator; or
    - (ii) a fault or malfunction relating to a facility (within the meaning of the *Telecommunications Act 1997*); or
    - (iii) a fault or malfunction relating to a carriage service (within the meaning of that Act) provided to the public; and
  - (c) it would be reasonable to extend the deadline for making requests under subsection 116(2) beyond the end of that 1 February.

*Extension of buy-back period*

- (2) The Regulator may, by legislative instrument, determine that this Act has effect as if a reference in each of the following provisions to the end of that 1 February were a reference to such later time as is specified in the determination:
  - (a) paragraph 115(1)(c);
  - (b) paragraph 116(2)(b).
- (3) If the Regulator makes a determination under this section, the Regulator must publish a copy of the determination on its website.

## Part 5—Emissions number

### 117 Simplified outline

The following is a simplified outline of this Part:

- If a person is a liable entity for a financial year, the person's emissions number for the financial year is the total of the person's provisional emissions numbers for the financial year.
- The Regulator may make an advisory assessment of a person's emissions number for a financial year.

Note: An emissions number is reported under section 22A of the *National Greenhouse and Energy Reporting Act 2007*.

### 118 Emissions number

#### *Scope*

- (1) This section applies if a person is a liable entity for an eligible financial year.

#### *Emissions number*

- (2) For the purposes of this Act, the person's ***emissions number*** for the eligible financial year is the total of the person's provisional emissions numbers (if any) for the eligible financial year.
- (3) If the person's emissions number for the eligible financial year is not a whole number, the emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded down). For this purpose, zero is taken to be a whole number.

Section 119

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**119 Assessment of emissions number—incorrect report given by liable entity**

*Scope*

- (1) This section applies if:
- (a) a report relating to an eligible financial year was given under section 22A of the *National Greenhouse and Energy Reporting Act 2007* by a person who was a liable entity for the eligible financial year; and
  - (b) the report was given before the end of 4 months after the end of the eligible financial year; and
  - (c) the Regulator has reasonable grounds to believe that the number specified in the report as the person's emissions number for the eligible financial year is incorrect.

*Assessment*

- (2) The Regulator may:
- (a) make an assessment of the person's emissions number for the eligible financial year; and
  - (b) give written notice of the assessment to the person.
- (3) A notice of assessment under paragraph (2)(b) must be accompanied by:
- (a) if the assessment was made before the end of 1 February next following the eligible financial year—a statement explaining that the person may need to acquire and surrender eligible emissions units to avoid being liable for unit shortfall charge; or
  - (b) otherwise—a statement explaining that the person may be liable to pay:
    - (i) unit shortfall charge; and
    - (ii) late payment penalty under section 135 in respect of that unit shortfall charge.

*Amendment of assessments*

- (4) The Regulator may amend an assessment under this section at any time.

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Section 120

- (5) The Regulator may exercise the power conferred by subsection (4):
  - (a) on written application being made to the Regulator by the person to whom the assessment relates; or
  - (b) on the Regulator's own initiative.
- (6) If the Regulator amends an assessment, the Regulator must give written notice of the amendment to the person to whom the assessment relates.
- (7) If:
  - (a) the Regulator decides to refuse to amend an assessment; and
  - (b) the Regulator made the decision in response to an application by the person to whom the assessment relates;the Regulator must give written notice of the decision to the person.
- (8) For the purposes of this Act, an amended assessment is taken to be an assessment under this section.

*Advisory character of assessment*

- (9) A notice of assessment under this section is an instrument of an advisory character.

**120 Assessment of emissions number—no report given by liable entity***Scope*

- (1) This section applies if:
  - (a) a person has not, before the end of 4 months after the end of an eligible financial year, given a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007* in relation to the eligible financial year; and
  - (b) the Regulator has reasonable grounds to believe that the person is a liable entity for the eligible financial year.

*Assessment*

- (2) The Regulator may:

Section 120

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- (a) make an assessment of the person's emissions number for the eligible financial year; and
  - (b) give written notice of the assessment to the person.
- (3) A notice of assessment under paragraph (2)(b) must be accompanied by:
  - (a) if the assessment was made before the end of 1 February next following the eligible financial year—a statement explaining that the person may need to acquire and surrender eligible emissions units to avoid being liable for unit shortfall charge; or
  - (b) otherwise—a statement explaining that the person may be liable to pay:
    - (i) unit shortfall charge; and
    - (ii) late payment penalty under section 135 in respect of that unit shortfall charge.

*Amendment of assessments*

- (4) The Regulator may amend an assessment under this section at any time.
- (5) The Regulator may exercise the power conferred by subsection (4):
  - (a) on written application being made to the Regulator by the person to whom the assessment relates; or
  - (b) on the Regulator's own initiative.
- (6) If the Regulator amends an assessment, the Regulator must give written notice of the amendment to the person to whom the assessment relates.
- (7) If:
  - (a) the Regulator decides to refuse to amend an assessment; and
  - (b) the Regulator made the decision in response to an application by the person to whom the assessment relates;the Regulator must give written notice of the decision to the person.
- (8) For the purposes of this Act, an amended assessment is taken to be an assessment under this section.



Section 120

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*Advisory character of assessment*

- (9) A notice of assessment under this section is an instrument of an advisory character.

## **Part 6—Surrender of eligible emissions units**

### **Division 1—Introduction**

#### **121 Simplified outline**

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more eligible emissions units, the person may, by electronic notice transmitted to the Regulator, surrender any or all of those units.
- If a person is a liable entity for a fixed charge year, the person will have a provisional unit shortfall (and be liable to pay unit shortfall charge) if the person does not surrender, by the end of 15 June in that year, a number of eligible emissions units equal to the total of the person's interim emissions numbers for the year.
- Generally, an interim emissions number is calculated by reference to 75% of the corresponding provisional emissions number.
- If a person is a liable entity for a fixed charge year, the person will have a final unit shortfall (and be liable to pay unit shortfall charge) if the number of eligible emissions units surrendered by the person after 15 June in that year and before the next 1 February, together with the total of the person's interim emissions numbers, does not equal the person's emissions number for the year.
- If a person is a liable entity for a flexible charge year, the person will have a unit shortfall (and be liable to pay unit shortfall charge) if the person does not, before the end of the next 1 February, surrender a number of eligible emissions units equal to the person's emissions number for the year.

## Section 121

- A surplus surrender in a fixed charge year will result in a refund payment.
- A surplus surrender in a flexible charge year may be carried forward to reduce any unit shortfall for the next financial year.
- The number of eligible international emissions units surrendered for any of the first 5 flexible charge years must not exceed 50% of the person's emissions number for the year.
- An eligible international emissions unit cannot be surrendered for a fixed charge year.
- There are restrictions on the types of eligible international emissions units that can be surrendered.
- An eligible international emissions unit cannot be surrendered in relation to the first 3 flexible charge years unless the person pays the charge imposed on that surrender.
- The Regulator may make an advisory assessment of a person's unit shortfall and the unit shortfall charge payable on that shortfall.

Note 1: Unit shortfall charge is imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

Note 2: Charge on the surrender of an eligible international emissions unit is imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011*. The charge complements the minimum reserve auction charge for units issued in the first 3 flexible charge years.

## **Division 2—How eligible emissions units are surrendered**

### **122 How eligible emissions units are surrendered**

- (1) If a person is the registered holder of one or more eligible emissions units, the person may, by electronic notice transmitted to the Regulator during an eligible financial year, surrender any or all of those units.

Note: A liable entity may surrender units to avoid liability for a unit shortfall charge.

- (2) A notice under subsection (1) must:
- (a) specify the eligible emissions unit or units that are being surrendered; and
  - (b) specify the eligible financial year to which the surrender relates; and
  - (c) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the eligible emissions unit or units that are being surrendered.
- (3) The eligible financial year specified under paragraph (2)(b) must be:
- (a) the eligible financial year in which the electronic notice was transmitted; or
  - (b) an earlier eligible financial year.
- (4) A carbon unit must not be surrendered in relation to an eligible financial year unless that eligible financial year is:
- (a) the vintage year of the unit; or
  - (b) an eligible financial year later than the vintage year of the unit; or
  - (c) the eligible financial year immediately preceding the vintage year of the unit.

Note: See also subsection 133(6) (borrowing limit).

- (5) A person must not surrender, in relation to an eligible financial year, a carbon unit that has a vintage year that next follows the eligible financial year unless the electronic notice is transmitted after the emissions number publication time of the person for the eligible financial year.

Note: For *emissions number publication time*, see section 5.

- (6) A carbon unit must not be surrendered in relation to an eligible financial year that is a fixed charge year unless the unit has a vintage year of that eligible financial year.
- (7) If:
- (a) a carbon unit was issued:
    - (i) in accordance with the Jobs and Competitiveness Program; or
    - (ii) in accordance with Part 8 (coal-fired electricity generation); and
  - (b) the unit has a vintage year that is a fixed charge year; the unit must not be surrendered in relation to an eligible financial year unless that eligible financial year is the vintage year of the unit.
- (8) An eligible international emissions unit must not be surrendered in relation to an eligible financial year that is a fixed charge year.
- (9) An eligible international emissions unit must not be surrendered if the surrender would breach regulations made for the purposes of subsection 123(1) (surrender restrictions).
- (10) If a carbon unit is surrendered by a person:
- (a) the unit is cancelled; and
  - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (11) If an eligible international emissions unit is surrendered by a person:
- (a) the Regulator must take such action in relation to the unit as is specified in the regulations; and

Section 123

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- (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (12) If an eligible Australian carbon credit unit is surrendered by a person:
  - (a) the unit is cancelled; and
  - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (13) The Registry must set out a record of each notice under subsection (1).

**123 Surrender restrictions**

- (1) The regulations may make provision for, or in relation to, prohibiting the surrender of specified eligible international emissions units.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.
- (2) In making a recommendation to the Governor-General about regulations to be made for the purposes of subsection (1), the Minister may have regard to:
  - (a) Australia's international objectives; and
  - (b) Australia's international obligations (including obligations under international climate change agreements); and
  - (c) the environmental integrity of this Act and the associated provisions; and
  - (d) any relevant report given to the Minister by the Climate Change Authority under Part 22; and
  - (e) the extent to which eligible international emissions units may be surrendered, accepted or used for the purposes of:
    - (i) the *Climate Change Response Act 2002* of New Zealand; or
    - (ii) the European Union emissions trading scheme; and
  - (f) such other matters (if any) as the Minister considers relevant.

- (3) If:
- (a) regulations are made for the purposes of subsection (1); and
  - (b) the regulations are registered under the *Legislative Instruments Act 2003* during an eligible financial year;
- the regulations do not apply to the surrender of eligible international emissions units in relation to the eligible financial year.

## **124 Charge on surrender of eligible international emissions units**

- (1) If:
- (a) a person surrenders an eligible international emissions unit in relation to:
    - (i) the eligible financial year beginning on 1 July 2015; or
    - (ii) the eligible financial year beginning on 1 July 2016; or
    - (iii) the eligible financial year beginning on 1 July 2017; and
  - (b) charge is imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* on that surrender; and
  - (c) the person does not tender the charge at or about the same time as the notice of surrender is given under subsection 122(1);
- the surrender is to be disregarded for the purpose of this Act (other than this Division).

### *Recovery of charge*

- (2) If charge is imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* on the surrender of an eligible international emissions unit, the amount of the charge:
- (a) is a debt due to the Commonwealth; and
  - (b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

## **Division 3—Unit shortfalls**

### **Subdivision A—Fixed charge years**

#### **125 Provisional unit shortfall**

##### *Scope*

- (1) This section applies if:
- (a) a person is a liable entity for an eligible financial year (the ***relevant eligible financial year***); and
  - (b) the eligible financial year is a fixed charge year.

##### *Unit shortfall*

- (2) If the number worked out using the formula in subsection (5) exceeds zero:
- (a) the person has a unit shortfall under this section for the relevant eligible financial year; and
  - (b) the number of units in that shortfall is equal to the number worked out using that formula.

Note: Unit shortfall charge is imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

##### *No unit shortfall*

- (3) If the number worked out using the formula in subsection (5) is zero, the person does not have a unit shortfall under this section for the relevant eligible financial year.

##### *Provisional surplus surrender number*

- (4) If the number worked out using the formula in subsection (5) is less than zero:



- (a) the person has a provisional surplus surrender number for the relevant eligible financial year; and
- (b) the provisional surplus surrender number is equal to the number worked out using that formula (expressed as a positive).

*Formula*

- (5) The formula is as follows:

$$\begin{array}{rcl} \text{Total interim} & & \text{Number of} \\ \text{emissions numbers} & - & \text{units surrendered} \\ & & \text{by 15 June} \end{array}$$

where:

***number of units surrendered by 15 June*** means the number of eligible emissions units that were surrendered by the person, in relation to the relevant eligible financial year, before the end of 15 June in the relevant eligible financial year.

***total interim emissions numbers*** means the total of the interim emissions numbers of the person for the relevant eligible financial year.

Note: See also section 127.

- (6) If the number worked out using the formula in subsection (5) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up). For this purpose, zero is taken to be a whole number.

*Eligible Australian carbon credit units—surrender limit*

- (7) If:
- (a) before the end of 15 June in the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, eligible Australian carbon credit units; and
  - (b) the number of eligible Australian carbon credit units exceeds:
    - (i) if at least 50% of the total of the interim emissions numbers of the person for the relevant eligible financial year is attributable to, or to estimates of, provisional

**Section 126**

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emissions numbers under Subdivision B of Division 2 of Part 3 (which deals with landfill facilities)—the total of the interim emissions numbers of the person for the relevant eligible financial year; or

- (ii) otherwise—5% of the total of the interim emissions numbers of the person for the relevant eligible financial year;

then:

- (c) subsection (5) has effect as if the person had not, before the end of 15 June in the relevant eligible financial year, surrendered, in relation to the relevant eligible financial year, the number of eligible Australian carbon credit units that equals the excess; and
- (d) section 128 has effect as if the person had, during the period:
  - (i) beginning immediately after the end of 15 June in the relevant eligible financial year; and
  - (ii) ending at the end of 1 February next following the relevant eligible financial year;surrendered, in relation to the relevant eligible financial year, the number of eligible Australian carbon credit units that equals the excess.

**126 Interim emissions number**

*Scope*

- (1) This section applies if:
  - (a) a person (the **relevant person**) is a liable entity for an eligible financial year (the **relevant eligible financial year**); and
  - (b) the eligible financial year is a fixed charge year.

*Direct emitter*

- (2) For the purposes of this Act, if:
  - (a) one or more persons (who may consist of or include the relevant person) had a provisional emissions number for the previous eligible financial year under a particular provision of Division 2 of Part 3 in so far as that provision applies to a particular facility; and

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- (b) the relevant person is likely to have a provisional emissions number for the relevant eligible financial year under that provision in so far as that provision applies to that facility;
- then:
- (c) the number worked out using the formula in subsection (3) is an *interim emissions number* of the person for the relevant eligible financial year; or
- (d) if:
- (i) the conditions specified in the regulations are satisfied; and
  - (ii) a lesser number is ascertained in accordance with the regulations;
- the lesser number is an *interim emissions number* of the person for the relevant eligible financial year.
- (3) The formula is as follows:
- $$0.75 \times \text{Total provisional emissions numbers}$$
- where:
- total provisional emissions numbers* means the total of the provisional emissions numbers referred to in paragraph (2)(a).
- (4) For the purposes of this Act, if, before the end of 15 June in the relevant eligible financial year, the person gives the Regulator, in writing, a reasonable estimate of 75% of the provisional emissions number of the person for the relevant eligible financial year under a particular provision of Division 2 of Part 3 in so far as that provision applies to a particular facility:
- (a) the estimate is an *interim emissions number* of the person for the relevant eligible financial year; and
  - (b) subsection (2) does not apply to the person in relation to the facility for the relevant eligible financial year.
- (5) If the number worked out using the formula in subsection (3) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up). For this purpose, zero is taken to be a whole number.
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Section 127

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- (6) For the purposes of subsection (2), if the relevant eligible financial year began on 1 July 2012, assume that the financial year that began on 1 July 2011 was an eligible financial year.

*Natural gas supplier etc.*

- (7) For the purposes of this Act, if a particular number would have been the provisional emissions number of the person for the relevant eligible financial year under a particular provision of Division 3 of Part 3 if it were assumed that the relevant eligible financial year ended at the end of 31 March in the relevant eligible financial year, the number is an ***interim emissions number*** of the person for the relevant eligible financial year.

*Opt-in Scheme*

- (8) For the purposes of this Act, if a particular number would have been the provisional emissions number of the person for the relevant eligible financial year under the Opt-in Scheme if it were assumed that the relevant eligible financial year ended at the end of 31 March in the relevant eligible financial year, the number is an ***interim emissions number*** of the person for the relevant eligible financial year.

## **127 Adjustment of total interim emissions numbers**

*Scope*

- (1) This section applies if:
- (a) a person is a liable entity for an eligible financial year (the ***relevant eligible financial year***); and
  - (b) the eligible financial year is a fixed charge year; and
  - (c) the person has one or more provisional emissions numbers under Division 2 of Part 3 for the relevant eligible financial year that are attributable to covered emissions from the operation of a facility; and
  - (d) any of the following conditions is satisfied:
    - (i) a report under section 19, 22G or 22X of the *National Greenhouse and Energy Reporting Act 2007* was not

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Section 128

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required in relation to the facility for the previous eligible financial year;

- (ii) if one or more persons had a provisional emissions number for the previous eligible financial year, under a particular provision of Division 2 of Part 3 in so far as that provision applies to the facility—the total of those numbers is less than 35,000;
- (iii) if one or more persons are reasonably expected to have a provisional emissions number for the relevant eligible financial year, under a particular provision of Division 2 of Part 3 in so far as that provision applies to the facility—the total of those numbers is reasonably expected to be less than 35,000.

For the purposes of paragraph (d), assume that the financial year beginning on 1 July 2011 was an eligible financial year.

*Adjustment*

- (2) For the purposes of determining an interim emissions number of the person for the relevant eligible financial year, disregard a provisional emissions number that is, or is likely to be, attributable to covered emissions from the operation of the facility.

**128 Final unit shortfall***Scope*

- (1) This section applies if:
  - (a) a person is a liable entity for an eligible financial year; and
  - (b) the eligible financial year is a fixed charge year.

*Unit shortfall*

- (2) If the number worked out using the formula in subsection (5) exceeds zero:
  - (a) the person has a unit shortfall under this section for the eligible financial year; and
  - (b) the number of units in that shortfall is equal to the number worked out using that formula.

**Part 6** Surrender of eligible emissions units

**Division 3** Unit shortfalls

**Section 128**

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- Note: Unit shortfall charge is imposed by whichever of the following is applicable:
- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
  - (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
  - (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

*No unit shortfall*

- (3) If the number worked out using the formula in subsection (5) is zero, the person does not have a shortfall under this section for the eligible financial year.

*Final surplus surrender number*

- (4) If the number worked out using the formula in subsection (5) (disregarding any surrenders of eligible Australian carbon credit units) is less than zero:
- (a) the person has a final surplus surrender number for the eligible financial year; and
  - (b) the final surplus surrender number is equal to the number worked out using that formula (expressed as a positive).

*Formula*

- (5) The formula is as follows:

$$\text{Emissions number} - \left[ \begin{array}{c} \text{Number of units} \\ \text{surrendered after} \\ \text{15 June} \\ \text{and before} \\ \text{1 February} \end{array} + \begin{array}{c} \text{Total} \\ \text{interim} \\ \text{emissions} \\ \text{numbers} \end{array} + \begin{array}{c} \text{Surplus and} \\ \text{estimation error} \\ \text{adjustment} \\ \text{number} \end{array} \right]$$

where:

***emissions number*** means the person's emissions number for the eligible financial year.

***number of units surrendered after 15 June and before***

***1 February*** means the number of eligible emissions units that the person surrendered, in relation to the eligible financial year, during the period:

- (a) beginning immediately after the end of 15 June in the eligible financial year; and

- (b) ending at the end of 1 February next following the eligible financial year.

***surplus and estimation error adjustment number*** means the surplus and estimation error adjustment number of the person for the eligible financial year worked out under section 131.

***total interim emissions numbers*** means the total of the interim emissions numbers of the person for the eligible financial year.

- (6) If the number worked out using the formula in subsection (5) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up). For this purpose, zero is taken to be a whole number.

***Eligible Australian carbon credit units—surrender limit***

- (7) If:

- (a) during the period:

- (i) beginning immediately after the end of 15 June in the eligible financial year; and  
(ii) ending at the end of 1 February next following the eligible financial year;

the person surrendered, in relation to the eligible financial year, eligible Australian carbon credit units; and

- (b) the number of eligible Australian carbon credit units exceeds:

- (i) if at least 50% of the person's emissions number for the relevant eligible financial year is attributable to provisional emissions numbers under Subdivision B of Division 2 of Part 3 (which deals with landfill facilities)—the person's emissions number for the relevant eligible financial year; or  
(ii) otherwise—the number worked out using the formula in subsection (8);

then:

- (c) this Division has effect as if the person had not surrendered, during that period, the number of eligible Australian carbon credit units that equals the excess; and

Section 129

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- (d) this Division has effect as if the person had, during the period:
- (i) beginning immediately after the end of 15 June in the next eligible financial year; and
  - (ii) ending at the end of 1 February next following the next eligible financial year;
- surrendered, in relation to the next eligible financial year, the number of eligible Australian carbon credit units that equals the excess.
- (8) The formula is as follows:
- $$5\% \text{ surrender limit} - \frac{\text{Number of ACCUs surrendered by 15 June}}{\text{Number of ACCUs surrendered by 15 June}}$$
- where:
- 5% surrender limit** means 5% of the emissions number of the person for the eligible financial year.
- number of ACCUs surrendered by 15 June** means the number of eligible Australian carbon credit units that:
- (a) were surrendered by the person, in relation to the eligible financial year, before the end of 15 June in the eligible financial year; and
  - (b) did not exceed 5% of the total of the interim emissions numbers of the person for the eligible financial year.
- (9) If the number worked out using the formula in subsection (8) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up). For this purpose, zero is taken to be a whole number.

**129 Estimation error unit shortfall**

*Scope*

- (1) This section applies if:
- (a) a person is a liable entity for an eligible financial year; and
  - (b) the eligible financial year is a fixed charge year.



*Unit shortfall*

- (2) If the person has one or more estimation error numbers for the eligible financial year:
- (a) the person has a unit shortfall under this section for the eligible financial year; and
  - (b) the number of units in that shortfall is equal to the total of those estimation error numbers.

Note: Unit shortfall charge is imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

*Estimation error number*

- (3) If:
- (a) the person gave the Regulator an estimate under subsection 126(4) for the eligible financial year; and
  - (b) the number worked out using the formula in subsection (4) of this section exceeds zero;

that number is an ***estimation error number*** of the person for the eligible financial year.

- (4) The formula is as follows:

$$\left[ 0.75 \times \frac{\text{Provisional emissions number}}{\text{number}} \right] - \text{Estimate}$$

where:

***provisional emissions number*** means the provisional emissions number to which the estimate relates.

Section 130

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**130 Remission of unit shortfall charge imposed on estimation error unit shortfall**

*Scope*

- (1) This section applies if a person has a unit shortfall under section 129 for an eligible financial year.

*Power to remit*

- (2) The Regulator may remit the whole or a part of an amount of unit shortfall charge imposed on the unit shortfall if the Regulator is satisfied that there are circumstances that make it fair and reasonable to remit some or all of the amount.
- (3) In deciding whether to remit the whole or a part of an amount of unit shortfall charge, the Regulator must have regard to the following matters:
- (a) whether the person took reasonable steps to avoid having the unit shortfall;
  - (b) the extent to which the unit shortfall is attributable to an increase in emissions that could not reasonably have been foreseen by the person when the person gave the Regulator an estimate under subsection 126(4);
  - (c) whether the person has had a unit shortfall under section 129 for a previous eligible financial year;
  - (d) such other matters (if any) as the Regulator considers relevant.
- (4) The Regulator may exercise the power conferred by subsection (2):
- (a) on written application being made to the Regulator by the person; or
  - (b) on the Regulator's own initiative.

*Refusal*

- (5) If:
- (a) the Regulator decides to refuse to remit the whole or a part of an amount of unit shortfall charge; and

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Section 131

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- (b) the Regulator made the decision in response to an application made by the person;
- the Regulator must give written notice of the decision to the person.

**131 Surplus and estimation error adjustment number***Scope*

- (1) This section applies if:
  - (a) a person is a liable entity for an eligible financial year (the *relevant eligible financial year*); and
  - (b) the eligible financial year is a fixed charge year.

*Surplus and estimation error adjustment number*

- (2) If:
  - (a) the person has a provisional surplus surrender number for the relevant eligible financial year worked out under section 125; and
  - (b) the person has one or more estimation error numbers for the relevant eligible financial year worked out under section 129;then:
  - (c) if the number worked out using the formula in subsection (3) exceeds zero—that number is the surplus and estimation error adjustment number of the person for the eligible financial year; and
  - (d) if the number worked out using the formula in subsection (3) is zero—the person’s surplus and estimation error adjustment number for the relevant eligible financial year is zero; and
  - (e) if the number worked out using the formula in subsection (3) is less than zero—the person’s surplus and estimation error adjustment number for the relevant eligible financial year is equal to that number (expressed as a positive).

- (3) The formula is as follows:

Total estimation error numbers – Provisional surplus surrender number

where:

Section 131

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***provisional surplus surrender number*** means the provisional surplus surrender number of the person for the relevant eligible financial year worked out under section 125.

***total estimation error numbers*** means the total of the estimation error numbers of the person for the relevant eligible financial year worked out under section 129.

(4) If:

- (a) the person has one or more error estimation numbers for the relevant eligible financial year worked out under section 129; and
- (b) the person does not have a provisional surplus surrender number for the relevant eligible financial year worked out under section 125;

the person's surplus and estimation error adjustment number for the relevant eligible financial year is equal to the total of the estimation error numbers.

(5) If:

- (a) the person has a provisional surplus surrender number for the relevant eligible financial year worked out under section 125; and
- (b) the person does not have any error estimation numbers for the relevant eligible financial year worked out under section 129;

the person's surplus and estimation error adjustment number for the relevant eligible financial year is equal to the provisional surplus surrender number.

(6) If:

- (a) the person does not have a provisional surplus surrender number for the relevant eligible financial year worked out under section 125; and
- (b) the person does not have any estimation error numbers for the relevant eligible financial year worked out under section 129;

the person's surplus and estimation error adjustment number for the relevant eligible financial year is zero.

**132 Refund—surplus surrender***Scope*

- (1) This section applies if:
- (a) a person is a liable entity for an eligible financial year; and
  - (b) the eligible financial year is a fixed charge year.

*Refund*

- (2) If the person has a final surplus surrender number for that fixed charge year worked out under section 128, there is payable by the Commonwealth to the person the amount worked out using the following formula:

Final surplus surrender number  $\times$  Fixed charge amount

where:

***fixed charge amount*** means the per unit charge applicable under subsection 100(1) for the issue of a carbon unit with a vintage year of that fixed charge year.

- (3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (2).

**Subdivision B—Flexible charge years****133 Unit shortfall***Scope*

- (1) This section applies if:
- (a) a person is a liable entity for an eligible financial year (the ***relevant eligible financial year***); and
  - (b) the relevant eligible financial year is a flexible charge year.

*Unit shortfall*

- (2) If the number worked out using the formula in subsection (5) exceeds zero:

**Section 133**

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- (a) the person has a unit shortfall under this section for the relevant eligible financial year; and
- (b) the number of units in that shortfall is equal to the number worked out using that formula.

Note: Unit shortfall charge is imposed by whichever of the following is applicable:

- (a) Part 3 of the *Clean Energy (Charges—Excise) Act 2011*;
- (b) Part 3 of the *Clean Energy (Charges—Customs) Act 2011*;
- (c) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

*No unit shortfall*

- (3) If the number worked out using the formula in subsection (5) is zero, the person does not have a unit shortfall under this section for the relevant eligible financial year.

*Surplus surrender number*

- (4) If the number worked out using the formula in subsection (5) is less than zero:
  - (a) the person has a surplus surrender number for the relevant eligible financial year; and
  - (b) the surplus surrender number is equal to the number worked out using that formula (expressed as a positive).

*Formula*

- (5) The formula is as follows:

$$\text{Emissions number} - \left[ \frac{\text{Number of units surrendered before the end of 1 February}}{\text{1 February}} + \text{Surplus surrender number} \right]$$

where:

***emissions number*** means the person's emissions number for the relevant eligible financial year.

***number of units surrendered before the end of 1 February*** means the number of eligible emissions units the person surrendered, in relation to the relevant eligible financial year, before the end of 1 February next following the relevant eligible financial year.

## Section 133

**surplus surrender number** means the surplus surrender number (if any) of the person for the previous eligible financial year, so long as the previous eligible financial year is a flexible charge year.

*Borrowing limit*

(6) If:

- (a) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, carbon units (the **borrowed units**) that have a vintage year that next follows the relevant eligible financial year; and
- (b) the number of borrowed units exceeds 5% of the person's emissions number for the relevant eligible financial year;

this section has effect as if:

- (c) the person had not, before the end of that 1 February, surrendered, in relation to the relevant eligible financial year, the number of borrowed units that equals the excess; and
- (d) the person had, before the end of 1 February next following the next eligible financial year, surrendered, in relation to the next eligible financial year, the number of borrowed units that equals the excess.

*Eligible international emissions units—surrender limit*

(7) If:

- (a) the relevant eligible financial year is:
  - (i) the eligible financial year beginning on 1 July 2015; or
  - (ii) any of the next 4 eligible financial years; and
- (b) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, eligible international emissions units; and
- (c) the number of eligible international emissions units exceeds 50% of the emissions number of the person for the relevant eligible financial year;

this section has effect as if:

- (d) the person had not, before the end of that 1 February, surrendered, in relation to the relevant eligible financial year,

**Section 133**

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the number of eligible international emissions units that equals the excess; and

- (e) the person had, before the end of 1 February next following the next eligible financial year, surrendered, in relation to the next eligible financial year, the number of eligible international emissions units that equals the excess.

*Reduction of surplus surrender number*

(8) If:

- (a) apart from this subsection, the person has a surplus surrender number for the previous eligible financial year; and
- (b) the previous eligible financial year is a flexible charge year; and the following conditions are satisfied in relation to one or more eligible international emissions units:

- (c) before the end of 1 February next following the previous eligible financial year, the person surrendered, in relation to the previous eligible financial year, those units;

(d) assuming that:

- (i) those units had not been surrendered in relation to the previous eligible financial year; and
- (ii) the person had, on 1 February next following the relevant eligible financial year, purported to surrender, in relation to the relevant eligible financial year, those units;

the purported surrender of those units would have breached regulations made for the purposes of subsection 123(1);

then:

- (e) if the person would not have had a surplus surrender number for the previous eligible financial year if those units had not been surrendered in relation to the previous eligible financial year—subsection (5) has effect as if the person did not have a surplus surrender number for the previous eligible financial year; or
- (f) if the person's surplus surrender number for the previous eligible financial year would have been reduced if those units had not been surrendered in relation to the previous eligible financial year—subsection (5) has effect as if the person's



Section 133

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surplus surrender number for the previous eligible financial  
year were reduced accordingly.

## Division 4—Unit shortfall charge

### 134 When unit shortfall charge becomes due and payable

- (1) If a person has a unit shortfall under section 125 for a fixed charge year, unit shortfall charge imposed on the unit shortfall is due and payable at the end of the period of 5 business days after 15 June in the fixed charge year.

Note: For *unit shortfall charge*, see section 5.

- (2) If a person has a unit shortfall under section 128 or 129 for a fixed charge year, unit shortfall charge imposed on the unit shortfall is due and payable at the end of the period of 5 business days after 1 February next following the fixed charge year.

Note: For *unit shortfall charge*, see section 5.

- (3) If a person has a unit shortfall under section 133 for a flexible charge year, unit shortfall charge imposed on the unit shortfall is due and payable at the end of the period of 5 business days after 1 February next following the flexible charge year.

Note: For *unit shortfall charge*, see section 5.

### 134A Remission of unit shortfall charge—voluntary disclosure by liable entity of incorrect emissions number

#### *Scope*

- (1) This section applies if:
- (a) a report relating to an eligible financial year was given under section 22A of the *National Greenhouse and Energy Reporting Act 2007* by a person who was a liable entity for the eligible financial year; and
  - (b) the number specified in the report as the person's emissions number for the eligible financial year:
    - (i) is incorrect; and
    - (ii) is less than the person's emissions number for the eligible financial year; and

Section 134A

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- (c) after 1 February next following the eligible financial year, the person voluntarily discloses to the Regulator that the number specified in the report is incorrect; and
- (d) the disclosure was made before any relevant investigative action was taken; and
- (e) the person has a unit shortfall for the eligible financial year; and
- (f) the person applies to the Regulator for the remission of a part of the amount of the unit shortfall charge imposed on the unit shortfall.

*Power to remit*

- (2) The Regulator may remit a part of the amount of the unit shortfall charge if the Regulator is satisfied that it would be fair and reasonable to remit that part, having regard to:
  - (a) the circumstances that resulted in the incorrect number being specified in the report; and
  - (b) whether the person took reasonable precautions, and exercised due diligence, to avoid the incorrect number being specified in the report; and
  - (c) such other matters (if any) as the Regulator considers relevant.

*Limit on amount remitted*

- (3) The Regulator must not remit a part of the amount of the unit shortfall charge if the remainder of the amount would be less than the amount worked out using the formula:

$$\text{Number of units in the unit shortfall} \times \text{Applicable amount for the eligible financial year}$$

where:

***applicable amount for the financial year*** means:

- (a) if the eligible financial year is a fixed charge year—an amount equal to the per unit charge applicable under subsection 100(1) for the issue of a carbon unit with a vintage year of that fixed charge year; or

Section 134A

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- (b) if the eligible financial year is a flexible charge year—an amount equal to the benchmark average auction charge for the previous financial year.

*Refusal*

- (4) If the Regulator decides to refuse to remit a part of the unit shortfall charge, the Regulator must give written notice of the decision to the person.

*Relevant investigative action*

- (5) For the purposes of this section, if the Regulator gives the person a notice under Subdivision G of Division 4 of Part 6 of the *National Greenhouse and Energy Reporting Act 2007*, the giving of the notice is a **relevant investigative action**.
- (6) For the purposes of this section, if:
  - (a) an inspector enters premises under Part 15; and
  - (b) the inspector does so for the purpose of:
    - (i) determining whether the person complied with this Act or the associated provisions; or
    - (ii) substantiating information provided by the person under this Act or the associated provisions;the entry is a **relevant investigative action**.
- (7) For the purposes of this section, if:
  - (a) the Regulator gives the person a notice under section 221; and
  - (b) the Regulator does so because the Regulator 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 in relation to the person;the giving of the notice is a **relevant investigative action**.
- (8) For the purposes of this section, if:
  - (a) the Regulator gives the person a notice under section 71 of the *National Greenhouse and Energy Reporting Act 2007*; and

Section 135

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- (b) the Regulator does so because the Regulator has reason to believe that the person has information relating to whether the person has complied with that Act;
- the giving of the notice is a *relevant investigative action*.
- (9) For the purposes of this section, if:
  - (a) an authorised officer (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*) enters premises under Division 4 of Part 6 of that Act; and
  - (b) the authorised officer does so for the purpose of determining whether that Act has been complied with by the person;
- the entry is a *relevant investigative action*.

**135 Late payment penalty***Penalty*

- (1) If an amount of unit shortfall charge payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:
  - (a) 20% per annum; or
  - (b) if a lower rate per annum is specified in the regulations—that lower rate per annum;
- on the amount unpaid, computed from that time.

*Power to remit*

- (2) The Regulator may remit the whole or a part of an amount payable under subsection (1) if:
  - (a) the Regulator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
  - (b) the Regulator is satisfied:
    - (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
    - (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or

**Section 136**

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- (c) a part of the amount of the relevant unit shortfall charge has been remitted under section 134A; or
  - (d) the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.
- (3) The Regulator may exercise the power conferred by subsection (2):
  - (a) on written application being made to the Regulator by a person; or
  - (b) on the Regulator's own initiative.

*Refusal*

- (4) If:
  - (a) the Regulator decides to refuse to remit the whole or a part of an amount payable under subsection (1); and
  - (b) the Regulator made the decision in response to an application;the Regulator must give written notice of the decision to the applicant.

**136 Recovery of unit shortfall charge and late payment penalty**

*Scope*

- (1) This section applies to the following amounts:
  - (a) an amount of unit shortfall charge;
  - (b) an amount payable under section 135.

*Recovery*

- (2) The amount:
  - (a) is a debt due to the Commonwealth; and
  - (b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

**137 Set-off**

- (1) If:
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Section 138

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- (a) either of the following amounts (the *first amount*) is payable by a person:
    - (i) an amount of unit shortfall charge;
    - (ii) an amount payable under section 135; and
  - (b) the following conditions are satisfied in relation to another amount (the *second amount*):
    - (i) the amount is payable by the Commonwealth to the person;
    - (ii) the amount is of a kind specified in the regulations;
- the Regulator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.
- (2) If:
- (a) either of the following amounts (the *first amount*) is payable by a person:
    - (i) an amount of unit shortfall charge;
    - (ii) an amount payable under section 135; and
  - (b) an amount (the *second amount*) is payable by the Commonwealth to the person under section 132;
- the Regulator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

**138 Liability transfer certificate—statutory guarantee***Scope*

- (1) This section applies if:
- (a) a company was the holder of a liability transfer certificate throughout the whole or a part of an eligible financial year; and
  - (b) a person consented under subsection 81(3) or 85(4) to the making of the application for the certificate.

*Guarantee*

- (2) The person is taken to have guaranteed the payment by the company of the following amounts:
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**Part 6** Surrender of eligible emissions units

**Division 4** Unit shortfall charge

**Section 140**

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- (a) an amount of unit shortfall charge payable by the company in relation to a unit shortfall for the eligible financial year;
- (b) an amount payable under section 135 because of the late payment of an amount covered by paragraph (a).

**140 Refund of overpayments**

If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:

- (a) an amount of unit shortfall charge;
- (b) an amount payable under section 135.

Note: For appropriation, see section 28 of the *Financial Management and Accountability Act 1997*.



## **Division 5—Assessment of unit shortfall and unit shortfall charge**

### **141 Assessment of unit shortfall and unit shortfall charge**

#### *Scope*

- (1) This section applies if the Regulator has reasonable grounds to believe that:
  - (a) a person is a liable entity for an eligible financial year; and
  - (b) the person has a unit shortfall for the eligible financial year.

#### *Assessment*

- (2) The Regulator may:
  - (a) make an assessment of:
    - (i) the unit shortfall; or
    - (ii) the unit shortfall charge payable on the unit shortfall; and
  - (b) give written notice of the assessment to the person.

#### *Amendment of assessments*

- (3) The Regulator may amend an assessment under this section at any time.
- (4) The Regulator may exercise the power conferred by subsection (3):
  - (a) on written application being made to the Regulator by the person to whom the assessment relates; or
  - (b) on the Regulator's own initiative.
- (5) If the Regulator amends an assessment, the Regulator must give written notice of the amendment to the person to whom the assessment relates.
- (6) If:
  - (a) the Regulator decides to refuse to amend an assessment; and

**Part 6** Surrender of eligible emissions units

**Division 5** Assessment of unit shortfall and unit shortfall charge

**Section 141**

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- (b) the Regulator made the decision in response to an application by the person to whom the assessment relates;  
the Regulator must give written notice of the decision to the person.
- (7) For the purposes of this Act, an amended assessment is taken to be an assessment under this section.

*Reliance on report*

- (8) In making an assessment under this section, the Regulator may rely on a report given under the *National Greenhouse and Energy Reporting Act 2007*.

*Advisory character of assessment*

- (9) A notice of assessment under this section is an instrument of an advisory character.

**Division 6—Extension of surrender deadline****142 Extension of surrender deadline***Scope*

- (1) This section applies if the Regulator is satisfied that:
- (a) 2 or more persons were unable to surrender eligible emissions units during the whole or a part of either of the following days:
    - (i) 15 June in a fixed charge year;
    - (ii) 1 February next following an eligible financial year; and
  - (b) the inability to surrender the units was attributable to:
    - (i) a fault or malfunction relating to a computer system under the control of the Regulator; or
    - (ii) a fault or malfunction relating to a facility (within the meaning of the *Telecommunications Act 1997*); or
    - (iii) a fault or malfunction relating to a carriage service (within the meaning of that Act) provided to the public; and
  - (c) it would be reasonable to extend the deadline for the surrender of eligible emissions units beyond the end of that 15 June or 1 February, as the case may be.

*Extension of surrender deadline*

- (2) If subparagraph (1)(a)(i) applies, the Regulator may, by legislative instrument, determine that this Act has effect as if a reference in each of the following provisions to the end of that 15 June were a reference to such later time as is specified in the determination:
- (a) section 125;
  - (b) section 126;
  - (c) section 128;
  - (d) subsection 134(1).
- (3) If subparagraph (1)(a)(ii) applies, the Regulator may, by legislative instrument, determine that this Act has effect as if a reference in

**Section 142**

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each of the following provisions to the end of that 1 February were a reference to such later time as is specified in the determination:

- (a) paragraph 115(1)(c);
  - (b) section 128;
  - (c) section 133;
  - (d) subsection 134(2);
  - (e) subsection 134(3);
  - (f) section 200.
- (4) If the Regulator makes a determination under this section, the Regulator must publish a copy of the determination on its website.

## **Part 7—Jobs and Competitiveness Program**

### **Division 1—Introduction**

#### **143 Aim and objects**

- (1) The aim of this Part is to recognise issues relating to the impact of this Act and the associated provisions on the international competitiveness of activities that are:
  - (a) identified as emissions-intensive trade-exposed activities; and
  - (b) carried on in Australia.
- (2) The objects of this Part are:
  - (a) to enable the identification of activities as emissions-intensive trade-exposed activities; and
  - (b) to reduce the incentives for such an activity to be located in, or relocated to, foreign countries as a result of different climate change policies applying in Australia compared to foreign countries; and
  - (c) to provide transitional assistance in respect of such an activity if carried on in Australia; and
  - (d) to provide such assistance in a manner that is economically and environmentally efficient;until such assistance is no longer warranted, having regard to:
  - (e) whether measures to reduce emissions of carbon dioxide and other greenhouse gases that have an impact that is comparable to the impact of Australian emissions reduction measures (including the impact of associated assistance) have been implemented in respect of markets:
    - (i) that are outside Australia; and
    - (ii) that are for goods produced as a result of such an activity (whether carried on in or outside Australia); and
    - (iii) in which persons who carry on such an activity in Australia compete; and
  - (f) whether foreign countries that are responsible for the substantial majority of the world's emissions of carbon

Section 144

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dioxide and other greenhouse gases have implemented measures to reduce those emissions that have an impact that is comparable to the impact of Australian emissions reduction measures (including the impact of associated assistance); and

(g) any other relevant matters.

**144 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may formulate a program, to be known as the Jobs and Competitiveness Program, for the issue of free carbon units in respect of activities that:
  - (a) under the program, are taken to be emissions-intensive trade-exposed activities; and
  - (b) are, or are to be, carried on in Australia during a financial year specified in the program.
- The Jobs and Competitiveness Program may:
  - (a) require a recipient of free carbon units to relinquish units; and
  - (b) impose reporting or record-keeping requirements on a recipient of free carbon units.
- The Productivity Commission will conduct periodic reviews of:
  - (a) the operation of assistance arrangements under the Jobs and Competitiveness Program; and
  - (b) the impact of this Act and the associated provisions on emissions-intensive trade-exposed industries; and

Section 144

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| <p>(c) the economic and environmental efficiency of assistance arrangements under the Jobs and Competitiveness Program.</p> |
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## **Division 2—Formulation of the Jobs and Competitiveness Program**

### **145 Jobs and Competitiveness Program**

- (1) The regulations may formulate a program (to be known as the ***Jobs and Competitiveness Program***) for the issue of free carbon units in respect of activities that:
  - (a) under the program, are taken to be emissions-intensive trade-exposed activities; and
  - (b) are, or are to be, carried on in Australia during an eligible financial year specified in the program.
- (2) The Jobs and Competitiveness Program must provide that free carbon units must not be issued to a person in accordance with the program unless the person:
  - (a) meets such requirements as are specified in the program; and
  - (b) has a Registry account.
- (3) The Jobs and Competitiveness Program must not provide that the extraction of coal is an activity that, under the program, is taken to be an emissions-intensive trade-exposed activity.
- (4) The Minister must take all reasonable steps to ensure that regulations are made for the purposes of subsection (1) before 1 March 2012.
- (5) In making a recommendation to the Governor-General about regulations that amend regulations made for the purposes of subsection (1), the Minister must have regard to the following matters:
  - (a) the aim and objects of this Part;
  - (b) the most recent report given to the Productivity Minister by the Productivity Commission in relation to an inquiry mentioned in section 155;
  - (c) the principle that changes that will have a negative effect on recipients of assistance under the Jobs and Competitiveness



Program should not take effect before the later of the following:

- (i) 1 July 2017;
- (ii) the end of the 3-year period that begins when the reduction is announced;
- (d) such other matters (if any) as the Minister considers relevant.

#### **146 Relinquishment requirement**

- (1) The Jobs and Competitiveness Program may provide that, if:
  - (a) a number of free carbon units have been issued to a person in accordance with the program; and
  - (b) any of the following subparagraphs applies:
    - (i) a specified event happens;
    - (ii) a specified circumstance comes into existence;
    - (iii) the Regulator is satisfied about a specified matter;the person is required to relinquish a number of carbon units ascertained in accordance with the program.

Note: An administrative penalty is payable under section 212 for non-compliance with a relinquishment requirement under the Jobs and Competitiveness Program.

- (2) The number of carbon units required to be relinquished by the person must not exceed the number of units mentioned in paragraph (1)(a).
- (3) Subsection (1) does not, by implication, limit subsection 145(1).

#### **147 Reporting requirement**

##### *Scope*

- (1) This section applies to a person if free carbon units have been issued to the person in accordance with the Jobs and Competitiveness Program.

Section 148

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*Requirement*

- (2) The Jobs and Competitiveness Program may make provision for and in relation to requiring the person to give one or more written reports to the Regulator.
- (3) Subsection (2) does not, by implication, limit subsection 145(1).

**148 Record-keeping requirement**

*Scope*

- (1) This section applies to a person if free carbon units have been issued to the person in accordance with the Jobs and Competitiveness Program.

*Requirement*

- (2) The Jobs and Competitiveness Program may make provision for and in relation to requiring the person to:
  - (a) make records of information specified in the program; and
  - (b) retain such a record, or a copy, for 5 years after the record was made.
- (3) Subsection (2) does not, by implication, limit subsection 145(1).

**149 Other matters**

- (1) The Jobs and Competitiveness Program may make provision for and in relation to the following matters:
  - (a) applications for free carbon units;
  - (b) the approval by the Regulator of a form for such an application;
  - (c) information that must accompany such an application;
  - (d) documents that must accompany such an application;
  - (e) the method of calculating the number of free carbon units to be issued to a person in accordance with the program.

- (2) The Jobs and Competitiveness Program may provide that an application for free carbon units must be accompanied by a prescribed report.
- (3) The Jobs and Competitiveness Program may provide for verification by statutory declaration of statements in applications for free carbon units.
- (4) The Jobs and Competitiveness Program may provide for the Regulator to give information to prospective applicants to assist them in preparing applications for free carbon units.
- (5) The information under subsection (4) may include information in relation to the ways in which volumes of production may be measured, by prospective applicants, for the purposes of preparing applications for free carbon units.
- (6) Subsection (5) does not limit subsection (4).
- (7) This section does not, by implication, limit subsection 145(1).

#### **150 Ancillary or incidental provisions**

- (1) The Jobs and Competitiveness Program may contain ancillary or incidental provisions.
- (2) Subsection (1) does not, by implication, limit subsection 145(1).

**Division 3—Compliance with reporting and  
record-keeping requirements under the Jobs and  
Competitiveness Program**

**151 Compliance with reporting and record-keeping requirements**

*Reporting requirements*

- (1) If a person is subject to a requirement under the Jobs and Competitiveness Program to give a report to the Regulator, the person must comply with that requirement.

*Record-keeping requirements*

- (2) If a person is subject to a requirement under the Jobs and Competitiveness Program to:
- (a) make a record of information; or
  - (b) retain such a record or a copy;
- the person must comply with that requirement.

*Ancillary contraventions*

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (2); or
  - (d) conspire with others to effect a contravention of subsection (1) or (2).

*Civil penalty provisions*

- (4) Subsections (1), (2) and (3) are ***civil penalty provisions***.

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

## **Division 4—Special information-gathering powers**

### **152 Minister may obtain information**

#### *Scope*

- (1) This section applies to a constitutional corporation if:
  - (a) a person (who may be the corporation) has indicated to the Commonwealth that the person believes that an activity may be, or should be, eligible for emissions-intensive trade-exposed assistance; and
  - (b) that activity is not an activity that, under the Jobs and Competitiveness Program, is taken to be an emissions-intensive trade-exposed activity; and
  - (c) the Minister believes on reasonable grounds that the corporation has information that:
    - (i) relates to the activity; and
    - (ii) is likely to assist the Commonwealth to formulate or vary the policy embodied in the Jobs and Competitiveness Program.

#### *Request for information and report*

- (2) The Minister may, by written notice given to the corporation:
  - (a) request the corporation to give to the Minister, within the period and in the manner and form specified in the notice, any such information; and
  - (b) request that the information be accompanied by a report specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 60 days after the notice is given.

#### *Request for information*

- (4) The Minister may, by written notice given to the corporation, request the corporation to give to the Minister, within the period

Section 153

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and in the manner and form specified in the notice, any such information.

- (5) A period specified under subsection (4) must not be shorter than 30 days after the notice is given.

**153 No assistance for 2 eligible financial years if corporation refuses or fails to comply with request for information**

*Scope*

- (1) This section applies if:
- (a) a constitutional corporation is given a request under subsection 152(2) or (4) at a particular time; and
  - (b) the corporation is capable of complying with the request; and
  - (c) the corporation refuses or fails to comply with the request; and
  - (d) the Minister notifies the Regulator, in writing, that the Minister considers that the non-compliance is significant.

*No assistance for 2 eligible financial years*

- (2) No free carbon units that have a vintage year of:
- (a) the first eligible financial year that begins after that time; or
  - (b) the eligible financial year that next follows the eligible financial year mentioned in paragraph (a);
- are to be issued to the corporation in accordance with the Jobs and Competitiveness Program.

**154 Disclosure of information to the Regulator**

*Scope*

- (1) This section applies to information obtained under section 152.

*Disclosure*

- (2) The Minister may disclose the information to the Regulator for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, of the Regulator.

*Other powers of disclosure not limited*

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

## Division 5—Productivity Commission inquiries

### 155 Productivity Commission inquiries

#### *Review period*

- (1) For the purposes of this section, each of the following is a **review period**:
- (a) the 12-month period ending at the end of 30 June 2015;
  - (b) the period beginning at the start of 1 July 2015 and ending at the end of 31 December 2016;
  - (c) the period beginning at the start of 1 January 2017 and ending at the end of 31 December 2018;
  - (d) the 5-year period beginning at the start of 1 January 2019;
  - (e) each succeeding 5-year period.

#### *Inquiry by Productivity Commission*

- (2) During each review period, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer the following matters to the Productivity Commission for inquiry:
- (a) the matter of the operation of assistance arrangements under the Jobs and Competitiveness Program;
  - (b) the matter of the impact of this Act and the associated provisions on emissions-intensive trade-exposed industries;
  - (c) the matter of the economic and environmental efficiency of assistance arrangements under the Jobs and Competitiveness Program.
- (3) In referring the matters to the Productivity Commission for inquiry, the Productivity Minister must, under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify the review period in which the referral occurs as the period within which the Productivity Commission must submit its report on the inquiry to the Productivity Minister.



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Section 156

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Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of Parliament.

*Matters relating to industry, industry development and productivity*

- (4) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, each matter mentioned in subsection (2) of this section is taken to be a matter relating to industry, industry development and productivity.

### **156 Matters to which the Productivity Commission must have regard**

*Scope*

- (1) This section applies to an inquiry mentioned in section 155.

*Matters*

- (2) In holding the inquiry, and preparing its report on the inquiry, the Productivity Commission must have regard to the following matters:
- (a) whether assistance under the Jobs and Competitiveness Program is still warranted having regard to the matters in paragraphs 143(2)(e) and (f);
  - (b) the progress made by persons carrying on emissions-intensive trade-exposed activities towards achieving best practice for energy and emissions efficiency in relation to the industrial sector to which those activities relate;
  - (c) whether there are additional activities that should be identified as emissions-intensive trade-exposed activities for the purposes of the Jobs and Competitiveness Program;
  - (d) the extent to which foreign countries have implemented emissions reduction measures that have an impact that is comparable to the impact of Australian emissions reduction measures (including the impact of associated assistance);
  - (e) whether it is:
    - (i) feasible; and

Section 156

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- (ii) consistent with the aim and objects of this Part; to change the method of issuing free carbon units in accordance with the Jobs and Competitiveness Program to a method based on an assessment of the anticipated increase in international prices of individual emissions-intensive trade-exposed industry products that would result from foreign countries implementing emissions reduction measures that have an impact that is comparable to the impact of Australian emissions reduction measures (including the impact of associated assistance);
- (f) whether windfall gains are being conferred on persons carrying out emissions-intensive trade-exposed activities as a result of the Jobs and Competitiveness Program;
- (g) to the extent to which there is no cap on free carbon units issued in accordance with the Jobs and Competitiveness Program for particular facilities, the effect of those facilities not being subject to such a cap;
- (h) the growth in the emissions-intensive trade-exposed sector, and implications of that growth for the number of free carbon units issued within the limits of the carbon pollution cap;
- (i) the appropriateness of any supplementary allocations of free carbon units issued in accordance with the Jobs and Competitiveness Program in respect of liquefied natural gas production;
- (j) the impact of this Act and the associated provisions on the competitiveness of emissions-intensive trade-exposed industries;
- (k) whether the assistance under the Jobs and Competitiveness Program for a specific industry should be changed;
- (l) whether the Jobs and Competitiveness Program is supporting Australia's medium-term and long-term emissions reduction objectives;
- (m) the extent to which the Jobs and Competitiveness Program gives effect to:
  - (i) the aim and objects of this Part; and
  - (ii) the objects of this Act;
- (n) any other matters specified in a legislative instrument made by the Productivity Minister;

- (o) such other matters (if any) as the Productivity Commission considers relevant.
- (3) In having regard to the matters in paragraphs (2)(d) and (k), the Productivity Commission must consider the following:
  - (a) whether less than 70% of the relevant competitors of each emissions-intensive trade-exposed industry are located in foreign countries where the impact on those competitors of emissions reduction measures (including the impact of associated assistance) is comparable to the impact on the industry of Australian emissions reduction measures (including the impact of associated assistance);
  - (b) whether, having regard to the matter in paragraph (a), the application of the rate of assistance for a specific industry should pause when assistance rates reach:
    - (i) 90% for highly emissions-intensive industries; and
    - (ii) 60% for moderately emissions-intensive industries.
- (4) In having regard to the matter in paragraph (2)(e), the Productivity Commission must consider whether the relevant method is the most effective and efficient means of achieving the aim and objects of this Part.
- (5) In having regard to the matters in paragraphs (2)(f) and (j), the Productivity Commission must consider the following:
  - (a) an analysis of the carbon cost passed on (to and by emissions-intensive trade-exposed industries);
  - (b) the reduction in emissions of greenhouse gases resulting from emissions-intensive trade-exposed activities;
  - (c) the effect of a declining rate of assistance under the Jobs and Competitiveness Program on emissions-intensive trade-exposed activities.
- (6) Subsection (2) of this section has effect in addition to section 8 of the *Productivity Commission Act 1998*.
- (7) In conducting the inquiry, the Productivity Commission must consult the Climate Change Authority about the following matters:
  - (a) the matter mentioned in paragraph (2)(l);
  - (b) the matter mentioned in paragraph (2)(m).

Section 157

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**157 Report of inquiry**

*Scope*

- (1) This section applies to the report of an inquiry mentioned in section 155.

*Recommendations*

- (2) Recommendations in the report may include recommendations regarding the rates of assistance under the Jobs and Competitiveness Program over time that are specified in the regulations.
- (3) When making recommendations in accordance with subsection (2), the Productivity Commission must have regard to the principle that changes that will have a negative effect on recipients of assistance under the Jobs and Competitiveness Program should not take effect before the later of the following:
- (a) 1 July 2017;
  - (b) the end of the 3-year period that began when the change was announced.

*Government response to recommendations*

- (4) If the report sets out one or more recommendations to the Commonwealth Government:
- (a) as soon as practicable after receiving the report, the Productivity Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  - (b) the Productivity Minister must cause copies of the statement to be tabled in each House of the Parliament before the later of the following:
    - (i) the end of the period of 25 sitting days of that House after the day on which the Productivity Minister receives the report;
    - (ii) the end of the 6-month period beginning on the day on which the Productivity Minister receives the report.

- (5) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
- (a) the Climate Change Authority;
  - (b) the Regulator;
  - (c) the Productivity Commission;
  - (d) such other persons as the Productivity Minister considers relevant.

*Publication of report*

- (6) As soon as practicable after the Productivity Minister tables the report in each House of the Parliament, the Productivity Commission must publish the report on the Productivity Commission's website.

Note: The Productivity Minister must cause a copy of the report to be tabled in each House of Parliament—see section 12 of the *Productivity Commission Act 1998*.

**158 No limit on Productivity Minister's powers**

This Division does not limit the Productivity Minister's powers under paragraph 6(1)(a) of the *Productivity Commission Act 1998*.

## **Part 8—Coal-fired electricity generation**

### **Division 1—Introduction**

#### **159 Object**

The object of this Part is to maintain energy security with the introduction of this Act and the associated provisions. It does so by providing transitional assistance in respect of highly emissions-intensive generation assets so as to:

- (a) help generators that face sizeable losses in the value of their assets; and
- (b) support investor confidence, and underpin the investment in generation assets that is required to ensure that Australia's future energy security needs are met.

#### **160 Simplified outline**

The following is a simplified outline of this Part:

- Free carbon units may be issued in respect of generation complexes that meet certain eligibility requirements.
- Free units will be issued during:
  - (a) the financial year beginning on 1 July 2013; and
  - (b) each of the next 3 financial years.
- The number of free units is capped.
- Free units will not be issued if a generation complex does not pass the power system reliability test for a financial year.
- Free units will not be issued in respect of a generation complex unless a Clean Energy Investment Plan is given to the Resources and Energy Minister.

Section 160

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- If a closure contract is in force in relation to a generation complex:
  - (a) there will be restrictions on the free units that may be issued in respect of the generation complex; and
  - (b) the generation complex does not have to pass the power system reliability test; and
  - (c) the requirement to give a Clean Energy Investment Plan does not apply in relation to the generation complex.

## Division 2—Issue of free carbon units in respect of generation complexes

### 161 Issue of free carbon units in respect of generation complexes

#### *Scope*

- (1) This section applies to a generation complex if a certificate of eligibility for coal-fired generation assistance is in force in respect of the generation complex.

#### *Issue of free units*

- (2) On each of the following days:
- (a) 1 September in the eligible financial year beginning on 1 July 2013;
  - (b) 1 September in the eligible financial year beginning on 1 July 2015;
  - (c) 1 September in the eligible financial year beginning on 1 July 2016;

the Regulator must issue a number of free carbon units equal to the number worked out using the following formula:

$$\frac{\text{Annual assistance factor specified in the certificate}}{\text{Total annual assistance factors for that eligible financial year}} \times 41,705,000$$

where:

***annual assistance factor specified in the certificate*** means the number specified in the certificate as the annual assistance factor in respect of the generation complex.

Note: The annual assistance factor is worked out under section 167.

***total annual assistance factors for that eligible financial year*** means the total of the numbers specified as annual assistance factors in certificates of eligibility for coal-fired generation assistance issued, or purportedly issued, by the Regulator before



Section 161

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1 September in that eligible financial year. For this purpose, disregard a certificate if a decision to issue the certificate was set aside by a court or tribunal before 1 September in that eligible financial year.

- (3) On 1 September in the eligible financial year beginning on 1 July 2014, the Regulator must issue a number of free carbon units equal to the number worked out using the following formula:

$$\left[ \frac{\text{Annual assistance factor specified in the certificate}}{\text{Total annual assistance factors for that eligible financial year}} \times 83,410,000 \right] - A - B$$

where:

***annual assistance factor specified in the certificate*** means the number specified in the certificate as the annual assistance factor in respect of the generation complex.

Note: The annual assistance factor is worked out under section 167.

***total annual assistance factors for that eligible financial year*** means the total of the numbers specified as annual assistance factors in certificates of eligibility for coal-fired generation assistance issued, or purportedly issued, by the Regulator before 1 September in that eligible financial year. For this purpose, disregard a certificate if a decision to issue the certificate was set aside by a court or tribunal before 1 September in that eligible financial year.

***A*** means the total number of free carbon units issued in accordance with this Part before 1 September 2014 in respect of the generation complex.

***B*** means the Regulator's reasonable estimate of the number of free carbon units with a vintage year beginning on 1 July 2013 that were not issued in accordance with this Part in respect of the generation complex because of:

- (a) section 169 (power system reliability); or
- (b) section 177 (Clean Energy Investment Plan); or
- (c) section 181 (closure contracts).

Section 161

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- (4) If the number worked out using the formula in subsection (2) or (3) is not a multiple of 100:
- (a) the number is to be rounded to the nearest multiple of 100; and
  - (b) if the number is a multiple of 50—the number is to be rounded up to the nearest multiple of 100.

*When units are to be issued*

- (5) If 1 September in a later eligible financial year is not a business day, the units are to be issued on the next business day after that 1 September.

*Recipient of units*

- (6) Free carbon units issued in accordance with subsection (2) or (3) during an eligible financial year (the ***relevant eligible financial year***) are to be issued to whichever one of the following persons is applicable:
- (a) if, assuming that:
    - (i) immediately before the end of the previous eligible financial year, the generation complex had been a facility; and
    - (ii) immediately before the end of the previous eligible financial year, the generation complex had been in operation; and
    - (iii) immediately before the end of the previous eligible financial year, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from the operation of the generation complex;a person would, under section 20, be a liable entity for the previous eligible financial year wholly or partly as a result of those emissions of greenhouse gases—the person;
  - (b) if, assuming that:
    - (i) immediately before the end of the previous eligible financial year, the generation complex had been a facility; and

- (ii) immediately before the end of the previous eligible financial year, the generation complex had been in operation; and
  - (iii) immediately before the end of the previous eligible financial year, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from the operation of the generation complex;
- a person would, under section 22, be a liable entity for the previous eligible financial year wholly or partly as a result of those emissions of greenhouse gases—the person.

(7) However, if, assuming that:

- (a) immediately before the end of the previous eligible financial year, the generation complex had been a facility; and
- (b) immediately before the end of the previous eligible financial year, the generation complex had been in operation; and
- (c) immediately before the end of the previous eligible financial year, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from the operation of the generation complex;

2 or more participants in a designated joint venture would, under section 21, be liable entities for the previous eligible financial year wholly or partly as a result of those emissions of greenhouse gases:

- (d) subsection (6) does not apply to the free carbon units issued in accordance with subsection (2) or (3); and
- (e) those units are to be divided among, and issued to, those participants in shares that represent their respective participating percentages.

Note: For *participating percentage*, see section 76 or 77.

*Vintage year*

- (8) Free carbon units issued in accordance with subsection (2) or (3) during an eligible financial year are to have a vintage year of the eligible financial year.

**Part 8** Coal-fired electricity generation

**Division 2** Issue of free carbon units in respect of generation complexes

**Section 161**

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*Registry account*

- (9) The Regulator must not issue a free carbon unit to a person in accordance with subsection (2) or (3) unless the person has a Registry account.

*Power system reliability*

- (10) This section has effect subject to section 169.

Note: Section 169 deals with power system reliability.

*Clean Energy Investment Plan*

- (11) This section has effect subject to section 177.

Note: Section 177 deals with Clean Energy Investment Plans.

*Closure contract*

- (12) This section has effect subject to section 181.

Note: Section 181 deals with closure contracts.

## **Division 3—Certificate of eligibility for coal-fired generation assistance**

### **162 Application for certificate of eligibility for coal-fired generation assistance**

- (1) A person may, within 30 days after the commencement of this section, apply for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex.
- (2) A person is not entitled to make an application in respect of a generation complex unless the person owns, controls or operates the generation complex.
- (3) Applications must be mutually exclusive so far as their coverage of generation units is concerned.
- (4) If the Regulator receives 2 or more applications that, when taken together, breach subsection (3):
  - (a) the Regulator must not consider any of those applications; and
  - (b) the Regulator must, by written notice given to the applicants, reject those applications and inform the applicants that:
    - (i) the applications breach subsection (3); and
    - (ii) if one or more fresh applications are made within 20 days after the notice was given and those fresh applications do not breach subsection (3), the Regulator will be prepared to consider those fresh applications.
- (5) The 30 day time limit in subsection (1) does not apply to a fresh application made in response to a notice under subsection (4).
- (6) This Act (other than subsection (4)) has effect as if an application rejected under subsection (4) had never been made.
- (7) The Regulator may extend the 30 day time limit in subsection (1) for the making of a particular application, so long as:

Section 163

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- (a) the extended time limit is not later than 60 days after the commencement of this section; and
- (b) the application, when taken together with any other application or applications received by the Regulator, does not breach subsection (3).

**163 Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) be in the approved combined form; and
  - (c) be accompanied by such information as is specified in the regulations; and
  - (d) be accompanied by such documents (if any) as are specified in the regulations; and
  - (e) be accompanied by a prescribed report.
- (2) For the purposes of this section, the *approved combined form* is the form approved, in writing, by the Minister (whether before or after the commencement of this section):
  - (a) for applications for payments from the Energy Security Fund; and
  - (b) for applications under section 162.
- (3) Paragraph (2)(a) does not apply in relation to a payment under a contract with the Commonwealth that relates to the closure of a generation complex.
- (4) The approved combined form may provide for verification by statutory declaration of statements in applications.

**164 Further information**

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

- (b) refuse to take any action, or any further action, in relation to the application.

## **165 Issue of certificate of eligibility for coal-fired generation assistance**

### *Scope*

- (1) This section applies to a generation complex if an application under section 162 has been made in respect of the generation complex.

### *Issue of certificate*

- (2) After considering the application, the Regulator may issue a certificate of eligibility for coal-fired generation assistance in respect of the generation complex.

Note: See section 166 (criteria for issuing certificate).

- (3) A certificate of eligibility for coal-fired generation assistance must state that a specified number is the ***annual assistance factor*** in respect of the generation complex.

Note: The annual assistance factor is worked out under section 167.

### *Timing*

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
  - (a) if the Regulator requires the applicant to give further information under subsection 164(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within whichever is the later of the following:
    - (i) 90 days after the application was made;
    - (ii) 150 days after the commencement of this section.

### *Refusal*

- (5) If the Regulator decides to refuse to issue a certificate of eligibility for coal-fired generation assistance in respect of the generation

Section 166

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complex, the Regulator must give written notice of the decision to the applicant.

*Publication of copy of certificate*

- (6) As soon as practicable after issuing a certificate of eligibility for coal-fired generation assistance in respect of the generation complex, the Regulator must publish a copy of the certificate on its website.

**166 Criteria for issuing certificate of eligibility for coal-fired generation assistance**

- (1) The Regulator must not issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex unless the Regulator is satisfied that the generation complex passes the generation complex assistance eligibility test.

*Generation complexes*

- (2) For the purposes of subsection (1), a generation complex passes the ***generation complex assistance eligibility test*** if:
- (a) at any time during the period:
    - (i) beginning on 1 July 2008; and
    - (ii) ending on 30 June 2010;the generation complex:
    - (iii) was in operation; and
    - (iv) was connected to a grid with a grid capacity of at least 100 megawatts; and
  - (b) at least 95% of the electricity generated by the generation complex during the period:
    - (i) beginning on 1 July 2008; and
    - (ii) ending on 30 June 2010;was attributable to the combustion of coal; and
  - (c) the emissions intensity of the generation complex is greater than 1.0.

Note: For ***emissions intensity***, see section 168.



*Capacity of grid*

- (3) For the purposes of this section, the **capacity** of a grid is to be determined in accordance with regulations made for the purposes of subsection 31(3) of the *Renewable Energy (Electricity) Act 2000*.

*Rounding*

- (4) For the purposes of this section, disregard subsection 168(2) in working out the emissions intensity of a generation complex.

## 167 Annual assistance factor

The annual assistance factor to be specified in a certificate of eligibility for coal-fired generation assistance in respect of a generation complex is the Regulator's reasonable estimate of the number worked out to 3 decimal places using the following formula:

$$\text{Historical energy} \times \left( \text{Emissions intensity} - 0.86 \right)$$

where:

**emissions intensity** means the emissions intensity of the generation complex.

Note: For **emissions intensity**, see section 168.

**historical energy** means:

- (a) if the generation complex is a generation complex that entered service on or before 1 July 2008—the total number of gigawatt hours of electricity generated by the generation complex during the period:
- (i) beginning on 1 July 2008; and
  - (ii) ending on 30 June 2010;
- as measured at all generator terminals of the generation complex; or
- (b) if the generation complex is a generation complex that entered service after 1 July 2008—14.016 multiplied by the number of megawatts in the nameplate rating of the

Section 168

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generation complex as at the day the generation complex entered service.

**168 Emissions intensity**

- (1) For the purposes of this Act, the *emissions intensity* of a generation complex is the number worked out to 3 decimal places using the formula:

$$\frac{\text{Carbon dioxide equivalence of emissions}}{\text{Gigawatt hours of electricity generated}}$$

where:

*carbon dioxide equivalence of emissions* means the total number of kilotonnes of the carbon dioxide equivalence of the greenhouse gases emitted from the combustion of fuel in the generation complex for the purposes of the generation of electricity during the period:

- (a) beginning on 1 July 2008; and
- (b) ending on 30 June 2010.

*gigawatt hours of electricity generated* means the total number of gigawatt hours of electricity generated by the generation complex during the period:

- (a) beginning on 1 July 2008; and
- (b) ending on 30 June 2010;

as measured at all generator terminals of the generation complex.

- (2) However, the *emissions intensity* of a generation complex is taken to be 1.3 if the number worked out to 3 decimal places using the formula in subsection (1) is greater than 1.3.

**Division 4—Power system reliability****169 No assistance if generation complex does not pass the power system reliability test***Scope*

- (1) This section applies to a generation complex if a certificate of eligibility for coal-fired generation assistance is in force in respect of the generation complex.

*No assistance if generation complex does not pass the power system reliability test*

- (2) No free carbon units with a vintage year of a particular eligible financial year are to be issued in accordance with this Part in respect of the generation complex if the generation complex does not pass the power system reliability test in relation to the eligible financial year.

*Closure contract*

- (3) This section has effect subject to section 181A.

**170 Power system reliability test***Scope*

- (1) This section applies to a generation complex if a certificate of eligibility for coal-fired generation assistance is in force in respect of the generation complex.

*Power system reliability test*

- (2) For the purposes of this Act, the generation complex passes the **power system reliability test** in relation to an eligible financial year (the **relevant eligible financial year**) if:
  - (a) the following conditions are satisfied:

Section 170

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- (i) as at the start of 1 April in the previous eligible financial year, a person who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets;
  - (ii) as at the start of 1 July 2010, the nameplate rating in megawatts of the generation complex was registered under such a law;
  - (iii) as at the start of 1 April in the previous eligible financial year, the nameplate rating in megawatts of the generation complex was not less than the nameplate rating in megawatts of the generation complex that was registered under that law as at the start of 1 July 2010; or
- (b) the following conditions are satisfied:
  - (i) as at the start of 1 April in the previous eligible financial year, a person who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets;
  - (ii) the nameplate rating in megawatts of the generation complex was first registered under the law at a time after the start of 1 July 2010 but before 1 April in the previous eligible financial year;
  - (iii) as at the start of 1 April in the previous eligible financial year, the nameplate rating in megawatts of the generation complex was not less than the nameplate rating in megawatts that was registered as mentioned in subparagraph (ii); or
- (c) the following conditions are satisfied:
  - (i) neither paragraph (a) nor (b) applies;
  - (ii) as at the start of 1 April in the previous eligible financial year, a person who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the

- Commonwealth, a State or a Territory relating to the regulation of energy markets;
- (iii) during the period beginning at the start of 1 July 2010 and ending immediately before 1 April in the previous eligible financial year, there were one or more reductions in the nameplate rating in megawatts of the generation complex;
  - (iv) the appropriate energy market operator certifies in writing that there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the reduction or reductions; or
- (d) the following conditions are satisfied:
- (i) neither paragraph (a) nor (b) applies;
  - (ii) at a time before 1 April in the previous eligible financial year, a person who owns, controls or operates the generation complex was registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets;
  - (iii) during the period beginning at the start of 1 July 2010 and ending immediately before 1 April in the previous eligible financial year, the registration ceased to be in force;
  - (iv) the appropriate energy market operator certifies in writing that there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the cessation; or
- (e) the conditions set out in section 171 are satisfied; or
- (f) the following conditions are satisfied:
- (i) the generation complex passed the power system reliability test in relation to an earlier eligible financial year because of paragraph (e);
  - (ii) the generation complex did so partly because, during the period mentioned in subparagraph 171(3)(a)(ii), there was a reduction in the nameplate rating in megawatts of the generation complex;
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Section 171

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- (iii) during the period beginning immediately after the end of the period mentioned in subparagraph 171(3)(a)(ii) and ending immediately before 1 April in the eligible financial year that preceded the relevant eligible financial year, there was no reduction in the nameplate rating in megawatts of the generation complex; or
- (g) the following conditions are satisfied:
  - (i) the generation complex passed the power system reliability test in relation to an earlier eligible financial year because of paragraph (e);
  - (ii) the generation complex did so partly because of paragraph 171(3)(b).

**171 Replacement capacity**

- (1) This section sets out the conditions mentioned in paragraph 170(2)(e) that apply for the purposes of ascertaining whether the generation complex passes the *power system reliability test* in relation to an eligible financial year.
- (2) The first condition is that neither paragraph 170(2)(a) nor (b) applies.
- (3) The second condition is that either:
  - (a) both:
    - (i) as at the start of 1 April in the previous eligible financial year, a person (the *first person*) who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets; and
    - (ii) during the period beginning at the start of 1 July 2010 and ending immediately before 1 April in the previous eligible financial year, there was a reduction in the nameplate rating in megawatts of the generation complex; or
  - (b) both:
    - (i) at a time before 1 April in the previous eligible financial year, a person (the *first person*) who owns, controls or

Section 171

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- operates the generation complex was registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets; and
- (ii) during the period beginning at the start of 1 July 2010 and ending immediately before 1 April in the previous eligible financial year, the registration ceased to be in force.
- (4) The third condition is that, as at the start of 1 April in the previous eligible financial year, the first person is registered, under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets, as a generator in respect of one or more generation units that:
- (a) before the start of that 1 April, have been nominated by the first person under section 172 for the purposes of the application of this section to the generation complex; and
  - (b) are not included in the generation complex; and
  - (c) are connected to the same interconnected electricity system as the generation complex; and
  - (d) if the market relating to the interconnected electricity system is divided into regions—are located in the same region as the generation complex; and
  - (e) entered service on or before 1 December in the previous eligible financial year; and
  - (f) were not taken into account under paragraph (5)(b) for the purposes of ascertaining whether the generation complex passed the power system reliability test in relation to an earlier eligible financial year.
- (5) The fourth condition is that the sum of:
- (a) the nameplate rating in megawatts of the generation complex that was registered under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets as at the start of 1 April in the previous eligible financial year; and
  - (b) the nameplate rating or ratings in megawatts of the generation units covered by subsection (4) that was registered
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**Section 171**

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under such a law as at the start of 1 April in the previous eligible financial year; and

(c) if:

- (i) the generation complex passed the power system reliability test in relation to an earlier eligible financial year because of paragraph 170(2)(e); and
- (ii) the generation complex did so in relation to whichever is the most recent of those earlier eligible financial years partly because there were relevant excess megawatts;

those relevant excess megawatts;

equals or exceeds whichever is the least of the following:

(d) whichever of the following is applicable:

- (i) if, as at the start of 1 July 2010, the nameplate rating in megawatts of the generation complex was registered under such a law—the nameplate rating in megawatts as so registered;
- (ii) if the nameplate rating in megawatts of the generation complex was first registered under such a law at a time after the start of 1 July 2010 but before 1 April in the previous eligible financial year—the nameplate rating in megawatts so registered;

(e) if the generation complex has passed the power system reliability test in relation to one or more earlier eligible financial years because of paragraph 170(2)(c)—the reduced nameplate rating in megawatts of the generation complex that was applicable under subparagraph 170(2)(c)(iii) for the purposes of ascertaining whether the generation complex passed the power system reliability test in relation to whichever is the most recent of those earlier eligible financial years;

(f) if the generation complex passed the power system reliability test in relation to one or more earlier eligible financial years because of paragraph 170(2)(e)—the nameplate rating in megawatts that was applicable under paragraph (a) of this subsection for the purposes of ascertaining whether the generation complex passed the power system reliability test in relation to whichever is the most recent of those earlier eligible financial years.



The excess (if any) is to be known as the ***relevant excess megawatts***.

- (6) The fifth condition is that the requirements (if any) set out in the regulations are met.
- (7) For the purposes of this section, the ***nameplate rating*** of a generation unit is:
  - (a) if the appropriate energy market operator in relation to the relevant generation complex is Australian Energy Market Operator Limited (ACN 072 010 327)—the maximum generation capacity in megawatts of the generation complex, most recently published by Australian Energy Market Operator Limited; and
  - (b) if the appropriate energy market operator in relation to the relevant generation complex is the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* of Western Australia—the maximum generation capacity in megawatts of the generation unit specified in a written determination made by the Regulator for the purposes of this paragraph.
- (8) In making a determination under paragraph (7)(b), the Regulator may have regard to any information provided to the Regulator by the Independent Market Operator.
- (9) For the purposes of this section, a generation unit that comprises, or is included in, a generation complex ***enters service*** when the unit is first dispatched to deliver electricity by the appropriate energy market operator.

## **172 Nomination of generation units**

### *Scope*

- (1) This section applies to a generation unit if:
  - (a) a person (the ***first person***) who owns, controls or operates the generation unit is registered as a generator in respect of the generation unit under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets; and

Section 172

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- (b) the generation unit was first registered under the law on or after 1 July 2011; and
- (c) when the generation unit was first registered under the law, the first person was registered in respect of the generation unit under the law; and
- (d) if a project to construct and commission the generation unit was in existence as at the start of 1 July 2011—the project was not fully committed by the project proponent as at the start of 1 July 2011, having regard to the following matters:
  - (i) the project proponent's rights to land for the construction of the project;
  - (ii) whether contracts for the supply and construction of the project's major plant or equipment (including contract provisions for project cancellations) were executed;
  - (iii) the status of all planning and construction approvals and licences necessary for the commencement of construction of the project (including completed and approved environmental impact statements);
  - (iv) the level of commitment to financing arrangements for the project;
  - (v) whether project construction had commenced before 1 July 2011;
  - (vi) whether, as at the start of 1 July 2011, a firm date had been set for project construction to commence; and
- (e) the generation unit has output that:
  - (i) is readily predictable; and
  - (ii) is not significantly dependent on factors beyond the control of the operator; and
- (f) the likely emissions intensity of the generation unit during the 2-year period beginning when the generation unit enters service does not exceed 0.80; and
- (g) the requirements (if any) set out in the regulations are met.

*Nomination of generation unit*

- (2) The first person may, by written notice given to the Regulator, nominate the generation unit for the purposes of the application of section 171 to a specified generation complex.

- (3) A nomination must be accompanied by a report that complies with subsection (4).
- (4) A report complies with this subsection if:
  - (a) the report is by a person who has appropriate engineering qualifications; and
  - (b) the report sets out the person's estimate of the likely emissions intensity of the generation unit during the 2-year period beginning when the generation unit enters service; and
  - (c) the person does not have an interest, pecuniary or otherwise, in the outcome of the nomination.
- (5) A nomination cannot be withdrawn.
- (6) The first person is not entitled to nominate the generation unit if the generation unit has already been nominated under this section (whether by the first person or by another person).

*Emissions intensity*

- (7) For the purposes of subsection (1), the **likely emissions intensity** of a generation unit during the 2-year period beginning when the generation unit enters service is the number that, in the opinion of the Regulator, should be treated as the likely emissions intensity of the generation unit during that 2-year period, having regard to the following matters:
  - (a) any documents relating to the design of the generation unit;
  - (b) if the generation unit has entered service—the number worked out using the formula set out in subsection (8);
  - (c) the report mentioned in subsection (3);
  - (d) such other matters (if any) as the Regulator considers relevant.
- (8) The formula mentioned in paragraph (7)(b) is:  
$$\frac{\text{Carbon dioxide equivalence of emissions}}{\text{Gigawatt hours of electricity generated}}$$

where:

Section 173

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*carbon dioxide equivalence of emissions* means the total number of kilotonnes of the carbon dioxide equivalence of the greenhouse gases emitted from the combustion of fuel in the generation unit for the purposes of the generation of electricity during the period when the generation unit was in service.

*gigawatt hours of electricity generated* means the number of gigawatt hours of electricity generated by the generation unit during the period when the generation complex was in service, as measured at all generator terminals of the generation unit.

*When generation unit enters service*

- (9) For the purposes of this section, a generation unit *enters service* when the unit is first dispatched to deliver electricity by the appropriate energy market operator.

**173 Validity of nomination**

*Scope*

- (1) This section applies if a person makes, or purports to make, a nomination under subsection 172(2).

*Requirement*

- (2) The Regulator must, within 60 days after receiving the nomination or purported nomination, take all reasonable steps to inform the person whether or not the Regulator is satisfied that the nomination or purported nomination is valid.

**174 Anticipatory certification—reduction in nameplate rating**

*Scope*

- (1) This section applies to a generation complex if a person who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets.

*Application*

- (2) The person may apply, in writing, to the appropriate energy market operator to certify that if a proposed reduction in the nameplate rating in megawatts of the generation complex were to occur during the period:
- (a) beginning at the start of 1 July 2010; and
  - (b) ending immediately before 1 April in a specified eligible financial year;
- there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the reduction.

*Certification*

- (3) If an application is made under subsection (2), the appropriate energy market operator may:
- (a) certify in accordance with the application; or
  - (b) refuse to so certify.
- (4) If, within 120 days after receiving an application under subsection (2), the appropriate energy market operator has neither:
- (a) certified in accordance with the application; nor
  - (b) refused to so certify;
- the appropriate energy market operator is taken, for the purposes of this Act, to have certified in accordance with the application.

*Consequences of certification*

- (5) If:
- (a) the appropriate energy market operator certifies in accordance with the application; and
  - (b) the proposed reduction occurs;
- then, for the purposes of subparagraph 170(2)(c)(iv), the appropriate energy market operator is taken to have certified in writing that there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the reduction.

Section 175

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**175 Anticipatory certification—cessation of registration as a generator**

*Scope*

- (1) This section applies to a generation complex if a person who owns, controls or operates the generation complex is registered as a generator in respect of the generation complex under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets.

*Application*

- (2) The person may apply, in writing, to the appropriate energy market operator to certify that if a proposed cessation of the registration were to occur during the period:
- (a) beginning at the start of 1 July 2010; and
  - (b) ending immediately before 1 April in a specified eligible financial year;
- there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the cessation.

*Certification*

- (3) If an application is made under subsection (2), the appropriate energy market operator may:
- (a) certify in accordance with the application; or
  - (b) refuse to so certify.
- (4) If, within 120 days after receiving an application under subsection (2), the appropriate energy market operator has neither:
- (a) certified in accordance with the application; nor
  - (b) refused to so certify;
- the appropriate energy market operator is taken, for the purposes of this Act, to have certified in accordance with the application.

*Consequences of certification*

- (5) If:
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(a) the appropriate energy market operator certifies in accordance with the application; and

(b) the proposed cessation occurs;

then, for the purposes of subparagraph 170(2)(d)(iv), the appropriate energy market operator is taken to have certified in writing that there is unlikely to be a breach of relevant power system reliability standards applicable to the energy market concerned at any time within 2 years after the cessation.

### **176 Intermediary registered as a generator**

If:

(a) a person (the *first person*) owns, controls or operates a generation complex; and

(b) under a law of the Commonwealth, a State or a Territory relating to the regulation of energy markets, the first person is exempt from the requirement under that law to be registered as a generator in respect of the generation complex; and

(c) the first person is exempt because another person (the *intermediary*) is registered under that law as a generator in respect of the generation complex;

the intermediary is taken, for the purposes of this Division, to be a person who controls the generation complex.

## **Division 5—Clean Energy Investment Plans**

### **177 No assistance unless Clean Energy Investment Plan given**

- (1) No free carbon units with a vintage year of a particular eligible financial year are to be issued in accordance with this Part in respect of a generation complex unless a person who owns, controls or operates the generation complex:
  - (a) gives the Resources and Energy Minister a Clean Energy Investment Plan for the eligible financial year; and
  - (b) does so by 15 August in the eligible financial year.
- (2) This section has effect subject to section 181A (which deals with closure contracts).

### **178 Clean Energy Investment Plan**

For the purposes of this Division, a *Clean Energy Investment Plan* given by a person for an eligible financial year is a plan:

- (a) that sets out:
  - (i) the plans (if any) the person has for investment in new electrical generation capacity; and
  - (ii) the plans (if any) the person has for investment in the reduction of the emissions intensity of a generation complex (whether or not the generation complex is owned, controlled or operated by the person); and
  - (iii) the plans (if any) the person has for investment in research and development in relation to clean energy technology; and
- (b) if one or more reports that, to any extent, relate to a generation complex owned, controlled or operated by the person have been prepared and made available to the public in accordance with section 22 of the *Energy Efficiency Opportunities Act 2006*—that:
  - (i) is accompanied by a copy of the most recent report; or
  - (ii) includes the URL of a website from which a copy of the most recent report can be downloaded.



**179 Copy of Clean Energy Investment Plan to be given to the Regulator**

If the Resources and Energy Minister receives a Clean Energy Investment Plan under section 177, he or she must give a copy of the plan to the Regulator.

**180 Publication of Clean Energy Investment Plan**

If the Resources and Energy Minister receives a Clean Energy Investment Plan under section 177, he or she must cause the Clean Energy Investment Plan to be published on the website of his or her Department.

## **Division 6—Closure contracts**

### **181 Restrictions on assistance if closure contract has been entered into**

*No free carbon units to be issued*

(1) If:

- (a) a person who owns, operates or controls a generation complex has entered into a contract with the Commonwealth that relates to the closure of the generation complex; and
- (b) the contract contains a provision to the effect that the contract is a closure contract for the purposes of this Act in relation to all of the following eligible financial years:
  - (i) the eligible financial year beginning on 1 July 2013;
  - (ii) the eligible financial year beginning on 1 July 2014;
  - (iii) the eligible financial year beginning on 1 July 2015;
  - (iv) the eligible financial year beginning on 1 July 2016;

no free carbon units are to be issued in accordance with this Part in respect of the generation complex.

*No free carbon units with a particular vintage year to be issued*

(2) If:

- (a) a person who owns, operates or controls a generation complex has entered into a contract with the Commonwealth that relates to the closure of the generation complex; and
- (b) the contract contains a provision to the effect that the contract is a closure contract for the purposes of this Act in relation to one or more specified eligible financial years; and
- (c) subsection (1) does not apply;

no free carbon units with a vintage year of any of those eligible financial years are to be issued in accordance with this Part in respect of the generation complex.

**181A Exemptions from power system reliability test and Clean Energy Investment Plan**

If:

- (a) a person who owns, operates or controls a generation complex has entered into a contract with the Commonwealth that relates to the closure of the generation complex; and
- (b) the contract contains a provision to the effect that the contract is a closure contract for the purposes of this Act in relation to one or more eligible financial years;

the following provisions do not apply in relation to the generation complex:

- (c) subsection 169(2);
- (d) section 177.

Note 1: Subsection 169(2) deals with the power system reliability test.

Note 2: Section 177 deals with Clean Energy Investment Plans.

## **Part 9—Publication of information**

### **Division 1—Introduction**

#### **182 Simplified outline**

The following is a simplified outline of this Part:

- The Regulator must keep a Liable Entities Public Information Database.
- Certain information about liable entities must be entered in the Information Database.
- The Regulator must publish certain other information about the operation of this Act.

## **Division 2—Information about liable entities**

### **183 Liable Entities Public Information Database**

- (1) The Regulator must keep a database, to be known as the Liable Entities Public Information Database.

Note: In this Act, *Information Database* means the Liable Entities Public Information Database—see section 5.

- (2) The Information Database is to be maintained by electronic means.
- (3) The Information Database is to be made available for inspection on the Regulator's website.

### **184 Liable entities to be entered in the Information Database**

#### *Making of entry*

- (1) If the Regulator has reasonable grounds to believe that a person is, or is likely to be, a liable entity for an eligible financial year, the Regulator must make an entry for the person in the Information Database in relation to the eligible financial year.
- (2) If the Regulator makes the entry, the Regulator must give written notice of the entry to the person.

#### *Removal of entry*

- (3) If:
  - (a) there is an entry for a person in the Information Database in relation to an eligible financial year; and
  - (b) the Regulator has reasonable grounds to believe that the person is not a liable entity for that eligible financial year;the Regulator must remove the entry from the Information Database.
- (4) The Regulator may exercise the power conferred by subsection (3):
  - (a) on written application being made to the Regulator by the person; or

Section 185

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- (b) on the Regulator's own initiative.
- (5) If the Regulator removes the entry, the Regulator must give written notice of the removal to the person.
- (6) If:
  - (a) the Regulator decides to refuse to remove the entry; and
  - (b) the Regulator made the decision in response to an application by the person;the Regulator must give written notice of the decision to the person.

**185 Emissions number to be entered in the Information Database**

*Scope*

- (1) This section applies if there is an entry for a person in the Information Database in relation to an eligible financial year.

*Emissions number*

- (2) As soon as practicable after receiving a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007* that specifies a number as the person's emissions number for the eligible financial year, the Regulator must enter that number in the Information Database.
- (3) As soon as practicable after making an assessment under section 119 or 120 of the person's emissions number for the eligible financial year, the Regulator must enter details of the assessment in the Information Database.
- (4) As soon as practicable after amending an assessment under section 119 or 120 of the person's emissions number for the eligible financial year, the Regulator must enter details of the amended assessment in the Information Database.

**186 Estimate of total of emissions numbers to be entered in the Information Database**

Before the end of 28 February next following an eligible financial year, the Regulator must:

- (a) prepare a reasonable estimate of the total of the emissions numbers of liable entities for the eligible financial year; and
- (b) enter that estimate in the Information Database.

**187 Unit shortfall to be entered in the Information Database**

*Scope*

- (1) This section applies if there is an entry for a person in the Information Database in relation to an eligible financial year.

*Unit shortfall*

- (2) If:
  - (a) the Regulator is of the opinion that the person has a unit shortfall for the eligible financial year; and
  - (b) the Regulator has not made an assessment under section 141 of the person's unit shortfall for the eligible financial year;the Regulator must enter in the Information Database:
  - (c) the number that represents the Regulator's reasonable estimate of the number of units in the person's unit shortfall for the eligible financial year; and
  - (d) the amount that represents the Regulator's reasonable estimate of the amount of unit shortfall charge payable by the person in relation to the unit shortfall.
- (3) If the Regulator makes an assessment under section 141 of the person's unit shortfall for the eligible financial year and the unit shortfall charge payable on that shortfall, the Regulator must enter details of the assessment in the Information Database.
- (4) In making an estimate under this section, the Regulator may rely on a report given under the *National Greenhouse and Energy Reporting Act 2007* by the person.

**Section 188**

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(5) If:

- (a) an assessment has been made under section 141 of the person's unit shortfall for the eligible financial year; and
- (b) any of the following subparagraphs applies:
  - (i) a decision to make, to amend, or to refuse to amend, the assessment is being reconsidered by the Regulator under section 283;
  - (ii) a decision to make, to amend, or to refuse to amend, the assessment has been affirmed or varied by the Regulator under section 283, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
  - (iii) a decision to make, to amend, or to refuse to amend, the assessment is the subject of an application for review by the Administrative Appeals Tribunal;

then:

- (c) in any case—the Regulator must make an appropriate annotation in the Information Database; and
- (d) if subparagraph (b)(i) applies—when the Regulator notifies the applicant for reconsideration of the Regulator's decision on the reconsideration, the Regulator must make an appropriate annotation in the Information Database; and
- (e) if subparagraph (b)(ii) or (iii) applies—when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised, the Regulator must make an appropriate annotation in the Information Database.

**188 Unpaid unit shortfall charge to be entered in the Information Database**

*Scope*

(1) This section applies if:

- (a) there is an entry for a person in the Information Database in relation to an eligible financial year; and
- (b) the person has a unit shortfall for the eligible financial year; and



Section 189

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- (c) an amount of unit shortfall charge payable by the person in relation to the unit shortfall remains unpaid after the time when the amount became due for payment.

*Unit shortfall charge amount*

- (2) The Regulator must enter in the Information Database details of the unpaid amount.

**189 Number of surrendered eligible emissions units to be entered in the Information Database**

*Scope*

- (1) This section applies if there is an entry for a person in the Information Database in relation to an eligible financial year.

*Eligible emissions units surrendered*

- (2) As soon as practicable after receiving a notice under section 122 that surrenders, in relation to the eligible financial year, one or more eligible emissions units held by the person, the Regulator must enter in the Information Database:
  - (a) the total number of eligible emissions units surrendered; and
  - (b) the total number of each of the following types of eligible emissions units surrendered:
    - (i) carbon units;
    - (ii) eligible international emissions units;
    - (iii) Australian carbon credit units.

**190 Relinquishment requirement to be entered in the Information Database**

*Scope*

- (1) This section applies if there is an entry for a person in the Information Database in relation to an eligible financial year.

**Section 191**

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*Relinquishment requirement*

- (2) If, under this Act or the Jobs and Competitiveness Program, the person is required, during the eligible financial year, to relinquish a particular number of carbon units, the Regulator must enter in the Information Database details of the relinquishment requirement.
- (3) If any of the following paragraphs apply:
  - (a) the decision to require the person to relinquish a specified number of carbon units is being reconsidered by the Regulator under section 283;
  - (b) the decision to require the person to relinquish a specified number of carbon units has been affirmed or varied by the Regulator under section 283, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
  - (c) the decision to require the person to relinquish a specified number of carbon units is the subject of an application for review by the Administrative Appeals Tribunal;then:
  - (d) in any case—the Regulator must make an appropriate annotation in the Information Database; and
  - (e) if paragraph (a) applies—when the Regulator notifies the applicant for reconsideration of the Regulator’s decision on the reconsideration, the Regulator must make an appropriate annotation in the Information Database; and
  - (f) if paragraph (b) or (c) applies—when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised, the Regulator must make an appropriate annotation in the Information Database.

**191 Unpaid administrative penalty to be entered in the Information Database**

*Scope*

- (1) This section applies if:

Section 192

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- (a) there is an entry for a person in the Information Database in relation to an eligible financial year; and
- (b) the person is required, under this Act or the Jobs and Competitiveness Program, to relinquish a particular number of carbon units; and
- (c) during the eligible financial year, an amount (the *penalty amount*) payable by the person under section 212 in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment.

*Penalty amount*

- (2) The Regulator must enter in the Information Database details of the unpaid penalty amount.

**192 Number of relinquished units to be entered in the Information Database**

*Scope*

- (1) This section applies if:
  - (a) there is an entry for a person in the Information Database in relation to an eligible financial year; and
  - (b) under this Act or the Jobs and Competitiveness Program, the person is required to relinquish a particular number of carbon units; and
  - (c) during the eligible financial year, the person relinquishes one or more carbon units in order to comply with the requirement.

*Carbon units relinquished*

- (2) As soon as practicable after receiving the notice of relinquishment, the Regulator must enter in the Information Database the total number of carbon units relinquished.

Section 193

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**193 Correction and rectification of the Information Database**

*Corrections of clerical errors or obvious defects*

- (1) The Regulator may alter the Information Database for the purposes of correcting a clerical error or an obvious defect in the Information Database.

*General power of correction*

- (2) The Regulator may make such entries in the Information Database as the Regulator considers appropriate for the purposes of ensuring that the Information Database is accurate.
- (3) The Regulator may exercise the power conferred by subsection (2):
  - (a) on written application being made to the Regulator by a person; or
  - (b) on the Regulator's own initiative.

### **Division 3—Information about holders of Registry accounts**

#### **194 Information about holders of Registry accounts**

The Regulator must:

- (a) publish on its website:
  - (i) the name of each person who has a Registry account;  
and
  - (ii) the person's address last known to the Regulator; and
- (b) keep that information up-to-date.

## Division 4—Information about units

### 195 Information about auction results—general

For each auction of carbon units conducted by the Regulator, the Regulator must publish the following information on its website:

- (a) the date of the auction;
- (b) the vintage year, or vintage years, of the carbon units auctioned;
- (c) a statement setting out, for the vintage year, or each of those vintage years, as the case may be:
  - (i) each per unit charge that was payable for the issue of carbon units with the vintage year concerned; and
  - (ii) for each such per unit charge—the total number of carbon units with the vintage year concerned that were issued for the per unit charge.

### 196 Information about auction results—last 6 months

*6 months ending on 31 May*

- (1) Within 7 business days after the end of:
  - (a) May 2015; and
  - (b) each later May;

the Regulator must publish on its website the amount worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

where:

***number of units issued as the result of auctions*** means the total number of carbon units that were issued as the result of auctions conducted by the Regulator during the 6-month period ending at the end of that May.

Section 196

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***total auction proceeds*** means the total amount paid or payable by way of charges for the issue of carbon units that were issued as the result of auctions conducted by the Regulator during the 6-month period ending at the end of that May.

*6 months ending on 30 November*

- (2) Within 7 business days after the end of:

- (a) November 2015; and
- (b) each later November;

the Regulator must publish on its website the amount worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

where:

***number of units issued as the result of auctions*** means the total number of carbon units that were issued as the result of auctions conducted by the Regulator during the 6-month period ending at the end of that November.

***total auction proceeds*** means the total amount paid or payable by way of charges for the issue of carbon units that were issued as the result of auctions conducted by the Regulator during the 6-month period ending at the end of that November.

*Vintage years*

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

- (a) a carbon unit is issued as the result of an auction conducted by the Regulator during an eligible financial year beginning on or after 1 July 2015; and
- (b) the vintage year of the unit is not that eligible financial year; disregard the issue of the unit.

Section 197

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**197 Information about issue of carbon units for a fixed charge**

*2012-2013*

- (1) As soon as practicable after 15 February 2014, the Regulator must publish on its website the total number of carbon units issued in accordance with section 100 with a vintage year beginning on 1 July 2012.

*2013-2014*

- (2) As soon as practicable after 15 February 2015, the Regulator must publish on its website the total number of carbon units issued in accordance with section 100 with a vintage year beginning on 1 July 2013.

*2014-2015*

- (3) As soon as practicable after 15 February 2016, the Regulator must publish on its website the total number of carbon units issued in accordance with section 100 with a vintage year beginning on 1 July 2014.

*2015-2016*

- (4) As soon as practicable after 15 February 2017, the Regulator must publish on its website the total number of carbon units issued in accordance with section 100 with a vintage year beginning on 1 July 2015.

*2016-2017*

- (5) As soon as practicable after 15 February 2018, the Regulator must publish on its website the total number of carbon units issued in accordance with section 100 with a vintage year beginning on 1 July 2016.

*2017-2018*

- (6) As soon as practicable after 15 February 2019, the Regulator must publish on its website the total number of carbon units issued in



accordance with section 100 with a vintage year beginning on 1 July 2017.

## **198 Information about issue of free carbon units**

### *Jobs and Competitiveness Program*

- (1) As soon as practicable after free carbon units are issued to a person in accordance with the Jobs and Competitiveness Program, the Regulator must publish on its website:
  - (a) the name of the person; and
  - (b) the total number of free carbon units issued to the person; and
  - (c) the vintage year of the free carbon units issued to the person; and
  - (d) each activity that:
    - (i) under the Jobs and Competitiveness Program, is taken to be an emissions-intensive trade-exposed activity; and
    - (ii) is an activity in respect of which the free carbon units were issued to the person.

### *Coal-fired electricity generation*

- (2) As soon as practicable after free carbon units are issued to a person in accordance with Part 8 (coal-fired electricity generation), the Regulator must publish on its website:
  - (a) the name of the person; and
  - (b) the total number of free carbon units issued to the person; and
  - (c) the vintage year of the free carbon units issued to the person.

## **199 Quarterly reports about issue of free carbon units**

As soon as practicable after the end of each quarter, the Regulator must publish the following information on its website:

- (a) the total number of free carbon units with a particular vintage year issued during the quarter in accordance with the Jobs and Competitiveness Program;
- (b) for each activity that, under the Jobs and Competitiveness Program, is taken to be an emissions-intensive trade-exposed activity—the total number of free carbon units with a

**Section 200**

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particular vintage year issued during the quarter in respect of that activity in accordance with that program;

- (c) if, at the end of the quarter, there were one or more pending applications for free carbon units under the Jobs and Competitiveness Program—the total number of free carbon units to which those pending applications relate;
- (d) the total number of free carbon units with a particular vintage year issued during the quarter in accordance with Part 8 (coal-fired electricity generation).

**200 Information about surrender of borrowed and banked eligible emissions units**

*Borrowed units*

- (1) As soon as practicable after the end of 1 February next following an eligible financial year, the Regulator must publish on its website the total number of carbon units that:
  - (a) were surrendered in relation to the eligible financial year; and
  - (b) had a vintage year later than the eligible financial year.

*Banked units*

- (2) As soon as practicable after the end of 1 February next following an eligible financial year, the Regulator must publish on its website the total number of carbon units that:
  - (a) were surrendered in relation to the eligible financial year; and
  - (b) had a vintage year earlier than the eligible financial year.

**201 Information about total emissions numbers and unit shortfalls**

As soon as practicable after 1 March following an eligible financial year, the Regulator must:

- (a) calculate:
  - (i) the total of the numbers that, in the Regulator's opinion, are the emissions numbers of liable entities for the eligible financial year; and

Section 202

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- (ii) the number that, in the Regulator's opinion, is the total of the unit shortfalls of liable entities in relation to the eligible financial year; and
- (b) publish the results on the Regulator's website.

**202 Publication of concise description of the characteristics of carbon units**

The Regulator must:

- (a) as soon as practicable after the commencement of this section, publish on the Regulator's website a statement setting out a concise description of the characteristics of carbon units; and
- (b) keep that statement up-to-date.

**Division 5—Information about relinquishment requirements for persons other than liable entities**

**203 Information about relinquishment requirements**

*Scope*

- (1) This section applies if:
  - (a) under this Act or the Jobs and Competitiveness Program, a person is required, during an eligible financial year, to relinquish a particular number of carbon units; and
  - (b) there is no entry for the person in the Information Database in relation to the eligible financial year.

*Relinquishment requirement*

- (2) The Regulator must publish on its website:
  - (a) the name of the person; and
  - (b) details of the relinquishment requirement.
- (3) If any of the following paragraphs applies:
  - (a) the decision to require the person to relinquish a specified number of carbon units is being reconsidered by the Regulator under section 283;
  - (b) the decision to require the person to relinquish a specified number of carbon units has been affirmed or varied by the Regulator under section 283, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
  - (c) the decision to require the person to relinquish a specified number of carbon units is the subject of an application for review by the Administrative Appeals Tribunal;then:
  - (d) in any case—the Regulator must publish an appropriate annotation on its website; and

Section 204

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- (e) if paragraph (a) applies—when the Regulator notifies the applicant for reconsideration of the Regulator’s decision on the reconsideration, the Regulator must publish an appropriate annotation on its website; and
- (f) if paragraph (b) or (c) applies—when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised, the Regulator must publish an appropriate annotation on its website.

## **204 Information about unpaid administrative penalties**

### *Scope*

- (1) This section applies if:
  - (a) under this Act or the Jobs and Competitiveness Program, a person is required to relinquish a particular number of carbon units; and
  - (b) during an eligible financial year, an amount (the **penalty amount**) payable by the person under section 212 in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment; and
  - (c) there is no entry for the person in the Information Database in relation to the eligible financial year.

### *Penalty amount*

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

## **205 Information about number of relinquished units**

### *Scope*

- (1) This section applies if:

**Part 9** Publication of information

**Division 5** Information about relinquishment requirements for persons other than liable entities

**Section 205**

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- (a) under this Act or the Jobs and Competitiveness Program, a person is required to relinquish a particular number of carbon units; and
- (b) during an eligible financial year, the person relinquishes one or more carbon units in order to comply with the requirement; and
- (c) there is no entry for the person in the Information Database in relation to the eligible financial year.

*Carbon units relinquished*

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

## **Division 6—Information about designated large landfill facilities**

### **206 Publication of list of designated large landfill facilities**

- (1) The regulations may require the Regulator to publish on its website, during each eligible financial year, a list of the landfill facilities that, in the Regulator's opinion, were designated large landfill facilities in relation to the previous eligible financial year.
- (2) The list must set out the location of each landfill facility on the list.
- (3) The regulations may provide that the list is to be published on or before such day as is ascertained in accordance with the regulations.
- (4) For the purposes of subsection (1), assume that the financial year beginning on 1 July 2011 is an eligible financial year.

## Part 10—Fraudulent conduct

### 207 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 carbon units is attributable to the commission of the offence, a court may order the person to relinquish a specified number of carbon units.

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

#### *Scope*

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

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



*Relinquishment*

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

*Compliance*

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

Note: An administrative penalty is payable under section 212 for non-compliance with a relinquishment requirement.

- (4) The person does not comply with an order under subsection (2) unless the notice of relinquishment 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 carbon units; or
  - (b) the person is not the registered holder of the number of carbon units required to be relinquished.

*Conviction*

- (6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

*Copy of order*

- (7) A copy of an order under subsection (2) is to be given to the Regulator.

*Appropriate court*

- (8) For the purposes of this section, each of the following courts is an ***appropriate court***:
- (a) the court that convicted the person of the offence;
  - (b) the Federal Court;
  - (c) the Supreme Court of a State or Territory.

**Section 208**

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*Spent convictions*

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

## **Part 11—Relinquishment of carbon units**

### **Division 1—Introduction**

#### **209 Simplified outline**

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more carbon units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act or the Jobs and Competitiveness Program.

Note: A person may be required to relinquish carbon units under section 208 (fraudulent conduct) or the Jobs and Competitiveness Program.

## **Division 2—How carbon units are relinquished**

### **210 How carbon units are relinquished**

- (1) If a person is the registered holder of one or more carbon units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- (2) A notice under subsection (1) must:
  - (a) specify the carbon unit or units that are being relinquished; and
  - (b) if the carbon unit or units are being relinquished in order to comply with a requirement under the Jobs and Competitiveness Program—specify the requirement to which the relinquishment relates; and
  - (c) if the carbon unit or units are being relinquished in order to comply with an order under subsection 208(2) (fraudulent conduct)—specify the order to which the relinquishment relates; and
  - (d) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the carbon unit or units that are being relinquished.
- (3) If:
  - (a) a carbon unit is relinquished by a person; and
  - (b) the unit has a vintage year that is a fixed charge year;then:
  - (c) the unit is cancelled; and
  - (d) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (4) If:
  - (a) a carbon unit is relinquished by a person; and
  - (b) subsection (3) does not apply to the relinquishment of the unit;

then:

- (c) the Regulator must transfer the unit from the person's Registry account in which there is an entry for the unit to the Commonwealth relinquished units account; and
  - (d) when the unit is transferred to the Commonwealth relinquished units account, property in the unit is transferred to the Commonwealth.
- (5) The Registry must set out a record of each notice under subsection (1).

## **211 Deemed relinquishment**

### *Scope*

- (1) This section applies if:
- (a) under this Act or the Jobs and Competitiveness Program, a person is subject to a requirement to relinquish a particular number of carbon units (the **relinquishment number**); and
  - (b) under this Act or the Jobs and Competitiveness Program, the Regulator is required to issue to the person a particular number of carbon units (the **issue number**).

### *Deemed relinquishment*

- (2) If the issue number exceeds the relinquishment number:
- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Regulator under subsection 210(1), relinquished a number of those units equal to the relinquishment number; and
  - (b) that notice is taken to have specified, as the units that are being relinquished, such units as are determined by the Regulator; and
  - (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.
- (3) If the relinquishment number equals or exceeds the issue number:

**Part 11** Relinquishment of carbon units

**Division 2** How carbon units are relinquished

**Section 211**

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- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Regulator under subsection 210(1), relinquished all of the units mentioned in paragraph (1)(b) of this section; and
- (b) that notice is taken to have specified, as the units that are being relinquished, all of the units mentioned in paragraph (1)(b); and
- (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.

## **Division 3—Compliance with relinquishment requirements**

### **212 Compliance with relinquishment requirements**

#### *Scope*

- (1) This section applies if, under this Act or the Jobs and Competitiveness Program:
- (a) a person is required to relinquish a particular number of carbon units; and
  - (b) the person is required to do so by a particular time (the ***compliance deadline***).

#### *No units relinquished*

- (2) If, by the compliance deadline, the person has not relinquished any carbon units in order to comply with the requirement, the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\begin{array}{c} \text{Number of units} \\ \text{required to be relinquished} \end{array} \times \begin{array}{c} \text{Prescribed amount} \\ \text{for the financial year} \\ \text{in which the compliance} \\ \text{deadline occurs} \end{array}$$

where:

***prescribed amount for the financial year in which the compliance deadline occurs*** means:

- (a) if the requirement arose before the end of 31 July 2013—\$46; or
- (b) if the requirement arose during the period beginning at the start of 1 August 2013 and ending at the end of 31 July 2014—\$48.30; or
- (c) if the requirement arose during the period beginning at the start of 1 August 2014 and ending at the end of 31 July 2015—\$50.80; or
- (d) in any other case:

**Section 212**

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- (i) if an amount is specified in the regulations for the financial year in which the compliance deadline occurs—that amount; or
- (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.

*Relinquishment of insufficient units*

- (3) If, by the compliance deadline:
- (a) the person has relinquished one or more carbon units in order to comply with the requirement; and
  - (b) the number of relinquished units is less than the number of units required to be relinquished;

the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\left( \begin{array}{c} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{c} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \begin{array}{c} \text{Prescribed amount for} \\ \text{the financial year in} \\ \text{which the compliance} \\ \text{deadline occurs} \end{array}$$

where:

***prescribed amount for the financial year in which the compliance deadline occurs*** means:

- (a) if the requirement arose before the end of 31 July 2013—\$46; or
- (b) if the requirement arose during the period beginning at the start of 1 August 2013 and ending at the end of 31 July 2014—\$48.30; or
- (c) if the requirement arose during the period beginning at the start of 1 August 2014 and ending at the end of 31 July 2015—\$50.80; or
- (d) in any other case:
  - (i) if an amount is specified in the regulations for the financial year in which the compliance deadline occurs—that amount; or
  - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.



Section 213

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*When penalty becomes due and payable*

- (4) An amount payable under this section is due and payable at the end of 30 days after the compliance deadline.

*Compliance*

- (5) For the purposes of this section, a person relinquishes carbon units in order to comply with a particular requirement under this Act or the Jobs and Competitiveness Program if, and only if, the notice of relinquishment specifies the requirement.
- (6) To avoid doubt, a person may be liable to pay a penalty under this section even if:
- (a) the person is not the registered holder of any carbon units; or
  - (b) the person is not the registered holder of the number of carbon units required to be relinquished.

**213 Late payment penalty**

*Penalty*

- (1) If an amount payable by a person under section 212 remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or
  - (b) if a lower rate per annum is specified in the regulations—that lower rate per annum;
- on the amount unpaid, computed from that time.

*Power to remit*

- (2) The Regulator may remit the whole or a part of an amount payable under subsection (1) if:
- (a) the Regulator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
  - (b) the Regulator is satisfied:

Section 214

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- (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
    - (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or
  - (c) the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.
- (3) The Regulator may exercise the power conferred by subsection (2):
- (a) on written application being made to the Regulator by a person; or
  - (b) on the Regulator's own initiative.

*Refusal*

- (4) If:
- (a) the Regulator decides to refuse to remit the whole or a part of an amount payable under subsection (1); and
  - (b) the Regulator made the decision in response to an application;
- the Regulator must give written notice of the decision to the applicant.

**214 Recovery of penalties**

An amount payable under section 212 or 213:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

**215 Set-off**

If:

- (a) an amount (the *first amount*) is payable under section 212 or 213 by a person; and
- (b) the following conditions are satisfied in relation to another amount (the *second amount*):

- (i) the amount is payable by the Commonwealth to the person;
- (ii) the amount is of a kind specified in the regulations; the Regulator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

## **216 Refund of overpayments**

If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:

- (a) an amount payable under section 212;
- (b) an amount payable under section 213.

Note: For appropriation, see section 28 of the *Financial Management and Accountability Act 1997*.

## Part 12—Notification of significant holding of carbon units

### 217 Simplified outline

The following is a simplified outline of this Part:

- The controlling corporation of a group must notify the Regulator if the group has a significant holding of carbon units.
- A non-group entity must notify the Regulator if the non-group entity has a significant holding of carbon units.

### 218 Notification of significant holding of carbon units—controlling corporation of a group

#### *Scope*

- (1) This section applies to a controlling corporation if any of the following events occurs:
  - (a) the controlling corporation's group begins to have a significant holding of carbon units with a particular vintage year;
  - (b) the controlling corporation's group ceases to have a significant holding of carbon units with a particular vintage year;
  - (c) there is a change in the significant holding percentage for the controlling corporation's group in relation to carbon units with a particular vintage year.

Note 1: For *significant holding*, see subsection (7).

Note 2: For *significant holding percentage*, see subsection (8).

*Notice*

- (2) The controlling corporation must, within 5 business days after becoming aware of the event, give the Regulator a written notice:
  - (a) informing the Regulator of the event; and
  - (b) setting out the additional information mentioned in subsection (3).
- (3) The additional information to be set out in the notice is as follows:
  - (a) the name and address of the controlling corporation;
  - (b) for each member of the controlling corporation's group that, immediately after the event, holds one or more carbon units with the vintage year:
    - (i) the name and address of the member; and
    - (ii) details of the member's holding of those carbon units;
  - (c) such other information (if any) as is specified in the regulations.

*Ancillary contraventions*

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

*Civil penalty provisions*

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

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

*Regulator to publish certain information*

- (6) If the Regulator receives a notice under subsection (2) in relation to:

Section 218

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- (a) the controlling corporation; and
  - (b) carbon units with a particular vintage year;
- the Regulator must publish on its website:
- (c) the name and address of the controlling corporation; and
  - (d) if the controlling corporation's group has a significant holding percentage in relation to those units—the significant holding percentage; and
  - (e) if the controlling corporation's group does not have a significant holding of those units—a statement to that effect.

*Significant holding*

- (7) For the purposes of this section, the controlling corporation's group has a ***significant holding*** of carbon units with a particular vintage year if the percentage worked out using the following formula is 10% or more:

$$\frac{\text{Total number of carbon units with the vintage year held by the members of the controlling corporation's group}}{\text{Carbon pollution cap number for the vintage year}} \times 100$$

*Significant holding percentage*

- (8) If the controlling corporation's group has a significant holding of carbon units with a particular vintage year, then, for the purposes of this section, the ***significant holding percentage*** for the controlling corporation's group in relation to those units is:
- (a) the percentage worked out using the formula in subsection (7) in relation to those units; or
  - (b) if the percentage worked out using the formula in subsection (7) in relation to those units is not a whole percentage—the percentage rounded down to the nearest whole percentage.

*Exception*

- (9) Paragraphs (1)(a) and (b) do not apply to a carbon unit with a vintage year that is a fixed charge year.

**219 Notification of significant holding of carbon units—non-group entity***Scope*

- (1) This section applies to a non-group entity if any of the following events occurs:
- (a) the non-group entity begins to have a significant holding of carbon units with a particular vintage year;
  - (b) the non-group entity ceases to have a significant holding of carbon units with a particular vintage year;
  - (c) there is a change in the significant holding percentage for the non-group entity in relation to carbon units with a particular vintage year.

Note 1: For *significant holding*, see subsection (7).

Note 2: For *significant holding percentage*, see subsection (8).

*Notice*

- (2) The non-group entity must, within 5 business days after becoming aware of the event, give the Regulator a written notice:
- (a) informing the Regulator of the event; and
  - (b) setting out the additional information mentioned in subsection (3).
- (3) The additional information to be set out in the notice is as follows:
- (a) the name and address of the non-group entity;
  - (b) the total number of carbon units with the vintage year held by the non-group entity immediately after the event;
  - (c) such other information (if any) as is specified in the regulations.

Section 219

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*Ancillary contraventions*

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

*Civil penalty provisions*

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

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

*Regulator to publish certain information*

- (6) If the Regulator receives a notice under subsection (2) in relation to:
- (a) the non-group entity; and
  - (b) carbon units with a particular vintage year;
- the Regulator must publish on its website:
- (c) the name and address of the non-group entity; and
  - (d) if the non-group entity has a significant holding percentage in relation to those units—the significant holding percentage; and
  - (e) if the non-group entity does not have a significant holding of those units—a statement to that effect.

*Significant holding*

- (7) For the purposes of this section, the non-group entity has a ***significant holding*** of carbon units with a particular vintage year if the percentage worked out using the following formula is 10% or more:



$$\frac{\text{Total number of carbon units with the vintage year held by the non-group entity}}{\text{Carbon pollution cap number for the vintage year}} \times 100$$

*Significant holding percentage*

- (8) If the non-group entity has a significant holding of carbon units with a particular vintage year, then, for the purposes of this section, the ***significant holding percentage*** for the non-group entity in relation to those units is:
- (a) the percentage worked out using the formula in subsection (7) in relation to those units; or
  - (b) if the percentage worked out using the formula in subsection (7) in relation to those units is not a whole percentage—the percentage rounded down to the nearest whole percentage.

*Exception*

- (9) Paragraphs (1)(a) and (b) do not apply to a carbon unit with a vintage year that is a fixed charge year.

## Part 13—Information-gathering powers

### 220 Simplified outline

The following is a simplified outline of this Part:

- The Regulator may obtain information or documents.

### 221 Regulator may obtain information or documents

#### *Scope*

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

#### *Requirement*

- (2) The Regulator may, by written notice given to the person, require the person:
  - (a) to give to the Regulator, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Regulator, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Regulator, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

*Ancillary contraventions*

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

*Civil penalty provisions*

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

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

*No limitation*

- (7) This section is not limited by:
- (a) any other provision of this Act (other than section 302); or
  - (b) any provision of the *National Greenhouse and Energy Reporting Act 2007*;
- that relates to the powers of the Regulator to obtain information or documents.

**222 Copying documents—compensation**

A person is entitled to be paid by the Regulator, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 221(2)(c).

**Section 223**

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**223 Copies of documents**

- (1) The Regulator may:
  - (a) inspect a document or copy produced under subsection 221(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The Regulator may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 221(2)(c).

**224 Regulator may retain documents**

- (1) The Regulator may take, and retain for as long as is necessary, possession of a document produced under subsection 221(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Regulator to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Regulator must, at such times and places as the Regulator thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

**225 Self-incrimination**

- (1) A person is not excused from giving information or producing a document under section 221 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
  - (a) the information given or the document produced; or
  - (b) giving the information or producing the document; or

Section 225

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- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;

is not admissible in evidence against the individual:

- (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 135, 212 or 213); or
- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

## Part 14—Record-keeping requirements

### 226 Simplified outline

The following is a simplified outline of this Part:

- The regulations may require a person to:
  - (a) make a record of information; and
  - (b) retain the record.
- Records must be kept of the quotation of OTNs.

### 227 Record-keeping requirements—general

- (1) The regulations may require a person to:
  - (a) make a record of specified information, where the information is relevant to:
    - (i) this Act; or
    - (ii) the associated provisions; and
  - (b) retain:
    - (i) the record; or
    - (ii) a copy of the record;for 5 years after the making of the record.
- (2) If a person is subject to a requirement under regulations made for the purposes of subsection (1), the person must comply with that requirement.

#### *Ancillary contraventions*

- (3) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (2); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

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

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

*Other provisions do not limit this section*

- (5) This section is not limited by:
- (a) any other provision of this Act; or
  - (b) a provision of the *National Greenhouse and Energy Reporting Act 2007*;
- that relates to the keeping or retention of records.

## **228 Record-keeping requirements—quotation of OTN**

*Scope*

- (1) This section applies if:
- (a) a person (the ***supplier***) supplies an amount of natural gas to another person (the ***recipient***); and
  - (b) the recipient quotes the recipient's OTN in relation to the supply.

*Record-keeping requirements*

- (2) The supplier must retain:
- (a) the statement by which the quotation was made; or
  - (b) a copy of that statement;
- for 5 years after the quotation occurred.
- (3) The recipient must:

**Section 228**

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- (a) make a copy of the statement by which the quotation was made; and
- (b) retain that copy for 5 years after the quotation occurred.

*Civil penalty*

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

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



## **Part 15—Monitoring powers**

### **Division 1—Simplified outline**

#### **229 Simplified outline**

The following is a simplified outline of this Part:

- An inspector may enter premises for the purpose of:
  - (a) determining whether this Act or the associated provisions have been complied with; or
  - (b) substantiating information provided under this Act or the associated provisions.
- Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
- An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.
- The occupier of the premises has certain rights and responsibilities.

## **Division 2—Appointment of inspectors and issue of identity cards**

### **230 Appointment of inspectors**

- (1) The Regulator may, in writing, appoint:
  - (a) a member of the staff of the Regulator who:
    - (i) is an SES employee or acting SES employee; or
    - (ii) is an APS employee who holds or performs the duties of an Executive Level 1 or 2 position, or an equivalent position; or
  - (b) a member or special member of the Australian Federal Police;as an inspector for the purposes of this Act.
- (2) The Regulator must not appoint a person as an inspector unless the Regulator is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.
- (3) An inspector must, in exercising powers as an inspector, comply with any directions of the Regulator.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **231 Identity cards**

- (1) The Regulator must issue an identity card to an inspector.

#### *Form of identity card*

- (2) The identity card must:
  - (a) be in the form approved, in writing, by the Regulator; and
  - (b) contain a recent photograph of the inspector.

#### *Offence*

- (3) A person commits an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an inspector; and
- (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Regulator.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence—card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

*Inspector must carry card*

- (6) An inspector must carry his or her identity card at all times when exercising powers as an inspector.

## Division 3—Powers of inspectors

### Subdivision A—Monitoring powers

#### 232 Inspector may enter premises by consent or under a warrant

- (1) For the purpose of:
  - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
  - (b) substantiating information provided under this Act or the associated provisions;an inspector may:
  - (c) enter any premises; and
  - (d) exercise the monitoring powers set out in section 233.
- (2) However, an inspector is not authorised to enter the premises unless:
  - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 237.

#### 233 Monitoring powers of inspectors

- (1) The following are the *monitoring powers* that an inspector may exercise in relation to premises under section 232:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine any activity conducted on the premises;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections (2), (3) and (5).

*Operating electronic equipment*

- (2) The monitoring powers include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to:
  - (c) determining whether this Act or the associated provisions have been, or are being, complied with; or
  - (d) substantiating information provided under this Act or the associated provisions.
- (3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
  - (a) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.

**Section 233**

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- (4) An inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Securing things if entry to premises is under a monitoring warrant*

- (5) If entry to the premises is under a monitoring warrant, the monitoring powers include the power to secure a thing for a period not exceeding 24 hours if:
- (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an inspector believes on reasonable grounds that:
    - (i) the thing affords evidence of the commission of an offence against this Act or of an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; and
    - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (iii) the circumstances are serious and urgent.
- (6) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24 hour period:
- (a) may be extended more than once; and
  - (b) must not be extended more than 3 times.

## **234 Persons assisting inspectors**

### *Inspectors may be assisted by other persons*

- (1) An inspector may, in entering premises under section 232 and in exercising monitoring powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

### *Powers of a person assisting the inspector*

- (2) A person assisting the inspector may:
  - (a) enter the premises; and
  - (b) exercise monitoring powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

## **Subdivision B—Powers of inspectors to ask questions and seek production of documents**

## **235 Inspector may ask questions and seek production of documents**

### *Entry with consent*

- (1) If an inspector is authorised to enter premises because the occupier of the premises consented to the entry, the inspector may ask the occupier to:
  - (a) answer any questions relating to the operation of:
    - (i) this Act; or
    - (ii) the associated provisions; that are put by the inspector; and
  - (b) produce any document relating to the operation of:

**Section 236**

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- (i) this Act; or
  - (ii) the associated provisions;
- that is requested by the inspector.

*Entry under a monitoring warrant*

- (2) If an inspector is authorised to enter premises by a monitoring warrant, the inspector may require any person on the premises to:
- (a) answer any questions relating to the operation of:
    - (i) this Act; or
    - (ii) the associated provisions;that are put by the inspector; and
  - (b) produce any document relating to the operation of:
    - (i) this Act; or
    - (ii) the associated provisions;that is requested by the inspector.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

**236 Self-incrimination**

- (1) A person is not excused from giving an answer or producing a document under section 235 on the ground that the answer or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
  - (a) the answer given or the document produced; or
  - (b) giving the answer or producing the document; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer or producing the document;



is not admissible in evidence against the individual:

- (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 135, 212 or 213); or
- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

## **Division 4—Obligations and incidental powers of inspectors**

### **237 Consent**

- (1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 232(2)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

### **238 Announcement before entry under warrant**

An inspector must, before entering premises under a monitoring warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

### **239 Inspector to be in possession of warrant**

If a monitoring warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of the warrant or a copy of the warrant.

### **240 Details of warrant etc. to be given to occupier**

If:

- (a) a monitoring warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- an inspector executing the warrant must, as soon as practicable:
- (c) make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it); and
  - (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 5.

### **241 Expert assistance to operate electronic equipment**

- (1) This section applies to premises to which a monitoring warrant relates.

#### *Securing equipment*

- (2) If an inspector believes on reasonable grounds that:
  - (a) there is on the premises information that is relevant to:
    - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
    - (ii) substantiating information provided under this Act or the associated provisions;and that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and

**Section 242**

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(c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured:
- (a) until the 24 hour period ends; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.

*Extensions*

- (5) If an inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (6) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24 hour period:
- (a) may be extended more than once; and
  - (b) must not be extended more than 3 times.

**242 Compensation for damage to electronic equipment**

- (1) This section applies if:
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- (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:
- Court** means:
- (a) the Federal Court; or
  - (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- damage**, in relation to data, includes damage by erasure of data or addition of other data.

## **Division 5—Occupier's rights and responsibilities**

### **243 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a monitoring warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the occupier or other person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **244 Occupier to provide inspector with facilities and assistance**

- (1) The occupier of premises to which a monitoring warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an inspector executing the warrant; and
  - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

## **Division 6—Monitoring warrants**

### **245 Monitoring warrants**

#### *Application for warrant*

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of:
  - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
  - (b) substantiating information provided under this Act or the associated provisions.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state that the warrant is issued for the purpose of:
    - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
    - (ii) substantiating information provided under this Act or the associated provisions; and

**Part 15** Monitoring powers

**Division 6** Monitoring warrants

**Section 245**

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- (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
  - (i) to enter the premises; and
  - (ii) to exercise the powers set out in Divisions 3 and 4 in relation to the premises; and
- (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.



## **Division 7—Powers of magistrates**

### **246 Powers of magistrates**

#### *Powers conferred personally*

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

#### *Powers need not be accepted*

- (2) The magistrate need not accept the power conferred.

#### *Protection and immunity*

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## Part 16—Liability of executive officers of bodies corporate

### 247 Simplified outline

The following is a simplified outline of this Part:

- If a body corporate contravenes a civil penalty provision, an executive officer of the body corporate will contravene a civil penalty provision in certain circumstances.

### 248 Civil penalties for executive officers of bodies corporate

- (1) If:
  - (a) a body corporate contravenes a civil penalty provision; and
  - (b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention;the officer contravenes this subsection.
- (2) For the purposes of subsection (1), the officer is **reckless** as to whether the contravention would occur if:
  - (a) the officer is aware of a substantial risk that the contravention would occur; and
  - (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.
- (3) For the purposes of subsection (1), the officer is **negligent** as to whether the contravention would occur if the officer's conduct involves:

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Section 249

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- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the contravention would occur;
- that the conduct merits the imposition of a pecuniary penalty.

*Civil penalty provision*

- (4) Subsection (1) is a civil penalty provision.

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

**249 Reasonable steps to prevent contravention**

- (1) For the purposes of section 248, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
    - (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
    - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
    - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware of the contravention.
- (2) This section does not limit section 248.

## Part 17—Civil penalty orders

### 250 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

### 251 References to Court

In this Part:

***Court*** means:

- (a) the Federal Court; or
- (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

### 252 Civil penalty orders

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a ***civil penalty order***.

*Determining amount of pecuniary penalty*

- (3) In determining the pecuniary penalty, the Court may have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and

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Section 252

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- (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the extent to which the person has co-operated with the authorities; and
  - (f) if the person is a body corporate:
    - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
    - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
    - (iii) whether the body corporate had a corporate culture conducive to compliance.
- (4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed:
- (a) in the case of a contravention of subsection 64(1) or (2)—the amount worked out under subsection (5); or
  - (b) in the case of a contravention of subsection 47(1) or (2) or 64(3) or (4)—500 penalty units for each contravention; or
  - (c) otherwise—10,000 penalty units for each contravention.
- (5) For the purposes of paragraph (4)(a), the amount is whichever is the greater of the following amounts:
- (a) if the court can determine the total value of the benefits that:
    - (i) have been obtained by one or more persons; and
    - (ii) are reasonably attributable to the contravention;3 times that total value;
  - (b) in any case—10,000 penalty units.
- (6) The pecuniary penalty payable under subsection (1) by a person other than a body corporate must not exceed:
- (a) in the case of a contravention of subsection 47(1) or (2) or 64(3) or (4)—100 penalty units for each contravention; or
  - (b) otherwise—2,000 penalty units for each contravention.

*Civil enforcement of penalty*

- (7) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it

## Section 253

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were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

### **253 Who may apply for a civil penalty order**

- (1) Only the Regulator may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

### **254 Two or more proceedings may be heard together**

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

### **255 Time limit for application for an order**

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

### **256 Civil evidence and procedure rules for civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

### **257 Civil proceedings after criminal proceedings**

The Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **258 Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and

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Section 259

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- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**259 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

**260 Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings**

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

**261 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and

## Section 262

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- (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

### 262 State of mind

#### *Scope*

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following civil penalty provisions:
  - (a) subsection 47(1);
  - (b) subsection 47(2);
  - (c) subsection 55B(1);
  - (d) subsection 55B(2);
  - (e) subsection 57(2);
  - (f) subsection 58(2);
  - (g) subsection 59(3);
  - (h) subsection 59(4);
  - (i) subsection 60(3);
  - (j) subsection 60(4);
  - (k) subsection 63(1);
  - (l) subsection 64(1);



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Section 263

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- (m) subsection 64(3);
- (n) subsection 66(1);
- (o) subsection 66(2);
- (p) subsection 66(3);
- (q) subsection 66(4);
- (r) subsection 71A(1);
- (s) subsection 151(1);
- (t) subsection 151(2);
- (u) subsection 218(2);
- (v) subsection 219(2);
- (w) subsection 221(4);
- (x) subsection 227(2);
- (y) subsection 228(2);
- (z) subsection 228(3).

*State of mind*

- (2) In the proceedings, it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 261.

**263 Continuing contraventions**

- (1) If an act or thing is required, under a civil penalty provision, to be done within a particular period, or before a particular time, then the obligation to do that act or thing continues (even if the period has expired or the time has passed) until the act or thing is done.
- (2) A person who contravenes any of the following civil penalty provisions:
  - (a) subsection 47(1);
  - (b) subsection 47(2);
  - (c) subsection 66(1);

**Section 263**

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- (d) subsection 66(2);
- (e) subsection 66(3);
- (f) subsection 66(4);
- (g) subsection 71A(1);
- (h) subsection 151(1);
- (i) subsection 218(2);
- (j) subsection 219(2);
- (k) subsection 221(4);

commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

- (3) The pecuniary penalty payable under subsection 252(1) for such a separate contravention in respect of a particular day must not exceed:
  - (a) in the case of a contravention of subsection 221(4)—10% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted; or
  - (b) otherwise—5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

## **Part 18—Infringement notices**

### **264 Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of a civil penalty provision as an alternative to the institution of court proceedings.

### **265 When an infringement notice can be given**

- (1) If the Regulator has reasonable grounds to believe that a person has contravened a civil penalty provision, the Regulator may give the person an infringement notice relating to the contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

### **266 Matters to be included in an infringement notice**

An infringement notice must:

- (a) set out the name of the person to whom the notice is given; and
- (b) set out the name of the person who gave the notice; and
- (c) set out brief details relating to the alleged contravention of a civil penalty provision, including the date of the alleged contravention; and
- (d) contain a statement to the effect that proceedings will not be brought in relation to the alleged contravention if the penalty specified in the notice is paid to the Regulator, on behalf of the Commonwealth, within:
  - (i) 28 days after the notice is given; or
  - (ii) if the Regulator allows a longer period—that longer period; and

## Section 267

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- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out the effect of section 268; and
- (g) set out such other matters (if any) as are specified in the regulations.

### 267 Amount of penalty

The penalty to be specified in an infringement notice given to a person must be a pecuniary penalty equal to one-fifth of the maximum penalty for contravening the civil penalty provision to which the notice relates.

### 268 Withdrawal of an infringement notice

- (1) This section applies if an infringement notice is given to a person.
- (2) The Regulator may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

- (4) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

### 269 What happens if the penalty is paid

- (1) This section applies if:
  - (a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.

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Section 270

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- (2) Any liability of the person for the alleged contravention is discharged.
- (3) Proceedings may not be brought against the person for the alleged contravention.

**270 Effect of this Part on civil penalty proceedings**

This Part does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or
- (b) affect the liability of a person to have proceedings brought against the person for an alleged contravention of a civil penalty provision if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings to have contravened a civil penalty provision.

**271 Regulations**

The regulations may make further provision in relation to infringement notices.

## **Part 19—Offences relating to unit shortfall charge and administrative penalties**

### **Division 1—Introduction**

#### **272 Simplified outline**

The following is a simplified outline of this Part:

- A person must not enter into a scheme:
  - (a) with the intention, knowledge or belief that the scheme will secure or achieve the result that a body corporate or trust will be unable to pay an amount of unit shortfall charge payable by the body corporate or trust; or
  - (b) if it would be reasonable to conclude that the person entered into the scheme for the sole or dominant purpose of securing or achieving the result that a body corporate or trust will be unable to pay an amount of unit shortfall charge payable by the body corporate or trust.
- A person must not enter into a scheme:
  - (a) with the intention, knowledge or belief that the scheme will secure or achieve the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act; or

Section 272

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| <p>(b) if it would be reasonable to conclude that the person entered into the scheme for the sole or dominant purpose of securing or achieving the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act.</p> |
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## **Division 2—Offences relating to unit shortfall charge**

### **273 Scheme to avoid existing liability to pay unit shortfall charge**

#### *Intention*

- (1) A person commits an offence if:
- (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
  - (b) at or after the time when the unit shortfall charge became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the unit shortfall charge.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (1); or
  - (b) a party to the scheme.

#### *Knowledge or belief*

- (3) A person commits an offence if:
- (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
  - (b) at or after the time when the unit shortfall charge became due and payable, the person entered into a scheme; and



- (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that the body corporate or trust:
  - (i) will be unable; or
  - (ii) will be likely to be unable; or
  - (iii) will continue to be unable; or
  - (iv) will be likely to continue to be unable;
 having regard to the other debts of the body corporate or trust, to pay the unit shortfall charge.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (3); or
  - (b) a party to the scheme.

*Objective purpose*

- (5) A person (the **first person**) commits an offence if:
  - (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
  - (b) at or after the time when the unit shortfall charge became due and payable, the first person entered into a scheme; and
  - (c) having regard to:
    - (i) the manner in which the scheme was entered into; and
    - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
    - (iii) the timing of the scheme;
 it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
    - (iv) will be unable; or

Section 274

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- (v) will be likely to be unable; or
- (vi) will continue to be unable; or
- (vii) will be likely to continue to be unable;  
to pay the unit shortfall charge.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the first person; or
  - (b) a party to the scheme.

**274 Scheme to avoid future liability to pay unit shortfall charge**

*Intention*

- (1) A person commits an offence if:
  - (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
  - (b) before the unit shortfall charge became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the unit shortfall charge, the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the unit shortfall charge.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (1); or

- (b) a party to the scheme.

*Knowledge or belief*

- (3) A person commits an offence if:
  - (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
  - (b) before the unit shortfall charge became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the unit shortfall charge, the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable;
 having regard to the other debts of the body corporate or trust, to pay the unit shortfall charge.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (3); or
  - (b) a party to the scheme.

*Objective purpose*

- (5) A person (the **first person**) commits an offence if:
    - (a) an amount of unit shortfall charge is payable by a body corporate or trust; and
    - (b) before the unit shortfall charge became due and payable, the first person entered into a scheme; and
    - (c) having regard to:
      - (i) the manner in which the scheme was entered into; and
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Section 274

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- (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
- (iii) the timing of the scheme;  
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the unit shortfall charge, the body corporate or trust:
  - (iv) will be unable; or
  - (v) will be likely to be unable; or
  - (vi) will continue to be unable; or
  - (vii) will be likely to continue to be unable; to pay the unit shortfall charge.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the first person; or
  - (b) a party to the scheme.

## **Division 3—Offences relating to administrative penalties**

### **275 Scheme to avoid existing liability to pay administrative penalty**

#### *Intention*

- (1) A person commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (1); or
  - (b) a party to the scheme.

#### *Knowledge or belief*

- (3) A person commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and

Section 275

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- (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that the body corporate or trust:
  - (i) will be unable; or
  - (ii) will be likely to be unable; or
  - (iii) will continue to be unable; or
  - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (3); or
  - (b) a party to the scheme.

*Objective purpose*

- (5) A person (the **first person**) commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) at or after the time when the penalty became due and payable, the first person entered into a scheme; and
  - (c) having regard to:
    - (i) the manner in which the scheme was entered into; and
    - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
    - (iii) the timing of the scheme;it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
    - (iv) will be unable; or

- (v) will be likely to be unable; or
- (vi) will continue to be unable; or
- (vii) will be likely to continue to be unable; to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the first person; or
  - (b) a party to the scheme.

## **276 Scheme to avoid future liability to pay administrative penalty**

### *Intention*

- (1) A person commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) before the penalty became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable; having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (1); or

Section 276

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- (b) a party to the scheme.

*Knowledge or belief*

- (3) A person commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) before the penalty became due and payable, the person entered into a scheme; and
  - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
    - (i) will be unable; or
    - (ii) will be likely to be unable; or
    - (iii) will continue to be unable; or
    - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the person mentioned in subsection (3); or
  - (b) a party to the scheme.

*Objective purpose*

- (5) A person (the **first person**) commits an offence if:
  - (a) a penalty is due and payable by a body corporate or trust under section 212; and
  - (b) before the penalty became due and payable, the first person entered into a scheme; and
  - (c) having regard to:
    - (i) the manner in which the scheme was entered into; and



- (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
- (iii) the timing of the scheme;  
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
  - (iv) will be unable; or
  - (v) will be likely to be unable; or
  - (vi) will continue to be unable; or
  - (vii) will be likely to continue to be unable; to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
  - (a) the first person; or
  - (b) a party to the scheme.

## **Part 20—Enforceable undertakings**

### **277 Simplified outline**

The following is a simplified outline of this Part:

- A person may give the Regulator an enforceable undertaking about compliance with this Act or the associated provisions.

### **278 Acceptance of undertakings**

- (1) The Regulator may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act or the associated provisions, or is unlikely to contravene this Act or the associated provisions, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Regulator.
- (4) The Regulator may, by written notice given to the person, cancel the undertaking.
- (5) The Regulator must publish the undertaking on the Regulator's website.

**279 Enforcement of undertakings**

- (1) If:
- (a) a person has given an undertaking under section 278; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Regulator considers that the person has breached the undertaking;
- the Regulator may apply to a Court for an order under subsection (2) of this section.
- (2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Regulator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.
- (3) In this section:
- Court** means:
- (a) the Federal Court; or
  - (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

## Part 21—Review of decisions

### 280 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of delegates of the Regulator may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the Regulator.
- Certain decisions of the Regulator may be reviewed by the Administrative Appeals Tribunal.

### 281 Reviewable decisions

For the purposes of this Act, each of the following decisions of the Regulator is a *reviewable decision*:

Reviewable decisions	
Item	Decision
1	A decision to make a determination under paragraph (b) of the definition of <i>nameplate rating</i> in section 5.
2	A decision to make a determination under subsection 29(3).
3	A decision to refuse to issue an OTN under section 40.
4	A decision to refuse to give consent to the surrender of an OTN under section 42.
5	A decision to cancel an OTN under section 43.
6	A decision to refuse to declare that a person is an approved person for the purposes of the application of subsection 56(2) in relation to an eligible financial year.
7	A decision to refuse to make a declaration under section 70.
8	A decision under subsection 72(3) to revoke a declaration under section 70.
9	A decision to make a determination under subsection 76(2).

## Section 281

<b>Reviewable decisions</b>	
<b>Item</b>	<b>Decision</b>
10	A decision to make a determination under subsection 77(1).
11	A decision to refuse to issue a liability transfer certificate under section 83 or 87.
12	A decision to refuse to give consent to the surrender of a liability transfer certificate under section 89.
13	A decision to cancel a liability transfer certificate under section 90.
14	A prescribed decision under the Opt-in Scheme.
15	A decision under subsection 106(6) to refuse to extend a period.
16	A decision to refuse to make an entry in a Registry account under section 109.
17	A prescribed decision under a subsection 113(1) determination.
18	A decision to make an assessment under section 119.
19	A decision under subsection 119(4) to amend an assessment under section 119.
20	A decision under subsection 119(4) to refuse to amend an assessment under section 119.
21	A decision to make an assessment under section 120.
22	A decision under subsection 120(4) to amend an assessment under section 120.
23	A decision under subsection 120(4) to refuse to amend an assessment under section 120.
24	A decision to refuse to remit the whole or a part of an amount under subsection 130(2).
25	A decision to refuse to remit a part of an amount under subsection 134A(2).
26	A decision to refuse to remit the whole or a part of an amount under subsection 135(2).
27	A decision to make an assessment under section 141.
28	A decision under subsection 141(3) to amend an assessment under section 141.
29	A decision under subsection 141(3) to refuse to amend an assessment under section 141.
30	A prescribed decision under the Jobs and Competitiveness Program.
31	A decision to refuse to issue a certificate of eligibility for coal-fired

Section 282

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**Reviewable decisions**

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Item	Decision
	generation assistance under section 165.
32	A decision under subsection 165(3) to state that a specified number is the annual assistance factor in respect of a generation complex.
33	A decision to make a determination under paragraph 171(7)(b).
34	A decision under section 184 to refuse to remove an entry for a person in the Information Database.
35	A decision to refuse to remit the whole or a part of an amount under subsection 213(2).

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**282 Applications for reconsideration of decisions made by delegates of the Regulator**

*Scope*

- (1) This section applies to a reviewable decision if the decision is made by a delegate of the Regulator.

*Application*

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Regulator for the Regulator to reconsider the decision.
- (3) The application must:
- (a) be in a form approved in writing by the Regulator; and
  - (b) set out the reasons for the application; and
  - (c) be accompanied by the fee (if any) specified in a legislative instrument made by the Regulator.
- (4) The application must be made within:
- (a) 28 days after the applicant is informed of the decision; or
  - (b) if, either before or after the end of that period of 28 days, the Regulator extends the period within which the application may be made—the extended period.
- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.

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**Section 283**

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- (6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

**283 Reconsideration by the Regulator**

- (1) Upon receiving such an application, the Regulator must:
  - (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) The Regulator's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The Regulator must give to the applicant a written notice stating its decision on the reconsideration.
- (4) Within 28 days after making its decision on the reconsideration, the Regulator must give the applicant a written statement of its reasons for its decision.

**284 Deadline for reconsideration**

- (1) The Regulator must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The Regulator is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

**285 Review by the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal to review a reviewable decision if the Regulator has affirmed or varied the decision under section 283.
- (2) Applications may be made to the Administrative Appeals Tribunal to review a reviewable decision if the decision was not made by a delegate of the Regulator.

Section 286

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**286 Stay of proceedings for the recovery of unit shortfall charge or late payment penalty**

*Scope*

- (1) This section applies if:
  - (a) proceedings for the recovery of either of the following amounts are before a court:
    - (i) an amount of unit shortfall charge;
    - (ii) an amount under section 135; and
  - (b) in the proceedings, it is alleged that a person had a unit shortfall for an eligible financial year; and
  - (c) the Regulator has made an assessment under section 141 of the unit shortfall; and
  - (d) any of the following subparagraphs applies:
    - (i) a decision to make, to amend, or to refuse to amend, the assessment is being reconsidered by the Regulator under section 283;
    - (ii) a decision to make, to amend, or to refuse to amend, the assessment has been affirmed or varied by the Regulator under section 283, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
    - (iii) a decision to make, to amend, or to refuse to amend, the assessment is the subject of an application for review by the Administrative Appeals Tribunal.

*Stay of proceedings*

- (2) The court may stay the proceedings until:
  - (a) if subparagraph (1)(d)(i) applies—the Regulator notifies the applicant for reconsideration of the Regulator’s decision on the reconsideration; or
  - (b) if subparagraph (1)(d)(ii) or (iii) applies—the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.
- (3) This section does not limit the power of:
  - (a) a court; or



Section 286

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- (b) a Judge; or
  - (c) a magistrate;
- under any other law to order a stay of proceedings.

## **Part 22—Reviews by the Climate Change Authority**

### **Division 1—Simplified outline**

#### **287 Simplified outline**

The following is a simplified outline of this Part:

- The Climate Change Authority must conduct periodic reviews of:
  - (a) this Act and the associated provisions; and
  - (b) the level of carbon pollution caps; and
  - (c) any indicative national emissions trajectory and national carbon budget; and
  - (d) progress in achieving Australia's emission reduction targets and any national carbon budget.
- In addition to periodic reviews, the Climate Change Authority is to conduct a review of matters relating to this Act and the associated provisions if requested to do so by:
  - (a) the Minister; or
  - (b) both Houses of the Parliament.

## **Division 2—Periodic reviews of this Act and the associated provisions**

### **288 Periodic reviews of this Act and the associated provisions to be conducted by the Climate Change Authority**

- (1) Reviews of the following matters are to be conducted by the Climate Change Authority:
  - (a) the effectiveness and efficiency of this Act and the associated provisions, including:
    - (i) the effectiveness of reporting requirements imposed on liable entities; and
    - (ii) the effectiveness of the coverage of emissions, and potential emissions, of greenhouse gases; and
    - (iii) administrative costs incurred by liable entities in complying with this Act and the associated provisions; and
    - (iv) administrative costs incurred by liable entities in surrendering units to avoid being liable to pay unit shortfall charge;
  - (b) whether there should be any changes to Australia's medium-term and long-term targets and carbon budget for reducing net greenhouse gas emissions;
  - (c) the process that should apply to the setting of carbon pollution caps;
  - (d) policies and procedures that should apply to the auctioning of carbon units;
  - (e) the provisions that should apply in relation to the issue of carbon units for a fixed charge (to act as a cap);
  - (f) the provisions that should apply in relation to minimum reserve charges for the issue of carbon units as a result of an auction (to act as a floor);
  - (g) the provisions that should apply in relation to charges for the surrender of eligible international emissions units (to act as a floor);

**Section 288**

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- (h) the extent to which units other than carbon units should be able to be surrendered;
- (i) the extent to which a liable entity should be able to avoid liability for unit shortfall charge in relation to an eligible financial year by surrendering a carbon unit with a vintage year that is later than the eligible financial year;
- (j) the arrangements for the governance and administration of this Act and the associated provisions, including:
  - (i) the functions and powers of the Clean Energy Regulator; and
  - (ii) the Minister's power to give directions to the Clean Energy Regulator; and
  - (iii) the other powers of the Minister;
- (k) the relationship between:
  - (i) this Act and the associated provisions; and
  - (ii) the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- (l) such other matters (if any) that:
  - (i) are specified in a written instrument given by the Minister to the Chair of the Climate Change Authority; and
  - (ii) relate to this Act and the associated provisions.

*Timing of reviews*

- (2) The first review must be completed before the end of 31 December 2016.
- (3) The second review must be completed before the end of 31 December 2018.
- (4) Each subsequent review must be completed within 5 years after the deadline for completion of the previous review.
- (5) For the purposes of subsections (2), (3) and (4), a review is completed when the report of the review is given to the Minister under section 292.

*Consultation*

- (6) In conducting a review, the Climate Change Authority must make provision for public consultation.

*Instrument*

- (7) An instrument given under paragraph (1)(l) is not a legislative instrument.

**289 Periodic reviews of the level of carbon pollution caps etc.**

- (1) Reviews of the following matters are to be conducted by the Climate Change Authority:
- (a) the level of carbon pollution caps;
  - (b) any indicative national emissions trajectory and national carbon budget.

*Relevant matters*

- (2) In conducting a review, the Climate Change Authority must have regard to the following matters:
- (a) Australia's international obligations under international climate change agreements;
  - (b) undertakings relating to the reduction of greenhouse gas emissions that Australia has given under international climate change agreements;
  - (c) Australia's medium-term and long-term targets for reducing net greenhouse gas emissions;
  - (d) progress towards the reduction of greenhouse gas emissions;
  - (e) global action to reduce greenhouse gas emissions;
  - (f) estimates of the global greenhouse gas emissions budget;
  - (g) the economic and social implications associated with various levels of carbon pollution caps;
  - (h) voluntary action to reduce Australia's greenhouse gas emissions;
  - (i) estimates of greenhouse gas emissions that are not covered by this Act;

**Section 289**

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- (j) estimates of the number of Australian carbon credit units that are likely to be issued;
- (k) the extent (if any) of non-compliance with this Act and the associated provisions;
- (l) the extent (if any) to which liable entities have failed to surrender sufficient units to avoid liability for unit shortfall charge;
- (m) any acquisitions, or proposed acquisitions, by the Commonwealth of eligible international emissions units;
- (n) such other matters (if any) as the Climate Change Authority considers relevant.

*Timing of reviews*

- (3) The first review must be completed before the end of 28 February 2014.
- (4) The second review must be completed before the end of 28 February 2016.
- (5) Each subsequent review must be completed within 12 months after the deadline for completion of the previous review.
- (6) For the purposes of subsections (3), (4) and (5), a review is completed when the report of the review is given to the Minister under section 292.

*Consultation*

- (7) In conducting a review, the Climate Change Authority must make provision for public consultation.

*Report*

- (8) The report of the first review must set out recommendations relating to the level of carbon pollution caps for each of the first 5 flexible charge years.
- (9) The report of a subsequent review must set out a recommendation relating to the level of the carbon pollution cap for the flexible charge year next following the last flexible charge year for which a

corresponding recommendation was made in the report of the previous review.

- (10) A report of a review must set out recommendations for an indicative national emissions trajectory and a national carbon budget.
- (11) A report of a review must deal with the extent to which any indicative national emissions trajectory and national carbon budget are expected to be met by:
  - (a) emissions that are reflected in the provisional emissions numbers of liable entities; and
  - (b) emissions that:
    - (i) are attributable to activities in the Australian economy; and
    - (ii) are not reflected in the provisional emissions numbers of liable entities; and
  - (c) the purchase of eligible international emission units (whether by the Commonwealth or other persons).

## **290 Updated review of the level of the carbon pollution cap for 2020-21**

### *Scope*

- (1) This section applies if, as at 1 November 2014, there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for the flexible charge year beginning on 1 July 2015.
- (2) The Climate Change Authority must conduct a review of the level of the carbon pollution cap for the flexible charge year beginning on 1 July 2020.

### *Relevant matters*

- (3) In conducting the review, the Climate Change Authority must have regard to the matters set out in subsection 289(2).

**Section 291**

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*Timing of review*

- (4) The review must be completed before the end of 28 February 2015.
- (5) For the purposes of subsection (4), a review is completed when the report of the review is given to the Minister under section 292.

*Consultation*

- (6) In conducting the review, the Climate Change Authority must make provision for public consultation.

**291 Periodic reviews of progress in achieving Australia's emission reduction targets and national carbon budget**

- (1) Reviews of the following matters are to be conducted by the Climate Change Authority:
  - (a) progress in achieving Australia's medium-term and long-term targets for the reduction of net greenhouse gas emissions;
  - (b) progress in achieving any national carbon budget.

*Relevant matters*

- (2) In conducting a review, the Climate Change Authority must have regard to the following:
  - (a) the level of greenhouse gas emissions in Australia;
  - (b) the level of purchases of eligible international emissions units (whether by the Commonwealth or other persons);
  - (c) the level of greenhouse gas emissions that:
    - (i) are attributable to activities in the Australian economy; and
    - (ii) are not reflected in the provisional emissions numbers of liable entities;
  - (d) voluntary action to reduce greenhouse gas emissions;
  - (e) such other matters (if any) as the Climate Change Authority considers relevant.



*Timing of reviews etc.*

- (3) The first review must be completed before the end of 28 February 2014.
- (4) Each subsequent review must be completed within 12 months after the deadline for completion of the previous review.
- (5) For the purposes of subsections (3) and (4), a review is completed when the report of the review is given to the Minister under section 292.

*Consultation*

- (6) In conducting a review, the Climate Change Authority must make provision for public consultation.

**292 Report of review**

- (1) The Climate Change Authority must:
  - (a) prepare a report of a review under section 288, 289, 290 or 291; and
  - (b) give the report to the Minister; and
  - (c) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.
- (2) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

*Recommendations*

- (3) The report may set out recommendations to the Commonwealth Government.
- (4) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

Section 292

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- (5) Subsection (4) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.
- (6) If a report sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

*Government response to recommendations*

- (7) If a report sets out one or more recommendations to the Commonwealth Government:
  - (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  - (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.
- (8) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
  - (a) the Regulator;
  - (b) such other persons as the Minister considers relevant.

**Division 3—Other reviews****293 Reviews of this Act and the associated provisions to be conducted by the Climate Change Authority at the request of the Minister or the Parliament***Scope*

- (1) This section applies if:
  - (a) either:
    - (i) the Minister, by written instrument given to the Chair of the Climate Change Authority, requests the Climate Change Authority to conduct a review under this section of such matters as are specified in the instrument; or
    - (ii) both Houses of the Parliament, by resolution, request the Climate Change Authority to conduct a review under this section of such matters as are specified in the resolution; and
  - (b) the matters specified in the instrument or resolution, as the case may be, are covered by subsection (4).

*Review*

- (2) The Climate Change Authority must conduct a review of those matters.

*Consultation*

- (3) In conducting a review, the Climate Change Authority must make provision for public consultation.

*Covered matters*

- (4) This subsection covers the following matters:
  - (a) the effectiveness and efficiency of this Act and the associated provisions, including:
    - (i) the effectiveness of reporting requirements imposed on liable entities; and

**Section 293**

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- (ii) the effectiveness of the coverage of emissions, and potential emissions, of greenhouse gases; and
  - (iii) administrative costs incurred by liable entities in complying with this Act and the associated provisions;
  - (iv) administrative costs incurred by liable entities in surrendering units to avoid being liable to pay unit shortfall charge;
- (b) whether there should be any changes to Australia's medium-term and long-term targets and carbon budget for reducing net greenhouse gas emissions;
- (c) the process that should apply to the setting of carbon pollution caps;
- (d) policies and procedures that should apply to the auctioning of carbon units;
- (e) the provisions that should apply in relation to the issue of carbon units for a fixed charge (to act as a cap);
- (f) the provisions that should apply in relation to minimum reserve charges for the issue of carbon units as a result of an auction (to act as a floor);
- (g) the provisions that should apply in relation to charges for the surrender of eligible international emissions units (to act as a floor);
- (h) the extent to which units other than carbon units should be able to be surrendered;
- (i) the extent to which a liable entity should be able to avoid liability for unit shortfall charge in relation to an eligible financial year by surrendering a carbon unit with a vintage year that is later than the eligible financial year;
- (j) the arrangements for the governance and administration of this Act and the associated provisions, including:
  - (i) the functions and powers of the Clean Energy Regulator; and
  - (ii) the Minister's power to give directions to the Clean Energy Regulator; and
  - (iii) the other powers of the Minister;
- (k) the relationship between:
  - (i) this Act and the associated provisions; and

- (ii) the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

*Instrument*

- (5) An instrument given under subparagraph (1)(a)(i) is not a legislative instrument.

**294 Report of review**

- (1) The Climate Change Authority must:
- (a) prepare a report of a review under section 293; and
  - (b) give the report to the Minister; and
  - (c) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.
- (2) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

*Recommendations*

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

*Government response to recommendations*

- (7) If a report sets out one or more recommendations to the Commonwealth Government:

Section 294

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- (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  - (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.
- (8) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
  - (a) the Regulator;
  - (b) such other persons as the Minister considers relevant.

**Part 23—Miscellaneous****295 Miscellaneous functions of the Regulator**

The Regulator has the following functions:

- (a) to monitor compliance with this Act and the associated provisions;
- (b) to monitor the extent to which persons have taken steps, by way of the surrender of carbon units, to avoid being liable to pay unit shortfall charge;
- (c) to promote compliance with:
  - (i) this Act; and
  - (ii) the associated provisions;
- (d) to conduct and/or co-ordinate education programs about:
  - (i) this Act; and
  - (ii) the associated provisions; and
  - (iii) emissions trading schemes;
- (e) to advise the Minister on matters relating to:
  - (i) this Act and the associated provisions; and
  - (ii) emissions trading schemes;
- (f) to advise and assist persons in relation to their obligations under this Act and the associated provisions;
- (g) to advise and assist persons in relation to the steps that can be taken, by way of the surrender of eligible emissions units, to avoid being liable to pay unit shortfall charge;
- (h) to advise and assist the representatives of persons in relation to compliance by persons with:
  - (i) this Act; and
  - (ii) the associated provisions;
- (i) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about co-operative arrangements for matters relating to:
  - (i) this Act; and
  - (ii) the associated provisions; and

Section 296

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- (iii) emissions trading schemes;
- (j) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act and the associated provisions.

**296 Computerised decision-making**

- (1) The Regulator may, by instrument in writing, arrange for the use, under the Regulator's control, of computer programs for any purposes for which the Regulator may, or must, under this Act or the regulations:
  - (a) make a decision; or
  - (b) exercise any power or comply with any obligation; or
  - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) For the purposes of this Act and the regulations, the Regulator is taken to have:
  - (a) made a decision; or
  - (b) exercised a power or complied with an obligation; or
  - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.
- (3) An instrument made under subsection (1) is not a legislative instrument.

**297 Regulator's power to require further information**

*Applications*

- (1) If:
  - (a) a person makes an application to the Regulator under this Act; and
  - (b) the Regulator exercises a power, under another provision of this Act, to require the applicant to give the Regulator further information in connection with the application;the Regulator:



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Section 297A

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- (c) must ensure that the further information is relevant to the matter to which the application relates; and
- (d) must ensure that the power is exercised in a reasonable way.

*Requests*

- (2) If:
  - (a) a person makes a request to the Regulator under this Act; and
  - (b) the Regulator exercises a power, under another provision of this Act, to require the person to give the Regulator further information in connection with the request;the Regulator:
  - (c) must ensure that the further information is relevant to the matter to which the request relates; and
  - (d) must ensure that the power is exercised in a reasonable way.

**297A Actions may be taken by an agent of a person**

- (1) The principles of agency apply in relation to the taking, by a person, of any of the following actions under this Act or the associated provisions:
  - (a) making an application;
  - (b) withdrawing an application;
  - (c) making a request;
  - (d) giving a notice (including an electronic notice);
  - (e) giving an instruction;
  - (f) giving information;
  - (g) giving a report;
  - (h) giving a plan;
  - (i) making a payment.
- (2) For example, the person may authorise another person to be the person's agent for the purposes of making an application under this Act or the associated provisions on the person's behalf.
- (3) To avoid doubt, this section does not, by implication, limit the application of the principles of agency to other matters arising under this Act or the associated provisions.

## Section 298

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### 298 Delegation by the Minister

- (1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Act or the regulations to:
  - (a) the Secretary; or
  - (b) an SES employee, or acting SES employee, in the Department.

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

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

### 299 Delegation by a State Minister or a Territory Minister

- (1) A Minister of a State or Territory may, by writing, delegate any or all of his or her functions or powers under this Act to a person who:
  - (a) is an officer or employee of the State or Territory, as the case may be; and
  - (b) holds or performs the duties of an office or position that is equivalent to a position occupied by an SES employee in the Australian Public Service.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister of the State or the Minister of the Territory, as the case may be.

### 300 Delegation by the Secretary

- (1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act or the regulations to an SES employee, or acting SES employee, in the Department.

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

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

**301 Concurrent operation of State and Territory laws**

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

**302 Law relating to legal professional privilege not affected**

This Act does not affect the law relating to legal professional privilege.

**303 Arrangements with States and Territories***States*

- (1) The Minister may make arrangements with a Minister of a State with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of that State.
- (2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

*Australian Capital Territory*

- (3) The Minister may make arrangements with a Minister of the Australian Capital Territory with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory.
- (4) The Minister may arrange with a Minister of the Australian Capital Territory with whom an arrangement is in force under subsection (3) for the variation or revocation of the arrangement.

*Northern Territory*

- (5) The Minister may make arrangements with a Minister of the Northern Territory with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory.

## Section 303A

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- (6) The Minister may arrange with a Minister of the Northern Territory with whom an arrangement is in force under subsection (5) for the variation or revocation of the arrangement.

### *Norfolk Island*

- (7) The Minister may make arrangements with a Minister of Norfolk Island with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island.
- (8) The Minister may arrange with a Minister of Norfolk Island with whom an arrangement is in force under subsection (7) for the variation or revocation of the arrangement.

### *Gazettal*

- (9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

### *Legislative Instruments Act*

- (10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

## **303A Contracts and arrangements to protect energy security**

- (1) The Treasurer may authorise the making of contracts and arrangements by the Commonwealth, where each contract or arrangement is made:
  - (a) for the purpose of protecting energy security in Australia; and
  - (b) with a constitutional corporation.
- (2) The Consolidated Revenue Fund is appropriated for the purposes of paying amounts payable by the Commonwealth under a contract or arrangement authorised under subsection (1).
- (3) Section 307 does not apply to this section.

**303B Loans to owners etc. of emissions-intensive coal-fired generation complexes***Loans to purchase future carbon units*

- (1) The Treasurer may authorise loans of money (whether secured or unsecured) by the Commonwealth, where each loan is made:
  - (a) for the purpose of purchasing future carbon units at an auction conducted by the Regulator during:
    - (i) the first financial year during which future carbon units are issued; or
    - (ii) either of the next 2 financial years; and
  - (b) to a person who:
    - (i) owns, controls or operates an emissions-intensive coal-fired generation complex; and
    - (ii) is a constitutional corporation.

*Loans to refinance existing loans*

- (2) The Treasurer may authorise loans of money (whether secured or unsecured) by the Commonwealth, where each loan is made:
  - (a) for the purpose of refinancing another loan that relates (in whole or in part) to an emissions-intensive coal-fired generation complex; and
  - (b) to a person who:
    - (i) owns, controls or operates the generation complex; and
    - (ii) is a constitutional corporation; and
  - (c) during the period of 3 years beginning at the commencement of this section.

*Appropriation*

- (3) The Consolidated Revenue Fund is appropriated for the purposes of making a loan authorised under subsection (1) or (2).

*Emissions-intensive coal-fired generation complex*

- (4) For the purposes of this section, an ***emissions-intensive coal-fired generation complex*** is a generation complex, where:

## Section 304

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- (a) at least 95% of the electricity generated by the generation complex during the period:
  - (i) beginning on 1 July 2008; and
  - (ii) ending on 30 June 2010;was attributable to the combustion of coal; and
- (b) the emissions intensity of the generation complex is greater than 0.80.

Note: For *emissions intensity*, see section 168.

- (5) For the purposes of subsection (4), disregard subsection 168(2) in working out the emissions intensity of a generation complex.

### *Future carbon unit*

- (6) For the purposes of this section, a *future carbon unit* is a carbon unit:
  - (a) with a particular vintage year; and
  - (b) that is issued as a result of an auction conducted by the Regulator before the start of the vintage year.

### *Transitional—definitions*

- (7) For the purposes of this section, if a term used in this section is defined in section 5 or 168, the definition has effect, during the period:
  - (a) beginning at the commencement of this section; and
  - (b) ending at the commencement of sections 5 and 168;as if sections 5 and 168 had commenced at the same time as this section.

### *Constitutional basis*

- (8) Section 307 does not apply to this section.

## 304 Liability for damages

None of the following:

- (a) the Minister;
- (b) a delegate of the Minister;

- (c) the Regulator;
- (d) an official of the Regulator;
- (e) a delegate of the Regulator;
- (f) the appropriate energy market operator in relation to a generation complex;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

- (g) in the performance or purported performance of any function;  
or
- (h) in the exercise or purported exercise of any power;  
conferred by this Act or the associated provisions.

### **305 Executive power of the Commonwealth**

This Act does not, by implication, limit the executive power of the Commonwealth.

### **306 Notional payments by the Commonwealth**

- (1) The purpose of this section is to ensure that amounts payable under this Act are notionally payable by the Commonwealth (or parts of the Commonwealth).
- (2) The Minister responsible for administering the *Financial Management and Accountability Act 1997* may give written directions for the purposes of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

### **307 Alternative constitutional basis**

- (1) Without limiting its effect apart from this section, this Act and the associated provisions also have effect as provided by this section.

*External affairs*

- (2) This Act and the associated provisions also have the effect they would have if:

Section 307

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- (a) subsections (3) to (8) had not been enacted; and
- (b) this Act and the associated provisions did not apply except to the extent to which they relate to:
  - (i) matters of international concern; or
  - (ii) matters external to Australia.

*Taxation*

- (3) This Act and the associated provisions also have the effect they would have if:
  - (a) subsections (2), (4), (5), (6), (7) and (8) had not been enacted; and
  - (b) this Act and the associated provisions did not apply except to the extent to which they relate to taxation.

*Limited types of liable entities*

- (4) This Act and the associated provisions also have the effect they would have if:
  - (a) subsections (2), (3), (5) and (6) had not been enacted; and
  - (b) each reference in this Act and the associated provisions to a liable entity were, by express provision, confined to a liable entity who is:
    - (i) a constitutional corporation; or
    - (ii) the Commonwealth; or
    - (iii) an authority of the Commonwealth.

*Limited types of facilities*

- (5) This Act and the associated provisions also have the effect they would have if subsections (2), (3), (4) and (6) had not been enacted and each reference in this Act and the associated provisions to a facility were, by express provision, confined to a facility:
  - (a) in a Territory; or
  - (b) outside Australia; or
  - (c) in a Commonwealth place; or
  - (d) over which the Commonwealth, or an authority of the Commonwealth, has operational control; or



- (e) operated in the course of, or in relation to, any of the following:
  - (i) trade or commerce between Australia and places outside Australia;
  - (ii) trade or commerce among the States;
  - (iii) trade or commerce within a Territory, between a State or Territory or between 2 Territories.

*Limited types of supply or re-supply*

- (6) This Act and the associated provisions also have the effect they would have if subsections (2), (3), (4) and (5) had not been enacted and each reference in this Act and the associated provisions to supply or re-supply were, by express provision, confined to supply or re-supply:
  - (a) in a Territory; or
  - (b) outside Australia; or
  - (c) in a Commonwealth place; or
  - (d) by the Commonwealth or an authority of the Commonwealth; or
  - (e) in the course of, or in relation to, any of the following:
    - (i) trade or commerce between Australia and places outside Australia;
    - (ii) trade or commerce among the States;
    - (iii) trade or commerce within a Territory, between a State or Territory or between 2 Territories.

*Jobs and Competitiveness Program*

- (7) This Act and the associated provisions also have the effect they would have if the reference in subsection 145(1) to the issue of free carbon units were, by express provision, confined to the issue of free carbon units to a person who is:
  - (a) a constitutional corporation; or
  - (b) the Commonwealth; or
  - (c) an authority of the Commonwealth.

Section 308

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*Coal-fired electricity generation*

- (8) This Act and the associated provisions also have the effect they would have if this Act provided that a person is not entitled to make an application under section 162 for a certificate of eligibility for coal-fired generation assistance unless the person is:
- (a) a constitutional corporation; or
  - (b) the Commonwealth; or
  - (c) an authority of the Commonwealth.

*Associated provisions*

- (9) For the purposes of this section, ***associated provisions*** does not include the following provisions:
- (a) the provisions of the *Clean Energy (Charges—Excise) Act 2011*;
  - (b) the provisions of the *Clean Energy (Charges—Customs) Act 2011*;
  - (c) the provisions of the *Clean Energy (Unit Issue Charge—Auctions) Act 2011*;
  - (d) the provisions of the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*;
  - (e) the provisions of the *Clean Energy (Unit Shortfall Charge—General) Act 2011*;
  - (f) the provisions of the *Clean Energy (International Unit Surrender Charge) Act 2011*.

**308 Compensation for acquisition of property**

- (1) If the operation of this Act or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **309 Prescribing matters by reference to other instruments**

- (1) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (3) If the regulations make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (4) Subsection (3) does not apply if the publication would infringe copyright.

### **310 Administrative decisions under the regulations**

The regulations may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

### **311 Transitional—definitions**

#### *Scope*

- (1) This section applies to a definition in section 5 if that definition defines an expression to have the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

## Section 312

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### *Transitional*

- (2) The definition has effect as if the amendments of the *National Greenhouse and Energy Reporting Act 2007* made by Part 2 of Schedule 1 to the *Clean Energy (Consequential Amendments) Act 2011* had commenced at the same time as section 3 of this Act.

## **312 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 13 September 2011  
Senate on 12 October 2011]*

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(168/11)