

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (10/03/2009)

Carbon Pollution Reduction Scheme Bill 2009

No. , 2009

(Climate Change and Water)

**A Bill for an Act to reduce pollution caused by
emissions of carbon dioxide and other greenhouse
gases, and for other purposes**

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EXPOSURE DRAFT

1 **A Bill for an Act to reduce pollution caused by**
2 **emissions of carbon dioxide and other greenhouse**
3 **gases, and for other purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 [^]1 **Short title**

8 This Act may be cited as the *Carbon Pollution Reduction Scheme*
9 *Act 2009*.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^2

1 **^2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections ^1 and ^2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections ^3 to ^387	The 28th day after the day on which this Act receives the Royal Assent. However, if: (a) the <i>Australian Climate Change Regulatory Authority Act 2009</i> ; and (b) the <i>Carbon Pollution Reduction Scheme (Charges—Customs) Act 2009</i> ; and (c) the <i>Carbon Pollution Reduction Scheme (Charges—Excise) Act 2009</i> ; and (d) the <i>Carbon Pollution Reduction Scheme (Charges—General) Act 2009</i> ; and (e) the <i>Carbon Pollution Reduction Scheme (Consequential Amendments) Act 2009</i> ; do not receive the Royal Assent on or before the 28th day after the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	

- 7 Note: This table relates only to the provisions of this Act as originally
8 passed by both Houses of the Parliament and assented to. It will not be
9 expanded to deal with provisions inserted in this Act after assent.

- 1 (2) Column 3 of the table contains additional information that is not
2 part of this Act. Information in this column may be added to or
3 edited in any published version of this Act.

4 ^3 Objects

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

6 *Climate Change Convention and Kyoto Protocol*

- 7 (2) The first object of this Act is to give effect to Australia's
8 obligations under:
9 (a) the Climate Change Convention; and
10 (b) the Kyoto Protocol.

11 *Global response to climate change*

- 12 (3) The second object of this Act is to support the development of an
13 effective global response to climate change.

14 *Long-term targets*

- 15 (4) The third object of this Act is:
16 (a) to take action directed towards meeting Australia's targets of:
17 (i) reducing greenhouse gas emissions to 60% below 2000
18 levels by 2050; and
19 (ii) reducing greenhouse gas emissions to between 5% and
20 15% below 2000 levels by 2020; and
21 (b) to do so in a flexible and cost-effective way.

22 ^4 Simplified outline

23 The following is a simplified outline of this Act:

- 24 • This Act sets up a scheme to reduce pollution caused by
25 emissions of carbon dioxide and other greenhouse gases.
26 • The scheme begins on 1 July 2010, and operates on a financial
27 year basis.

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- The scheme is administered by the Australian Climate Change Regulatory Authority.
- A person who is responsible for greenhouse gas emitted from the operation of a facility must surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the gas.
- A person who imports, manufactures or supplies synthetic greenhouse gas must surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the gas.
- A person who imports, produces or supplies eligible upstream fuel must surrender one eligible emissions unit for each tonne of carbon dioxide equivalence of the potential greenhouse gas emissions embodied in the fuel.
- Each of the following units are eligible emissions units:
 - (a) Australian emissions units issued under this Act;
 - (b) certain Kyoto units;
 - (c) certain non-Kyoto international emissions units.
- Most Australian emissions units will be issued as the result of an auction.
- A national scheme cap limits the total number of auctioned Australian emissions units.
- Some Australian emissions units may be issued free of charge or for a fixed charge.
- Australian emissions units are transferable.

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^5 Definitions

In this Act:

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1 **account number**, in relation to a Registry account, has the meaning
2 given by subsection ^146(3).

3 **acquire**, in relation to an Australian emissions unit, includes
4 acquire by way of the issue of the unit.

5 **alter** the Registry, includes:

- 6 (a) make an entry in the Registry; and
7 (b) remove an entry from the Registry.

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

10 **approved synthetic greenhouse gas destruction facility** has the
11 same meaning as in the *Ozone Protection and Synthetic*
12 *Greenhouse Gas Management Regulations 1995*.

13 [*Note: this anticipates an amendment of the Ozone Protection and*
14 *Synthetic Greenhouse Gas Management Regulations*]

15 **assigned amount unit** means an assigned amount unit issued in
16 accordance with the relevant provisions of the Kyoto rules. It is
17 immaterial whether the unit was issued in or out of Australia.

18 **associated provisions** means the following provisions:

- 19 (a) the provisions of the regulations;
20 (b) sections 22A and 22B of the *National Greenhouse and*
21 *Energy Reporting Act 2007*;
22 (c) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and
23 137.2 of the *Criminal Code*, in so far as those sections relate
24 to:
25 (i) this Act; or
26 (ii) the regulations; or
27 (iii) section 22A of the *National Greenhouse and Energy*
28 *Reporting Act 2007*.

29 **auction**, when used in relation to an Australian emissions unit,
30 includes a process that involves inviting persons to declare what
31 they would be willing to pay by way of a charge for the acquisition
32 of the unit.

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

3 **Australian emissions unit** means a unit issued under section ^83.

4 **Authority** means the Australian Climate Change Regulatory
5 Authority.

6 **benchmark average auction price** has the meaning given by
7 section ^141.

8 **black coal** has the same meaning as in the *National Greenhouse
9 and Energy Reporting Regulations 2008*.

10 *[Note: this anticipates an amendment of the NGER Regulations]*

11 **brown coal** has the same meaning as in the *National Greenhouse
12 and Energy Reporting Regulations 2008*.

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

- 14 (a) a Saturday; or
15 (b) a Sunday; or
16 (c) a public holiday in the place concerned.

17 **cancellation account** means a Commonwealth Registry account
18 designated as a cancellation account.

19 **carbon dioxide equivalence:**

- 20 (a) of an amount of greenhouse gas—has the same meaning as in
21 the *National Greenhouse and Energy Reporting Act 2007*; or
22 (b) of an amount of potential greenhouse gas emissions
23 embodied in an amount of an eligible upstream fuel—has the
24 same meaning as in the *National Greenhouse and Energy
25 Reporting Act 2007*.

26 Note: See also section ^386 (transitional).

27 **carbon pollution reduction scheme** means the scheme embodied
28 in this Act and the associated provisions.

29 **carbon sequestration right** has the meaning given by section ^240.

30 **category A transfer test** has the meaning given by section ^69.

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- 1 **category B transfer test** has the meaning given by section ^73.
- 2 **certificate of eligibility for coal-fired generation assistance** means
- 3 a certificate issued under section ^180.
- 4 **certificate of eligible synthetic greenhouse gas destruction** means
- 5 a certificate issued under section ^249.
- 6 **certificate of reforestation** means a certificate issued under section
- 7 ^195.
- 8 **certified emission reduction** means a certified emission reduction
- 9 issued outside Australia in accordance with the relevant provisions
- 10 of the Kyoto rules.
- 11 **civil penalty order** means an order under subsection ^327(1).
- 12 **civil penalty provision** means a provision declared by this Act to
- 13 be a civil penalty provision.
- 14 **clean development mechanism project** means a project that is
- 15 treated as a clean development mechanism project for the purposes
- 16 of the relevant provisions of the Kyoto rules.
- 17 **Climate Change Convention** means the United Nations
- 18 Framework Convention on Climate Change done at New York on
- 19 9 May 1992, as amended and in force for Australia from time to
- 20 time.
- 21 Note: The text of the Convention is set out in Australian Treaty Series 1994
- 22 No. 2 ([1994] ATS 2). In 2009, the text of an international agreement
- 23 in the Australian Treaty Series was accessible through the Australian
- 24 Treaties Library on the AustLII website (www.austlii.edu.au).
- 25 **coal-based char** has the same meaning as in the *National*
- 26 *Greenhouse and Energy Reporting Regulations 2008*.
- 27 *[Note: this anticipates an amendment of the NGER Regulations]*
- 28 **coke oven coke** has the same meaning as in the *National*
- 29 *Greenhouse and Energy Reporting Regulations 2008*.
- 30 **commitment period** means a period that is treated as a commitment
- 31 period for the purposes of the Kyoto rules.

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1 Note: The first commitment period begins on 1 January 2008 and ends on
2 31 December 2012.

3 ***commitment period reserve*** has the meaning given by the
4 regulations.

5 ***Commonwealth holding account*** means a Commonwealth
6 Registry account designated as a Commonwealth holding account.

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

9 ***Commonwealth Registry account*** means a Registry account kept
10 in the name of the Commonwealth.

11 ***Commonwealth relinquished units account*** means the
12 Commonwealth Registry account designated as the
13 Commonwealth relinquished units account.

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

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

18 ***continental shelf*** has the same meaning as in the *Seas and*
19 *Submerged Lands Act 1973*.

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

22 Note: See also section ^386 (transitional).

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

- 24 (a) the Commonwealth, a State or Territory; or
25 (b) a statutory authority of:
26 (i) the Commonwealth; or
27 (ii) a State; or
28 (iii) a Territory.

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

- 30 (c) subject to a lease or licence; or

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- 1 (d) covered by a reservation, proclamation, dedication,
2 condition, permission or authority, made or conferred by the
3 Commonwealth, a State or a Territory; or
4 (e) covered by the making, amendment or repeal of legislation of
5 the Commonwealth, a State or a Territory under which the
6 whole or a part of the land is to be used for a public purpose
7 or public purposes.

8 **designated**, in relation to a Commonwealth Registry account,
9 means designated under section ^148.

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

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

15 **electronic notice transmitted to the Authority** has the meaning
16 given by section ^8.

17 **eligible emissions unit** means:

- 18 (a) an Australian emissions unit; or
19 (b) an eligible international emissions unit.

20 **eligible financial year** means:

- 21 (a) the financial year beginning on 1 July 2010; or
22 (b) a later financial year.

23 **eligible international emissions unit** means:

- 24 (a) a certified emission reduction (other than a temporary
25 certified emission reduction or a long-term certified emission
26 reduction); or
27 (b) an emission reduction unit; or
28 (c) a removal unit; or
29 (d) a prescribed unit issued in accordance with the Kyoto rules;
30 or
31 (e) a non-Kyoto international emissions unit.

32 It is immaterial whether a unit covered by paragraph (d) was issued
33 in or outside Australia.

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1 **eligible reforestation project** has the meaning given by section
2 ^209.

3 **eligible upstream fuel** means any of the following types of fuel:

- 4 (a) liquid petroleum fuel;
- 5 (b) liquid petroleum gas;
- 6 (c) black coal;
- 7 (d) brown coal;
- 8 (e) coking coal;
- 9 (f) brown coal briquettes;
- 10 (g) coke oven coke;
- 11 (h) coal-based char;
- 12 (i) natural gas that is distributed or transmitted in a pipeline;
- 13 (j) coal seam methane that is captured for combustion;
- 14 (k) coal mine waste gas that is captured for combustion;
- 15 (l) ethane;
- 16 (m) town gas;
- 17 (n) liquefied natural gas;
- 18 (o) compressed natural gas;
- 19 (p) syngas;
- 20 (q) a fuel specified in the regulations.

21 **eligible waste** has the meaning given by the regulations.

22 **emission** of greenhouse gas from the operation of a facility has the
23 meaning given by section ^24.

24 **emission reduction unit** means an emission reduction unit issued
25 in accordance with the relevant provisions of the Kyoto rules. It is
26 immaterial whether the unit was issued in or out of Australia.

27 **emissions-intensive trade-exposed assistance program** means the
28 program under subsection ^167(1).

29 **emissions number** has the meaning given by section ^125.

30 **emissions number publication time** of a person for an eligible
31 financial year, means the time when the person's emissions number

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1 for the eligible financial year is entered on the Information
2 Database in accordance with subsection ^263(2).

3 ***engage in conduct*** means:

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

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

9 ***excess surrender number*** has the meaning given by section ^143.

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

11 ***exclusive economic zone*** has the same meaning as in the *Seas and*
12 *Submerged Lands Act 1973*.

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

- 14 (a) a director of the body corporate; or
15 (b) the chief executive officer (however described) of the body
16 corporate; or
17 (c) the chief financial officer (however described) of the body
18 corporate; or
19 (d) the secretary of the body corporate.

20 ***expert advisory committee*** means a committee established under
21 section ^357.

22 ***expert advisory committee member*** means a member of an expert
23 advisory committee, and includes the Chair of an expert advisory
24 committee.

25 ***export***, in relation to goods or a substance, means:

- 26 (a) do an act that constitutes exportation of the goods or
27 substance from Australia within the meaning of section 112
28 of the *Customs Act 1901*; or
29 (b) do an act that would constitute such exportation if the
30 external Territories were part of Australia for the purposes of
31 that Act.

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

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

5 Note: See also section ^386 (transitional).

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

7 ***feedstock*** means a substance used as a raw material in production.

8 ***financial control*** has the meaning given by section ^81.

9 ***foreign account***:

- 10 (a) when used in relation to a Kyoto unit—means an account
11 kept within a foreign Kyoto registry; or
12 (b) when used in relation to a non-Kyoto international emissions
13 unit—means an account kept under a law of a foreign
14 country corresponding to this Act.

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

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

24 ***foreign Kyoto registry*** means:

- 25 (a) a registry of a Kyoto party (other than Australia) that is the
26 Kyoto party's national registry for Kyoto units; or
27 (b) the CDM registry established in accordance with paragraph 1
28 of Appendix D to the Annex to Decision 3/CMP.1 of the
29 Meeting of the Kyoto Parties.

30 ***forestry right*** has the meaning given by section ^241.

31 ***forest stand*** means a stand of forest, where:

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- 1 (a) under the regulations, the stand is taken to have been
2 established by means of direct, human-induced methods; and
3 (b) the stand occupies an area of land of 0.2 hectares or more;
4 and
5 (c) the stand consists of trees that:
6 (i) have attained, or have the potential to attain, a crown
7 cover of at least 20% of the area occupied by the stand;
8 and
9 (ii) have reached, or have the potential to reach, a height of
10 at least 2 metres; and
11 (d) on 31 December 1989, the area occupied by the stand was
12 clear of trees that:
13 (i) had attained, or had the potential to attain, a crown
14 cover of at least 20% of the area occupied by the stand;
15 and
16 (ii) had reached, or had the potential to reach, a height of at
17 least 2 metres; and
18 (e) the stand meets such other requirements (if any) as are
19 specified in the regulations.

20 ***free Australian emissions unit*** means an Australian emissions unit
21 issued free of charge.

22 ***fuel oil*** has the same meaning as in the *Excise Tariff Act 1921*.

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

- 24 (a) Torrens system land; or
25 (b) Crown land.

26 ***generation asset*** means:

- 27 (a) a generation complex; or
28 (b) a generation complex project.

29 ***generation complex*** means:

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

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1 **generation complex project** means a project to construct and
2 commission a new generation complex. For this purpose, it is
3 immaterial whether the project has been completed.

4 **generation unit** means a generator of electricity, and includes:
5 (a) the boiler (if any); and
6 (b) any other related equipment essential to the generator's
7 functioning as a generator.

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

10 Note: See also section ^386 (transitional).

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

13 Note: See also section ^386 (transitional).

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

16 **identification number**, in relation to an Australian emissions unit,
17 has the meaning given by section ^84.

18 **import**, in relation to goods or a substance, means:

- 19 (a) do an act that constitutes importation of the goods or
20 substance into Australia within the meaning of section 50 of
21 the *Customs Act 1901*; or
22 (b) do an act that would constitute such importation if the
23 external Territories were part of Australia for the purposes of
24 that Act.

25 **import duty** has the same meaning as in the *Customs Act 1901*.

26 **Information Database** means the Liable Entities Public
27 Information Database kept under section ^261.

28 **insolvent under administration** has the same meaning as in the
29 *Corporations Act 2001*.

30 **inspector** means a person appointed as an inspector under section
31 ^306.

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

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

4 ***international transaction log*** means an electronic data system
5 administered by the Secretariat of the Climate Change Convention
6 for the purpose of monitoring and tracking transactions in Kyoto
7 units.

8 ***issue***, in relation to an Australian emissions unit, means issue
9 under section ^83.

10 ***Kyoto Party*** means a Party to the Kyoto Protocol.

11 ***Kyoto Protocol*** means the Kyoto Protocol to the United Nations
12 Framework Convention on Climate Change done at Kyoto on
13 11 December 1997, as amended and in force for Australia from
14 time to time.

15 Note: The text of the Kyoto Protocol is set out in Australian Treaty Series
16 2008 No. 2 ([2008] ATS 2). In 2009, the text of an international
17 agreement in the Australian Treaty Series was accessible through the
18 Australian Treaties Library on the AustLII website
19 (www.austlii.edu.au).

20 ***Kyoto rules*** means:

- 21 (a) the Kyoto Protocol; or
22 (b) a decision of the Meeting of the Kyoto Parties; or
23 (c) a standard or other instrument adopted by the Meeting of the
24 Kyoto Parties for a purpose relating to:
25 (i) the Kyoto Protocol; or
26 (ii) a decision of the Meeting of the Kyoto Parties; or
27 (d) a prescribed instrument that relates to:
28 (i) the Kyoto Protocol; or
29 (ii) a decision of the Meeting of the Kyoto Parties.

30 ***Kyoto unit*** means:

- 31 (a) an assigned amount unit; or
32 (b) a certified emission reduction; or
33 (c) an emission reduction unit; or
34 (d) a removal unit; or

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1 (e) a prescribed unit issued in accordance with the Kyoto rules.
2 It is immaterial whether a unit covered by paragraph (e) was issued
3 in or outside Australia.

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

7 **liability transfer certificate** means a certificate issued under
8 section ^72 or ^76.

9 **liable entity** means a person who, under a provision of this Act, is a
10 liable entity.

11 **liquid petroleum fuel** means:

- 12 (a) excisable goods (within the meaning of the *Excise Act 1901*)
13 classified to item 10 or 15 of the Schedule to the *Excise*
14 *Tariff Act 1921*; or
15 (b) imported goods (within the meaning of the *Excise Act 1901*)
16 that would be classified to item 10 or 15 of that Schedule if
17 they were manufactured in Australia.

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

20 *[Note: this anticipates an amendment of the NGER Regulations]*

21 **liquid petroleum gas marketer** means a person who is supplied
22 liquid petroleum gas from:

- 23 (a) a liquid petroleum gas separation plant bulk storage; or
24 (b) an import terminal bulk storage; or
25 (c) a petroleum refinery bulk storage;
26 for the purpose of re-supply.

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

29 **long-term certified emission reduction** means a certified emission
30 reduction that is treated as a long-term certified emission reduction
31 for the purposes of the relevant provisions of the Kyoto rules.

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1 **lower bound** of the national scheme gateway has the meaning
2 given by section ^15.

3 **make-good number** has the meaning given by section ^142.

4 **management** of a forest stand includes the harvesting and
5 re-establishment of the forest stand.

6 **mandatory cancellation account** means a Commonwealth Registry
7 account designated as the mandatory cancellation account for a
8 particular commitment period.

9 **Meeting of the Kyoto Parties** means the Meeting of the Parties to
10 the Climate Change Convention serving as the meeting of the
11 Parties to the Kyoto Protocol.

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

14 Note: See also section ^386 (transitional).

15 **Minister**, in relation to Norfolk Island, means an executive
16 member within the meaning of the *Norfolk Island Act 1979*.

17 **monitoring powers** has the meaning given by section ^309.

18 **monitoring warrant** means a warrant issued under section ^321.

19 **nameplate rating** of a generation asset means:

20 (a) in the case of a generation complex—the maximum
21 continuous electrical generation capacity in megawatts of the
22 generation complex, as registered with the appropriate energy
23 market operator; or

24 (b) in the case of a generation complex project—the proposed
25 maximum continuous electrical generation capacity in
26 megawatts of the proposed generation complex, as registered,
27 or proposed to be registered, with the appropriate energy
28 market operator.

29 **national scheme cap** has the meaning given by section ^14.

30 **national scheme cap number** has the meaning given by section
31 ^14.

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1 **net source cancellation account** means a Commonwealth Registry
2 account designated as the net source cancellation account for a
3 particular commitment period.

4 **net total number** of Australian emissions units issued in relation to
5 an eligible reforestation project in accordance with Part 10 has the
6 meaning given by section ^242.

7 **non-compliance cancellation account** means a Commonwealth
8 Registry account designated as the non-compliance cancellation
9 account for a particular commitment period.

10 Note: See also section ^386 (transitional).

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

13 Note: See also section ^386 (transitional).

14 **non-Kyoto international emissions unit** means:

15 (a) a prescribed unit issued in accordance with an international
16 agreement (other than the Kyoto Protocol); or

17 (b) a prescribed unit issued outside Australia under a law of a
18 foreign country.

19 It is immaterial whether a unit covered by paragraph (a) was issued
20 in or outside Australia.

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

22 **official of the Authority** has the same meaning as in the *Australian*
23 *Climate Change Regulatory Authority Act 2009*.

24 **open**, in relation to a Registry account, means open under section
25 ^146.

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

28 Note: See also section ^386 (transitional).

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

31 Note: See also section ^386 (transitional).

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1 **OTN** or **Obligation Transfer Number** means an OTN issued under
2 section ^44 or ^45.

3 **OTN Register** means the register kept under section ^49.

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

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

- 7 (a) an individual;
- 8 (b) a body corporate;
- 9 (c) a trust;
- 10 (d) a corporation sole;
- 11 (e) a body politic;
- 12 (f) a local governing body.

13 **person assisting** an inspector has the meaning given by section
14 ^310.

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

17 Note: See also section ^386 (transitional).

18 **power system reliability test** has the meaning given by section
19 ^189.

20 **premises** includes the following:

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

24 **principal State Minister**, in relation to a State, means:

- 25 (a) the Premier of the State; or
- 26 (b) if another Minister of the State is nominated in a written
27 notice given to the Minister administering this Act by the
28 Premier for the purposes of this definition—that other
29 Minister of the State.

30 **principal Territory Minister**, in relation to a Territory, means:

- 31 (a) the Chief Minister of the Territory; or

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1 (b) if another Minister of the Territory is nominated in a written
2 notice given to the Minister administering this Act by the
3 Chief Minister for the purposes of this definition—that other
4 Minister of the Territory.

5 ***project area***, in relation to a reforestation project, means:

6 (a) if the project relates to a single forest stand—the area of land
7 occupied, or to be occupied, by the forest stand; or

8 (b) if the project relates to 2 or more forest stands—an area of
9 land occupied, or to be occupied, by any of those forest
10 stands.

11 ***proposed generation complex***, in relation to a generation complex
12 project, means the generation complex that is proposed to result
13 from the project. For this purpose, it is immaterial whether the
14 generation complex has been constructed or commissioned.

15 ***provisional emissions number*** has the meaning given by Part 3.

16 ***quarter*** means a period of 3 months beginning on 1 January,
17 1 April, 1 July or 1 October.

18 ***quote***, in relation to an OTN, has the meaning given by section
19 ^51.

20 ***recognised***:

21 (a) ***recognised*** as a reforestation entity means recognised under
22 section ^201;

23 (b) ***recognised*** as a synthetic greenhouse gas destruction
24 customer means recognised under section ^256.

25 ***recognised reforestation entity*** means a person recognised as a
26 reforestation entity.

27 ***recognised synthetic greenhouse gas destruction customer*** means
28 a company recognised as a synthetic greenhouse gas destruction
29 customer.

30 ***recognised transformation***: each of the following is a ***recognised***
31 ***transformation*** of an eligible upstream fuel to another type of
32 eligible upstream fuel:

33 (a) the transformation of brown coal to brown coal briquettes;

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- 1 (b) the transformation of brown coal briquettes to coal-based
2 char;
3 (c) the transformation of coking coal to coke oven coke;
4 (d) the transformation of natural gas to liquefied natural gas;
5 (e) the transformation of natural gas to compressed natural gas;
6 (f) the transformation of liquefied natural gas to natural gas;
7 (g) the transformation of compressed natural gas to natural gas;
8 (h) the transformation of a type of eligible upstream fuel
9 specified in the regulations to a type of eligible upstream fuel
10 specified in the regulations.

11 ***reforestation project*** means:

- 12 (a) a project for the establishment, management and maintenance
13 of one or more forest stands; or
14 (b) a project for the management and maintenance of one or
15 more existing forest stands.

16 For this purpose, it is immaterial whether the project has been
17 carried out.

18 ***reforestation report*** means a report under section ^225.

19 ***reforestation reporting period*** has the meaning given by section
20 ^223 or ^224.

21 ***reforestation unit limit***, in relation to an eligible reforestation
22 project, has the meaning given by section ^220, ^221 or ^222.

23 ***registered holder***, in relation to:

- 24 (a) an Australian emissions unit; or
25 (b) a Kyoto unit; or
26 (c) a non-Kyoto international emissions unit;

27 means the person in whose Registry account there is an entry for
28 the unit.

29 ***Register of Reforestation Projects*** means the register kept under
30 section ^238.

31 ***Registry*** means the National Registry of Emissions Units continued
32 in existence under section ^145.

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1 **Registry account** means an account kept in accordance with
2 section ^146.

3 **relinquish**, in relation to an Australian emissions unit, means
4 relinquish under section ^286.

5 **relinquishment obligation transfer agreement** has the meaning
6 given by section ^234.

7 **removal unit** means a removal unit issued in accordance with the
8 relevant provisions of the Kyoto rules. It is immaterial whether the
9 unit was issued in or out of Australia.

10 **retirement account** for a commitment period means a
11 Commonwealth Registry account designated as the retirement
12 account for a particular commitment period.

13 **reviewable decision** has the meaning given by section ^346.

14 **scheme**, when used in section ^23 or ^30 or Part 22, means:

- 15 (a) any agreement, arrangement, understanding, promise or
16 undertaking, whether express or implied and whether or not
17 enforceable, or intended to be enforceable, by legal
18 proceedings; or
19 (b) any scheme, plan, proposal, action, course of action or course
20 of conduct, whether there are 2 or more parties or only one
21 party involved.

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

24 Note: See also section ^386 (transitional).

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

26 **staff of the Authority** has the same meaning as in the *Australian
27 Climate Change Regulatory Authority Act 2009*.

28 **statutory authority** of the Commonwealth, a State or a Territory,
29 means an authority or body (including a corporation sole)
30 established by or under a law of the Commonwealth, the State or
31 Territory other than a general law allowing incorporation as a
32 company or body corporate.

EXPOSURE DRAFT

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

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

4 **surrender**, in relation to an eligible emissions unit, means
5 surrender under section ^129.

6 **syngas** has the same meaning as in the *National Greenhouse and*
7 *Energy Reporting Regulations 2008*.

8 [*Note: this anticipates an amendment of the NGER Regulations*]

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

11 Note: See also section ^386 (transitional).

12 **synthetic greenhouse gas destruction event** means an event that
13 consists of the destruction of a particular quantity of a particular
14 kind of synthetic greenhouse gas.

15 **temporary certified emission reduction** means a certified emission
16 reduction that is treated as a temporary certified emission reduction
17 for the purposes of the relevant provisions of the Kyoto rules.

18 **territorial sea** has the same meaning as in the *Seas and Submerged*
19 *Lands Act 1973*.

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

22 **transfer**:

23 (a) in relation to an Australian emissions unit—has the meaning
24 given by section ^95; or

25 (b) in relation to a Kyoto unit—has the meaning given by section
26 ^107; or

27 (c) in relation to a non-Kyoto international emissions unit—has
28 the meaning given by section ^118.

29 **transferee**, in relation to a relinquishment obligation transfer
30 agreement, has the meaning given by section ^234.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^5

- 1 **trust** means a person in the capacity of trustee or, as the case
2 requires, a trust estate.
- 3 **trustee** has the same meaning as in the *Income Tax Assessment Act*
4 *1997*.
- 5 **trust estate** has the same meaning as in the *Income Tax Assessment*
6 *Act 1997*.
- 7 **type** of synthetic greenhouse gas: a substance covered by:
8 (a) paragraph 7B(1)(a) of the *National Greenhouse and Energy*
9 *Reporting Act 2007*; or
10 (b) a particular item of table 1 or table 2 in section 7B of that
11 Act;
12 is a **type** of synthetic greenhouse gas.
- 13 **United Nations Convention on the Law of the Sea** means the
14 United Nations Convention on the Law of the Sea done at Montego
15 Bay on 10 December 1982.
- 16 Note: The text of the Convention is set out in Australian Treaty Series 1994
17 No. 31 ([1994] ATS 31). In 2009, the text of an international
18 agreement in the Australian Treaty Series was accessible through the
19 Australian Treaties Library on the AustLII website
20 (www.austlii.edu.au).
- 21 **unit shortfall** has the meaning given by section ^130.
- 22 **upper bound** of the national scheme gateway has the meaning
23 given by section ^15.
- 24 **vacancy**, in relation to the office of an expert advisory committee
25 member, has a meaning affected by section ^7.
- 26 **vintage year**, in relation to an Australian emissions unit, has the
27 meaning given by subsection ^85(2).
- 28 **voluntary cancellation account** means a Commonwealth Registry
29 account designated as the voluntary cancellation account for a
30 particular commitment period.
- 31 **windfall gain declaration** means a declaration under section ^186.
- 32 **windfall gain test** has the meaning given by section ^187.

1 **^6 When supply occurs**

2 *Natural gas distributed or transmitted in a pipeline*

- 3 (1) For the purposes of this Act, if natural gas is distributed or
4 transmitted in a pipeline, the supply of the natural gas occurs:
5 (a) if the gas passes a metering point ascertained in accordance
6 with the regulations—when the gas passes that metering
7 point; or
8 (b) otherwise—when the gas passes a point ascertained in
9 accordance with the regulations.

10 *Other substances*

- 11 (2) For the purposes of this Act, the supply of any other substance
12 occurs when the substance is physically delivered.

13 **^7 Vacancy in the office of an expert advisory committee member**

14 For the purposes of a reference in:

- 15 (a) this Act to a ***vacancy*** in the office of an expert advisory
16 committee member; or
17 (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the
18 membership of a body;
19 for each expert advisory committee, there are taken to be 4 offices
20 of expert advisory committee members in addition to the Chair of
21 the expert advisory committee.

22 **^8 Electronic notice transmitted to the Authority**

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

EXPOSURE DRAFT

Part 1 Preliminary

Section ^9

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

18 **^9 Crown to be bound**

- 19 (1) This Act binds the Crown in each of its capacities.
- 20 (2) This Act does not make the Crown liable to a pecuniary penalty or
21 to be prosecuted for an offence.
- 22 (3) The protection in subsection (2) does not apply to an authority of
23 the Crown.
- 24 (4) The protection in subsection (2) does not apply to a penalty under
25 section ^133, ^135, ^287 or ^288.

26 **^10 Extension to external Territories**

27 This Act extends to every external Territory.

EXPOSURE DRAFT

Preliminary **Part 1**

Section **^11**

1 **^11 Extension to exclusive economic zone and continental shelf**

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

5 **^12 Innocent passage of foreign ships etc.**

6 This Act does not apply to the extent that its application would be
7 inconsistent with the exercise of rights of foreign ships in:
8 (a) the territorial sea; or
9 (b) the exclusive economic zone; or
10 (c) waters of the continental shelf;
11 in accordance with the United Nations Convention on the Law of
12 the Sea.

EXPOSURE DRAFT

Part 2 National scheme cap and national scheme gateway

Section ^13

1

2

Part 2—National scheme cap and national scheme gateway

3

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^13 Simplified outline

6

The following is a simplified outline of this Part:

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- The regulations may declare that a quantity of greenhouse gas that has a carbon dioxide equivalence of a specified number of tonnes is the *national scheme cap* for a financial year.
- For the financial year beginning on 1 July 2015 or a later financial year, the national scheme cap must fall within the upper and lower bound of the national scheme gateway (if any) declared by the regulations for the financial year.

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Note: The national scheme cap limits:

15

(a) the total number of auctioned Australian emissions units; and

16

(b) the total number of free Australian emissions units issued in accordance with the emissions-intensive trade-exposed assistance program; and

17

18

19

(c) the total number of free Australian emissions units issued in accordance with Part 9 (coal-fired electricity generation).

20

21

^14 National scheme cap

22

(1) The regulations may declare that:

23

(a) a quantity of greenhouse gas that has a carbon dioxide equivalence of a specified number of tonnes is the *national scheme cap* for a specified eligible financial year; and

24

25

26

(b) that number is the *national scheme cap number* for that eligible financial year.

27

28

(2) The Minister must take all reasonable steps to ensure that:

29

(a) regulations declaring the national scheme cap number for the eligible financial year beginning on 1 July 2010; and

30

EXPOSURE DRAFT

- 1 (b) regulations declaring the national scheme cap number for
2 each of the next 4 eligible financial years;
3 are made before 1 July 2010.
- 4 (3) The Minister must take all reasonable steps to ensure that:
5 (a) regulations declaring the national scheme cap number for the
6 eligible financial year beginning on 1 July 2015 are made at
7 least 5 years before the end of the eligible financial year; and
8 (b) regulations declaring the national scheme cap number for a
9 later eligible financial year are made at least 5 years before
10 the end of the later eligible financial year.
- 11 (4) If:
12 (a) apart from this subsection, at the beginning of the 5-year
13 period ending at the end of an eligible financial year (the
14 ***current eligible financial year***), there is no national scheme
15 cap number for the current eligible financial year; and
16 (b) there was a national scheme cap number for the previous
17 eligible financial year; and
18 (c) the current eligible financial year began on or after 1 July
19 2015;
20 the ***national scheme cap number*** for the current eligible financial
21 year is equal to:
22 (d) if 99% of the national scheme cap number for the previous
23 eligible financial year is less than the lower bound of the
24 national scheme gateway for the current eligible financial
25 year—that lower bound; or
26 (e) if 99% of the national scheme cap number for the previous
27 eligible financial year exceeds the upper bound of the
28 national scheme gateway for the current eligible financial
29 year—that upper bound; or
30 (f) if neither paragraph (d) nor (e) applies—99% of the national
31 scheme cap number for the previous eligible financial year
32 (rounded to the nearest whole number, with a number ending
33 in .5 being rounded up).
- 34 (5) In making a recommendation to the Governor-General about
35 regulations to be made for the purposes of this section, the
36 Minister:
-

EXPOSURE DRAFT

Part 2 National scheme cap and national scheme gateway

Section ^15

- 1 (a) must have regard to Australia's international obligations
2 under:
3 (i) the Climate Change Convention; and
4 (ii) the Kyoto Protocol; and
5 (b) must have regard to the most recent report given to the
6 Minister by an expert advisory committee under section
7 ^354, to the extent to which that report deals with national
8 scheme caps; and
9 (c) may have regard to the following matters:
10 (i) the principle that the stabilisation of atmospheric
11 concentrations of greenhouse gases at around 450 parts
12 per million of carbon dioxide equivalence or lower is in
13 Australia's national interest;
14 (ii) progress towards, and development of, comprehensive
15 global action under which all of the major economies
16 commit to substantially restrain greenhouse gas
17 emissions and all of the advanced economies commit to
18 reductions of greenhouse gas emissions comparable to
19 the reductions to which Australia has committed;
20 (iii) the economic implications associated with various
21 levels of national scheme caps, including implications
22 of the carbon price;
23 (iv) voluntary action which is expected to be taken to reduce
24 Australia's greenhouse gas emissions;
25 (v) estimates of greenhouse gas emissions that are not
26 covered (directly or indirectly) by the carbon pollution
27 reduction scheme;
28 (vi) such other matters (if any) as the Minister considers
29 relevant.
- 30 (6) Paragraph (5)(b) does not apply if no report has been given to the
31 Minister under section ^354.

32 ^15 National scheme gateway

33 *Scope*

- 34 (1) This section applies to:
35 (a) the eligible financial year beginning on 1 July 2015; and
-

EXPOSURE DRAFT

1 (b) each later eligible financial year.

2 *Gateway*

3 (2) The regulations may declare that:

4 (a) a quantity of greenhouse gas that has a carbon dioxide
5 equivalence of a specified number of tonnes is the **upper**
6 **bound** of the national scheme gateway for a specified eligible
7 financial year; and

8 (b) a quantity of greenhouse gas that has a carbon dioxide
9 equivalence of a specified number of tonnes is the **lower**
10 **bound** of the national scheme gateway for a specified eligible
11 financial year.

12 *National scheme cap*

13 (3) The Minister must take all reasonable steps to ensure that the
14 national scheme cap for an eligible financial year:

15 (a) is not more than the upper bound of the national scheme
16 gateway (if any) for the eligible financial year; and

17 (b) is not less than the lower bound of the national scheme
18 gateway (if any) for the eligible financial year.

19 *Regulations*

20 (4) In making a recommendation to the Governor-General about
21 regulations to be made for the purposes of this section, the
22 Minister:

23 (a) must have regard to Australia's international obligations
24 under:

25 (i) the Climate Change Convention; and

26 (ii) the Kyoto Protocol; and

27 (b) must have regard to the most recent report given to the
28 Minister by an expert advisory committee under section
29 ^354, to the extent to which that report deals with national
30 scheme gateways; and

31 (c) may have regard to the following matters:

32 (i) the principle that the stabilisation of atmospheric
33 concentrations of greenhouse gases at around 450 parts

EXPOSURE DRAFT

Part 2 National scheme cap and national scheme gateway

Section ^15

- 1 per million of carbon dioxide equivalence or lower is in
2 Australia's national interest;
- 3 (ii) progress towards, and development of, comprehensive
4 global action under which all of the major economies
5 commit to substantially restrain greenhouse gas
6 emissions and all of the advanced economies commit to
7 reductions of greenhouse gas emissions comparable to
8 the reductions to which Australia has committed;
- 9 (iii) the economic implications associated with various
10 national scheme gateways, including implications of the
11 carbon price;
- 12 (iv) voluntary action which is expected to be taken to reduce
13 Australia's greenhouse gas emissions;
- 14 (v) estimates of greenhouse gas emissions that are not
15 covered (directly or indirectly) by the carbon pollution
16 reduction scheme;
- 17 (vi) such other matters (if any) as the Minister considers
18 relevant.
- 19 (5) Paragraph (4)(b) does not apply if no report has been given to the
20 Minister under section ^354.

EXPOSURE DRAFT

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Part 3—Liable entities

3

Division 1—Introduction

4

^{^16} Simplified outline

5

The following is a simplified outline of this Part:

6

- This Part sets out rules for:

7

- (a) identifying the persons who are liable entities for a financial year (liable entities are liable to surrender eligible emissions units); and

8

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- (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).

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- If a person is responsible for greenhouse gas emitted from the operation of a facility during a financial year:

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- (a) the person is a liable entity for the financial year; and

17

18

- (b) the number of tonnes of carbon dioxide equivalence of the gas is a provisional emissions number of the person for the financial year.

19

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- A person can be responsible for greenhouse gas emitted from the operation of a facility because:

22

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- (a) the person is a controlling corporation of a group, and a member of the group has operational control of the facility; or

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EXPOSURE DRAFT

Part 3 Liable entities
Division 1 Introduction

Section ^16

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- (b) the person is not a member of a controlling corporation's group, but has operational control of the facility; or
- (c) the person is the holder of a liability transfer certificate in relation to the facility.
- If a person imports, manufactures or supplies synthetic greenhouse gas 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.
- If a person imports, produces or supplies eligible upstream fuel 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 potential greenhouse gas emissions embodied in the fuel is a provisional emissions number of the person for the financial year.
- If a person (the *supplier*) supplies an amount of eligible upstream fuel 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 person's OTN in relation to the supply of an amount of eligible upstream fuel, the OTN holder may be a liable entity.

EXPOSURE DRAFT

1

2 **Division 2—Direct emitters of greenhouse gases**

3 **Subdivision A—General rules**

4 **^17 Liabile entity—controlling corporation of a group**

5 *Scope*

6 (1) This section applies if:

7 (a) either:

8 (i) a facility (other than a landfill facility) was under the
9 operational control of one or more members of a
10 controlling corporation's group throughout an eligible
11 financial year; or

12 (ii) a facility (other than a landfill facility) was under the
13 operational control of one or more members of a
14 controlling corporation's group for a number of, but not
15 all, days in an eligible financial year (the *control days*);
16 and

17 (b) the total amount of greenhouse gases emitted from the
18 operation of the facility:

19 (i) if subparagraph (a)(i) applies—during the eligible
20 financial year; or

21 (ii) if subparagraph (a)(ii) applies—during the control days;
22 has a carbon dioxide equivalence of a particular number of
23 tonnes.

24 *Provisional emissions number*

25 (2) For the purposes of this Act, that number is a *provisional*
26 *emissions number* of the controlling corporation for the eligible
27 financial year.

28 *Liabile entity*

29 (3) For the purposes of this Act, the controlling corporation is a *liable*
30 *entity* for the eligible financial year.

EXPOSURE DRAFT

Part 3 Liable entities

Division 2 Direct emitters of greenhouse gases

Section ^17

Exemption—small facilities

(4) If:

(a) the facility was under the operational control of one or more members of the controlling corporation's group throughout the eligible financial year; and

(b) during the eligible financial year, the total amount of greenhouse gases emitted from the operation of the facility had a carbon dioxide equivalence of less than 25,000 tonnes;

the total amount mentioned in paragraph (b) does not count for the purposes of subsection (1).

Note: See also section ^23 (anti-avoidance).

(5) If:

(a) the facility was under the operational control of one or more members of the controlling corporation's group 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 greenhouse gases emitted from the operation of the facility had a carbon dioxide equivalence of less than the amount worked out using the formula:

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

the total amount mentioned in paragraph (b) does not count for the purposes of subsection (1).

Note: See also section ^23 (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 person was the holder of a liability transfer certificate in relation to the facility, then the facility is taken not to have been under the operational control of a member of the controlling corporation's group during the whole or the part, as the case may be, of the eligible financial year.

EXPOSURE DRAFT

1 *OTNs—no double counting*

2 (7) If:

- 3 (a) the facility was under the operational control of one or more
4 members of the controlling corporation's group throughout
5 the eligible financial year; and
6 (b) during the eligible financial year, an amount of greenhouse
7 gas emitted from the operation of the facility was attributable
8 to the combustion of eligible upstream fuel that was obtained
9 by way of the supply of the fuel to a person; and
10 (c) the person did not quote the person's OTN in relation to the
11 supply of the fuel;

12 the amount mentioned in paragraph (b):

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

15 (8) If:

- 16 (a) the facility was under the operational control of one or more
17 members of the controlling corporation's group for a number
18 of, but not all, days in the eligible financial year (the *control*
19 *days*); and
20 (b) during the control days, an amount of greenhouse gas emitted
21 from the operation of the facility was attributable to the
22 combustion of eligible upstream fuel that was obtained by
23 way of the supply of the fuel to a person; and
24 (c) the person did not quote the person's OTN in relation to the
25 supply of the fuel;

26 the amount mentioned in paragraph (b):

- 27 (d) does not count for the purposes of subsection (1); and
28 (e) counts for the purposes of subsection (5).

29 *Liquid petroleum fuel—no double counting*

30 (9) If:

- 31 (a) the facility was under the operational control of one or more
32 members of the controlling corporation's group throughout
33 the eligible financial year; and

EXPOSURE DRAFT

Part 3 Liable entities

Division 2 Direct emitters of greenhouse gases

Section ^18

- 1 (b) during the eligible financial year, an amount of greenhouse
2 gas emitted from the operation of the facility was attributable
3 to the combustion of liquid petroleum fuel; and
4 (c) the potential greenhouse gas emissions embodied in the fuel
5 were counted for the purposes of subsection ^31(1) or ^32(1);
6 the amount mentioned in paragraph (b):
7 (d) does not count for the purposes of subsection (1); and
8 (e) counts for the purposes of subsection (4).
- 9 (10) If:
10 (a) the facility was under the operational control of one or more
11 members of the controlling corporation's group for a number
12 of, but not all, days in the eligible financial year (the *control*
13 *days*); and
14 (b) during the control days, an amount of greenhouse gas emitted
15 from the operation of the facility was attributable to the
16 combustion of liquid petroleum fuel; and
17 (c) the potential greenhouse gas emissions embodied in the fuel
18 were counted for the purposes of subsection ^31(1) or ^32(1);
19 the amount mentioned in paragraph (b):
20 (d) does not count for the purposes of subsection (1); and
21 (e) counts for the purposes of subsection (5).

^18 Liable entity—non-group entity

Scope

- 23
24 (1) This section applies if:
25 (a) either:
26 (i) a facility (other than a landfill facility) was under the
27 operational control of a non-group entity throughout an
28 eligible financial year; or
29 (ii) a facility (other than a landfill facility) was under the
30 operational control of a non-group entity for a number
31 of, but not all, days in an eligible financial year (the
32 *control days*); and
33 (b) the total amount of greenhouse gases emitted from the
34 operation of the facility:

EXPOSURE DRAFT

- 1 (i) if subparagraph (a)(i) applies—during the eligible
2 financial year; or
3 (ii) if subparagraph (a)(ii) applies—during the control days;
4 has a carbon dioxide equivalence of a particular number of
5 tonnes.

6 *Provisional emissions number*

- 7 (2) For the purposes of this Act, that number is a **provisional**
8 **emissions number** of the non-group entity for the eligible financial
9 year.

10 *Liable entity*

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

13 *Exemption—small facility*

- 14 (4) If:
15 (a) the facility was under the operational control of the
16 non-group entity throughout the eligible financial year; and
17 (b) during the eligible financial year, the total amount of
18 greenhouse gases emitted from the operation of the facility
19 had a carbon dioxide equivalence of less than 25,000 tonnes;
20 the total amount mentioned in paragraph (b) does not count for the
21 purposes of subsection (1).

22 Note: See also section ^23 (anti-avoidance).

- 23 (5) If:
24 (a) the facility was under the operational control of the
25 non-group entity for a number of, but not all, days in the
26 eligible financial year (the **control days**); and
27 (b) during the control days, the total amount of greenhouse gases
28 emitted from the operation of the facility had a carbon
29 dioxide equivalence of less than the amount worked out using
30 the formula:

EXPOSURE DRAFT

Part 3 Liable entities

Division 2 Direct emitters of greenhouse gases

Section ^18

1 25,000 tonnes × $\frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$

2 the total amount mentioned in paragraph (b) does not count for the
3 purposes of subsection (1).

4 Note: See also section ^23 (anti-avoidance).

5 *OTNs—no double counting*

6 (6) If:

- 7 (a) the facility was under the operational control of the
8 non-group entity throughout the eligible financial year; and
9 (b) during the eligible financial year, an amount of greenhouse
10 gas emitted from the operation of the facility was attributable
11 to the combustion of eligible upstream fuel that was obtained
12 by way of the supply of the fuel to a person; and
13 (c) the person did not quote the person’s OTN in relation to the
14 supply of the fuel;

15 the amount mentioned in paragraph (b):

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

18 (7) If:

- 19 (a) the facility was under the operational control of the
20 non-group entity for a number of, but not all, days in the
21 eligible financial year (the *control days*); and
22 (b) during the control days, an amount of greenhouse gas emitted
23 from the operation of the facility was attributable to the
24 combustion of eligible upstream fuel that was obtained by
25 way of the supply of the fuel to a person; and
26 (c) the person did not quote the person’s OTN in relation to the
27 supply of the fuel;

28 the amount mentioned in paragraph (b):

- 29 (d) does not count for the purposes of subsection (1); and
30 (e) counts for the purposes of subsection (5).

EXPOSURE DRAFT

1 *Liquid petroleum fuel—no double counting*

2 (8) If:

- 3 (a) the facility was under the operational control of the
4 non-group entity throughout the eligible financial year; and
5 (b) during the eligible financial year, an amount of greenhouse
6 gas emitted from the operation of the facility was attributable
7 to the combustion of liquid petroleum fuel; and
8 (c) the potential greenhouse gas emissions embodied in the fuel
9 were counted for the purposes of subsection ^31(1) or ^32(1);
10 the amount mentioned in paragraph (b):
11 (d) does not count for the purposes of subsection (1); and
12 (e) counts for the purposes of subsection (4).

13 (9) If:

- 14 (a) the facility was under the operational control of the
15 non-group entity for a number of, but not all, days in the
16 eligible financial year (the *control days*); and
17 (b) during the control days, an amount of greenhouse gas emitted
18 from the operation of the facility was attributable to the
19 combustion of liquid petroleum fuel; and
20 (c) the potential greenhouse gas emissions embodied in the fuel
21 were counted for the purposes of subsection ^31(1) or ^32(1);
22 the amount mentioned in paragraph (b):
23 (d) does not count for the purposes of subsection (1); and
24 (e) counts for the purposes of subsection (5).

25 **^19 Liabile entity—holder of a liability transfer certificate**

26 *Scope*

27 (1) This section applies if:

- 28 (a) either:
29 (i) a person was the holder of a liability transfer certificate
30 in relation to a facility (other than a landfill facility)
31 throughout an eligible financial year; or
32 (ii) a person was the holder of a liability transfer certificate
33 in relation to a facility (other than a landfill facility) for

EXPOSURE DRAFT

Part 3 Liable entities

Division 2 Direct emitters of greenhouse gases

Section ^19

- 1 a number of, but not all, days in an eligible financial
2 year (the *certificate days*); and
3 (b) the total amount of greenhouse gases emitted from the
4 operation of the facility:
5 (i) if subparagraph (a)(i) applies—during the eligible
6 financial year; or
7 (ii) if subparagraph (a)(ii) applies—during the certificate
8 days;
9 has a carbon dioxide equivalence of a particular number of
10 tonnes.

11 *Provisional emissions number*

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

14 *Liable entity*

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

17 *Exemption—small facility*

- 18 (4) If:
19 (a) the person was the holder of the liability transfer certificate
20 throughout the eligible financial year; and
21 (b) during the eligible financial year, the total amount of
22 greenhouse gases emitted from the operation of the facility
23 had a carbon dioxide equivalence of less than 25,000 tonnes;
24 the total amount mentioned in paragraph (b) does not count for the
25 purposes of subsection (1).

26 Note: See also section ^23 (anti-avoidance).

- 27 (5) If:
28 (a) the person was the holder of the liability transfer certificate
29 for a number of, but not all, days in the eligible financial year
30 (the *certificate days*); and
31 (b) during the certificate days, the total amount of greenhouse
32 gases emitted from the operation of the facility had a carbon

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1 dioxide equivalence of less than the amount worked out using
2 the formula:

3 25,000 tonnes × $\frac{\text{Number of certificate days}}{\text{Number of days in the eligible financial year}}$

4 the total amount mentioned in paragraph (b) does not count for the
5 purposes of subsection (1).

6 Note: See also section ^23 (anti-avoidance).

7 *OTNs—no double counting*

8 (6) If:

- 9 (a) the person was the holder of the liability transfer certificate
10 throughout the eligible financial year; and
11 (b) during the eligible financial year, an amount of greenhouse
12 gas emitted from the operation of the facility was attributable
13 to the combustion of eligible upstream fuel that was obtained
14 by way of the supply of the fuel to a person (the *recipient*);
15 and
16 (c) the recipient did not quote the recipient's OTN in relation to
17 the supply of the fuel;

18 the amount mentioned in paragraph (b):

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

21 (7) If:

- 22 (a) the person was the holder of the liability transfer certificate
23 for a number of, but not all, days in the eligible financial year
24 (the *certificate days*); and
25 (b) during the certificate days, an amount of greenhouse gas
26 emitted from the operation of the facility was attributable to
27 the combustion of eligible upstream fuel that was obtained by
28 way of the supply of the fuel to a person (the *recipient*); and
29 (c) the recipient did not quote the recipient's OTN in relation to
30 the supply of the fuel;

31 the amount mentioned in paragraph (b):

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

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1 (e) counts for the purposes of subsection (5).

2 *Liquid petroleum fuel—no double counting*

3 (8) If:

4 (a) the person was the holder of the liability transfer certificate
5 throughout the eligible financial year; and

6 (b) during the eligible financial year, an amount of greenhouse
7 gas emitted from the operation of the facility was attributable
8 to the combustion of liquid petroleum fuel; and

9 (c) the potential greenhouse gas emissions embodied in the fuel
10 were counted for the purposes of subsection ^31(1) or ^32(1);
11 the amount mentioned in paragraph (b):

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

13 (e) counts for the purposes of subsection (4).

14 (9) If:

15 (a) the person was the holder of the liability transfer certificate
16 for a number of, but not all, days in the eligible financial year
17 (the *certificate days*); and

18 (b) during the certificate days, an amount of greenhouse gas
19 emitted from the operation of the facility was attributable to
20 the combustion of liquid petroleum fuel; and

21 (c) the potential greenhouse gas emissions embodied in the fuel
22 were counted for the purposes of subsection ^31(1) or ^32(1);
23 the amount mentioned in paragraph (b):

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

25 (e) counts for the purposes of subsection (5).

26 **Subdivision B—Landfill facilities**

27 **^20 Liabile entity for landfill emissions—controlling corporation of a** 28 **group**

29 *Scope*

30 (1) This section applies if:

31 (a) either:

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- 1 (i) a landfill facility was under the operational control of
2 one or more members of a controlling corporation's
3 group throughout an eligible financial year; or
4 (ii) a landfill facility was under the operational control of
5 one or more members of a controlling corporation's
6 group for a number of, but not all, days in an eligible
7 financial year (the *control days*); and
8 (b) the total amount of greenhouse gases emitted from the
9 operation of the landfill facility:
10 (i) if subparagraph (a)(i) applies—during the eligible
11 financial year; or
12 (ii) if subparagraph (a)(ii) applies—during the control days;
13 has a carbon dioxide equivalence of a particular number of
14 tonnes.

15 *Provisional emissions number*

- 16 (2) For the purposes of this Act, that number is a *provisional*
17 *emissions number* of the controlling corporation for the eligible
18 financial year.

19 *Liable entity*

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

22 *Exemption—small facilities*

- 23 (4) If:
24 (a) the landfill facility was under the operational control of one
25 or more members of the controlling corporation's group
26 throughout the eligible financial year; and
27 (b) during the eligible financial year, the number of tonnes of the
28 carbon dioxide equivalence of the total amount of greenhouse
29 gases emitted from the operation of the landfill facility is less
30 than the landfill facility's threshold number for the eligible
31 financial year;
32 the total amount mentioned in paragraph (b) does not count for the
33 purposes of subsection (1).
-

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1 Note 1: For the landfill facility's threshold number, see subsection (13).

2 Note 2: See also section ^23 (anti-avoidance).

3 (5) If:

4 (a) the landfill facility was under the operational control of one
5 or more members of the controlling corporation's group for a
6 number of, but not all, days in the eligible financial year (the
7 *control days*); and

8 (b) during the control days, the number of tonnes of the carbon
9 dioxide equivalence of the total amount of greenhouse gases
10 emitted from the operation of the landfill facility is less than
11 the number worked out using the formula:

$$12 \quad \frac{\text{Landfill facility's threshold number for the eligible financial year}}{\text{Number of control days}} \times \frac{\text{Number of control days}}{\text{Number of days in the eligible financial year}}$$

13 the total amount mentioned in paragraph (b) does not count for the
14 purposes of subsection (1).

15 Note 1: For the landfill facility's threshold number, see subsection (13).

16 Note 2: See also section ^23 (anti-avoidance).

17 *Exemption—closed landfill facilities*

18 (6) If:

19 (a) the landfill facility has not accepted any waste during the
20 period beginning at the start of 1 July 2008 and ending at the
21 end of the last day of the eligible financial year; and

22 (b) during the eligible financial year, an amount of greenhouse
23 gases was emitted from the operation of the landfill facility;
24 the amount mentioned in paragraph (b), to the extent to which it is
25 attributable to solid waste, does not count for the purposes of
26 subsection (1).

27 *Exemption for pre-1 July 2018 emissions attributable to legacy 28 waste*

29 (7) If:

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- 1 (a) the landfill facility was open for the acceptance of waste at
2 any time during the period:
3 (i) beginning on 1 July 2008; and
4 (ii) ending at the end of 30 June 2018; and
5 (b) the eligible financial year is included in that period; and
6 (c) during the eligible financial year, an amount of greenhouse
7 gases was emitted from the operation of the landfill facility;
8 and
9 (d) waste was accepted by the facility before 1 July 2008;
10 so much of the amount mentioned in paragraph (c) as is, under the
11 regulations, taken to be attributable to waste accepted by the
12 facility before 1 July 2008:
13 (e) does not count for the purposes of subsection (1); and
14 (f) counts for the purposes of whichever of subsection (4) or (5)
15 is applicable to the landfill facility.

16 *Exemption—liability transfer certificate*

- 17 (8) For the purposes of this section, if, throughout the whole or a part
18 of the eligible financial year, a person was the holder of a liability
19 transfer certificate in relation to the landfill facility, then the
20 landfill facility is taken not to have been under the operational
21 control of a member of the controlling corporation's group during
22 the whole or the part, as the case may be, of the eligible financial
23 year.

24 *OTNs—no double counting*

- 25 (9) If:
26 (a) the landfill facility was under the operational control of one
27 or more members of the controlling corporation's group
28 throughout the eligible financial year; and
29 (b) during the eligible financial year, an amount of greenhouse
30 gas emitted from the operation of the landfill facility was
31 attributable to the combustion of eligible upstream fuel that
32 was obtained by way of the supply of the fuel to a person;
33 and
34 (c) the person did not quote the person's OTN in relation to the
35 supply of the fuel;

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- 1 the amount mentioned in paragraph (b):
2 (d) does not count for the purposes of subsection (1); and
3 (e) counts for the purposes of subsection (4).
- 4 (10) If:
5 (a) the landfill facility was under the operational control of one
6 or more members of the controlling corporation's group for a
7 number of, but not all, days in the eligible financial year (the
8 *control days*); and
9 (b) during the control days, an amount of greenhouse gas emitted
10 from the operation of the landfill facility was attributable to
11 the combustion of eligible upstream fuel that was obtained by
12 way of the supply of the fuel to a person; and
13 (c) the person did not quote the person's OTN in relation to the
14 supply of the fuel;
15 the amount mentioned in paragraph (b):
16 (d) does not count for the purposes of subsection (1); and
17 (e) counts for the purposes of subsection (5).
- 18 *Liquid petroleum fuel—no double counting*
- 19 (11) If:
20 (a) the landfill facility was under the operational control of one
21 or more members of the controlling corporation's group
22 throughout the eligible financial year; and
23 (b) during the eligible financial year, an amount of greenhouse
24 gas emitted from the operation of the landfill facility was
25 attributable to the combustion of liquid petroleum fuel; and
26 (c) the potential greenhouse gas emissions embodied in the fuel
27 were counted for the purposes of subsection ^31(1) or ^32(1);
28 the amount mentioned in paragraph (b):
29 (a) does not count for the purposes of subsection (1); and
30 (e) counts for the purposes of subsection (4).
- 31 (12) If:
32 (a) the landfill facility was under the operational control of one
33 or more members of the controlling corporation's group for a

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- 1 number of, but not all, days in the eligible financial year (the
2 **control days**); and
3 (b) during the control days, an amount of greenhouse gas emitted
4 from the operation of the landfill facility was attributable to
5 the combustion of liquid petroleum fuel; and
6 (c) the potential greenhouse gas emissions embodied in the fuel
7 were counted for the purposes of subsection ^31(1) or ^32(1);
8 the amount mentioned in paragraph (b):
9 (d) does not count for the purposes of subsection (1); and
10 (e) counts for the purposes of subsection (5).

11 *Threshold number*

- 12 (13) For the purposes of this section, the landfill facility's **threshold**
13 **number** for the eligible financial year is:
14 (a) in a case where:
15 (i) at any time during the eligible financial year, the landfill
16 facility is open for the acceptance of waste; and
17 (ii) at any time during the eligible financial year, the landfill
18 facility is within the prescribed distance of another
19 landfill facility that is open for the acceptance of waste;
20 10,000; or
21 (b) in a case where:
22 (i) throughout the eligible financial year, the landfill
23 facility was closed for the acceptance of waste; and
24 (ii) the eligible financial year is any of the 10 financial
25 years that followed the last eligible financial year when
26 the facility was open for the acceptance of waste; and
27 (iii) the facility's threshold number for the last eligible
28 financial year when the facility was open for the
29 acceptance of waste was 10,000;
30 10,000; or
31 (c) in any other case—25,000.

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1 **^21 Liable entity for landfill emissions—non-group entity**

2 *Scope*

3 (1) This section applies if:

4 (a) either:

5 (i) a landfill facility was under the operational control of a
6 non-group entity throughout an eligible financial year;
7 or

8 (ii) a landfill facility was under the operational control of a
9 non-group entity for a number of, but not all, days in an
10 eligible financial year (the *control days*); and

11 (b) the total amount of greenhouse gases emitted from the
12 operation of the landfill facility:

13 (i) if subparagraph (a)(i) applies—during the eligible
14 financial year; or

15 (ii) if subparagraph (a)(ii) applies—during the control days;
16 has a carbon dioxide equivalence of a particular number of
17 tonnes.

18 *Provisional emissions number*

19 (2) For the purposes of this Act, that number is a *provisional*
20 *emissions number* of the non-group entity for the eligible financial
21 year.

22 *Liable entity*

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

25 *Exemption—small facilities*

26 (4) If:

27 (a) the landfill facility was under the operational control of the
28 non-group entity throughout the eligible financial year; and

29 (b) during the eligible financial year, the number of tonnes of the
30 carbon dioxide equivalence of the total amount of greenhouse
31 gases emitted from the operation of the landfill facility is less

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1 than the landfill facility's threshold number for the eligible
2 financial year;
3 the total amount mentioned in paragraph (b) does not count for the
4 purposes of subsection (1).

5 Note 1: For the landfill facility's threshold number, see subsection (12).

6 Note 2: See also section ^23 (anti-avoidance).

7 (5) If:

- 8 (a) the landfill facility was under the operational control of the
9 non-group entity for a number of, but not all, days in the
10 eligible financial year (the *control days*); and
11 (b) during the control days, the number of tonnes of the carbon
12 dioxide equivalence of the total amount of greenhouse gases
13 emitted from the operation of the landfill facility is less than
14 the number worked out using the formula:

$$15 \quad \text{Landfill facility's} \quad \times \quad \frac{\text{Number of control days}}{\text{Number of days in the}} \\ \text{threshold number for the} \quad \text{eligible financial year} \quad \text{eligible financial year}$$

16 the total amount mentioned in paragraph (b) does not count for the
17 purposes of subsection (1).

18 Note 1: For the landfill facility's threshold number, see subsection (12).

19 Note 2: See also section ^23 (anti-avoidance).

20 *Exemption—closed landfill facilities*

21 (6) If:

- 22 (a) the landfill facility has not accepted any waste during the
23 period beginning at the start of 1 July 2008 and ending at the
24 end of the last day of the eligible financial year; and
25 (b) during the eligible financial year, an amount of greenhouse
26 gases was emitted from the operation of the landfill facility;
27 the amount mentioned in paragraph (b), to the extent to which it is
28 attributable to solid waste, does not count for the purposes of
29 subsection (1).

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1 *Exemption for pre-1 July 2018 emissions attributable to legacy*
2 *waste*

3 (7) If:

4 (a) the landfill facility was open for the acceptance of waste at
5 any time during the period:

6 (i) beginning on 1 July 2008; and

7 (ii) ending at the end of 30 June 2018; and

8 (b) the eligible financial year is included in that period; and

9 (c) during the eligible financial year, an amount of greenhouse
10 gases was emitted from the operation of the landfill facility;
11 and

12 (d) waste was accepted by the facility before 1 July 2008;

13 so much of the amount mentioned in paragraph (c) as is, under the
14 regulations, taken to be attributable to waste accepted by the
15 facility before 1 July 2008:

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

17 (e) counts for the purposes of whichever of subsection (4) or (5)
18 is applicable to the landfill facility.

19 *OTNs—no double counting*

20 (8) If:

21 (a) the landfill facility was under the operational control of the
22 non-group entity throughout the eligible financial year; and

23 (b) during the eligible financial year, an amount of greenhouse
24 gas emitted from the operation of the landfill facility was
25 attributable to the combustion of eligible upstream fuel that
26 was obtained by way of the supply of the fuel to a person;
27 and

28 (c) the person did not quote the person's OTN in relation to the
29 supply of the fuel;

30 the amount mentioned in paragraph (b):

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

32 (e) counts for the purposes of subsection (4).

33 (9) If:

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- 1 (a) the landfill facility was under the operational control of the
2 non-group entity for a number of, but not all, days in the
3 eligible financial year (the *control days*); and
4 (b) during the control days, an amount of greenhouse gas emitted
5 from the operation of the landfill facility was attributable to
6 the combustion of eligible upstream fuel that was obtained by
7 way of the supply of the fuel to a person; and
8 (c) the person did not quote the person's OTN in relation to the
9 supply of the fuel;
10 the amount mentioned in paragraph (b):
11 (d) does not count for the purposes of subsection (1); and
12 (e) counts for the purposes of subsection (5).

13 *Liquid petroleum fuel—no double counting*

- 14 (10) If:
15 (a) the landfill facility was under the operational control of the
16 non-group entity throughout the eligible financial year; and
17 (b) during the eligible financial year, an amount of greenhouse
18 gas emitted from the operation of the landfill facility was
19 attributable to the combustion of liquid petroleum fuel; and
20 (c) the potential greenhouse gas emissions embodied in the fuel
21 were counted for the purposes of subsection ^31(1) or ^32(1);
22 the amount mentioned in paragraph (b):
23 (d) does not count for the purposes of subsection (1); and
24 (e) counts for the purposes of subsection (4).
- 25 (11) If:
26 (a) the landfill facility was under the operational control of the
27 non-group entity for a number of, but not all, days in the
28 eligible financial year (the *control days*); and
29 (b) during the control days, an amount of greenhouse gas emitted
30 from the operation of the landfill facility was attributable to
31 the combustion of liquid petroleum fuel; and
32 (c) the potential greenhouse gas emissions embodied in the fuel
33 were counted for the purposes of subsection ^31(1) or ^32(1);
34 the amount mentioned in paragraph (b):
35 (d) does not count for the purposes of subsection (1); and
-

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1 (e) counts for the purposes of subsection (5).

2 *Threshold number*

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

5 (a) in a case where:

6 (i) at any time during the eligible financial year, the landfill
7 facility is open for the acceptance of waste; and

8 (ii) at any time during the eligible financial year, the landfill
9 facility is within the prescribed distance of another
10 landfill facility that is open for the acceptance of waste;

11 10,000; or

12 (b) in a case where:

13 (i) throughout the eligible financial year, the landfill
14 facility was closed for the acceptance of waste; and

15 (ii) the eligible financial year is any of the 10 financial
16 years that followed the last eligible financial year when
17 the facility was open for the acceptance of waste; and

18 (iii) the facility's threshold number for the last eligible
19 financial year when the facility was open for the
20 acceptance of waste was 10,000;

21 10,000; or

22 (c) in any other case—25,000.

23 **^22 Liabile entity for landfill emissions—holder of a liability transfer** 24 **certificate**

25 *Scope*

26 (1) This section applies if:

27 (a) either:

28 (i) a person was the holder of a liability transfer certificate
29 in relation to a landfill facility throughout an eligible
30 financial year; or

31 (ii) a person was the holder of a liability transfer certificate
32 in relation to a landfill facility for a number of, but not

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- 1 all, days in an eligible financial year (the *certificate*
2 *days*); and
3 (b) the total amount of greenhouse gases emitted from the
4 operation of the landfill facility:
5 (i) if subparagraph (a)(i) applies—during the eligible
6 financial year; or
7 (ii) if subparagraph (a)(ii) applies—during the certificate
8 days;
9 has a carbon dioxide equivalence of a particular number of
10 tonnes.

11 *Provisional emissions number*

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

14 *Liable entity*

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

17 *Exemption—small facility*

- 18 (4) If:
19 (a) the person was the holder of the liability transfer certificate
20 throughout the eligible financial year; and
21 (b) during the eligible financial year, the number of tonnes of the
22 carbon dioxide equivalence of the total amount of greenhouse
23 gases emitted from the operation of the landfill facility is less
24 than the landfill facility's threshold number for the eligible
25 financial year;
26 the total amount mentioned in paragraph (b) does not count for the
27 purposes of subsection (1).

28 Note 1: For the landfill facility's threshold number, see subsection (12).

29 Note 2: See also section ^23 (anti-avoidance).

- 30 (5) If:

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- 1 (a) the person was the holder of the liability transfer certificate
2 for a number of, but not all, days in the eligible financial year
3 (the *certificate days*); and
4 (b) during the control days, the number of tonnes of the carbon
5 dioxide equivalence of the total amount of greenhouse gases
6 emitted from the operation of the landfill facility is less than
7 the number worked out using the formula:

$$8 \quad \frac{\text{Landfill facility's threshold number for the eligible financial year}}{\text{Number of days in the eligible financial year}} \times \frac{\text{Number of certificate days}}{\text{Number of days in the eligible financial year}}$$

9 the total amount mentioned in paragraph (b) does not count for the
10 purposes of subsection (1).

11 Note 1: For the landfill facility's threshold number, see subsection (12).

12 Note 2: See also section ^23 (anti-avoidance).

13 *Exemption—closed landfill facilities*

- 14 (6) If:
15 (a) the landfill facility has not accepted any waste during the
16 period beginning at the start of 1 July 2008 and ending at the
17 end of the last day of the eligible financial year; and
18 (b) during the eligible financial year, an amount of greenhouse
19 gases was emitted from the operation of the landfill facility;
20 the amount mentioned in paragraph (b), to the extent to which it is
21 attributable to solid waste, does not count for the purposes of
22 subsection (1).

23 *Exemption for pre-1 July 2018 emissions attributable to legacy 24 waste*

- 25 (7) If:
26 (a) the landfill facility was open for the acceptance of waste at
27 any time during the period:
28 (i) beginning on 1 July 2008; and
29 (ii) ending at the end of 30 June 2018; and
30 (b) the eligible financial year is included in that period; and

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- 1 (c) during the eligible financial year, an amount of greenhouse
2 gases was emitted from the operation of the landfill facility;
3 and
4 (d) waste was accepted by the facility before 1 July 2008;
5 so much of the amount mentioned in paragraph (c) as is, under the
6 regulations, taken to be attributable to waste accepted by the
7 facility before 1 July 2008:
8 (e) does not count for the purposes of subsection (1); and
9 (f) counts for the purposes of whichever of subsection (4) or (5)
10 is applicable to the landfill facility.

11 *OTNs—no double counting*

- 12 (8) If:
13 (a) the person was the holder of the liability transfer certificate
14 throughout the eligible financial year; and
15 (b) during the eligible financial year, an amount of greenhouse
16 gas emitted from the operation of the landfill facility was
17 attributable to the combustion of eligible upstream fuel that
18 was obtained by way of the supply of the fuel to a person (the
19 *recipient*); and
20 (c) the recipient did not quote the recipient's OTN in relation to
21 the supply of the fuel;
22 the amount mentioned in paragraph (b):
23 (d) does not count for the purposes of subsection (1); and
24 (e) counts for the purposes of subsection (4).
- 25 (9) If:
26 (a) the person was the holder of the liability transfer certificate
27 for a number of, but not all, days in the eligible financial year
28 (the *certificate days*); and
29 (b) during the certificate days, an amount of greenhouse gas
30 emitted from the operation of the landfill facility was
31 attributable to the combustion of eligible upstream fuel that
32 was obtained by way of the supply of the fuel to a person (the
33 *recipient*); and
34 (c) the recipient did not quote the recipient's OTN in relation to
35 the supply of the fuel;
-

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- 1 the amount mentioned in paragraph (b):
2 (d) does not count for the purposes of subsection (1); and
3 (e) counts for the purposes of subsection (5).

4 *Liquid petroleum fuel—no double counting*

- 5 (10) If:
6 (a) the person was the holder of the liability transfer certificate
7 throughout the eligible financial year; and
8 (b) during the eligible financial year, an amount of greenhouse
9 gas emitted from the operation of the landfill facility was
10 attributable to the combustion of liquid petroleum fuel; and
11 (c) the potential greenhouse gas emissions embodied in the fuel
12 were counted for the purposes of subsection ^31(1) or ^32(1);
13 the amount mentioned in paragraph (b):
14 (d) does not count for the purposes of subsection (1); and
15 (e) counts for the purposes of subsection (4).

- 16 (11) If:
17 (a) the person was the holder of the liability transfer certificate
18 for a number of, but not all, days in the eligible financial year
19 (the *certificate days*); and
20 (b) during the certificate days, an amount of greenhouse gas
21 emitted from the operation of the landfill facility was
22 attributable to the combustion of liquid petroleum fuel; and
23 (c) the potential greenhouse gas emissions embodied in the fuel
24 were counted for the purposes of subsection ^31(1) or ^32(1);
25 the amount mentioned in paragraph (b):
26 (d) does not count for the purposes of subsection (1); and
27 (e) counts for the purposes of subsection (5).

28 *Threshold number*

- 29 (12) For the purposes of this section, the landfill facility's ***threshold***
30 ***number*** for the eligible financial year is:
31 (a) in a case where:
32 (i) at any time during the eligible financial year, the landfill
33 facility is open for the acceptance of waste; and

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- 1 (ii) at any time during the eligible financial year, the landfill
2 facility is within the prescribed distance of another
3 landfill facility that is open for the acceptance of waste;
4 10,000; or
5 (b) in a case where:
6 (i) throughout the eligible financial year, the landfill
7 facility was closed for the acceptance of waste; and
8 (ii) the eligible financial year is any of the 10 financial
9 years that followed the last eligible financial year when
10 the facility was open for the acceptance of waste; and
11 (iii) the facility's threshold number for the last eligible
12 financial year when the facility was open for the
13 acceptance of waste was 10,000;
14 10,000; or
15 (c) in any other case—25,000.

16 **Subdivision C—Anti-avoidance**

17 ^{^23} **Anti-avoidance**

18 *Scope*

- 19 (1) This section applies if:
20 (a) at any time after 15 December 2008, one or more persons
21 entered into, commenced to carry out, or carried out, a
22 scheme; and
23 (b) in the Authority's opinion, the person, or any of the persons,
24 who entered into, commenced to carry out, or carried out, the
25 scheme did so for the purpose, or for purposes that included
26 the substantial purpose, of:
27 (i) enabling the controlling corporation of a group to obtain
28 the benefit of one or more threshold provisions in
29 relation to a facility for an eligible financial year; or
30 (ii) enabling a non-group entity to obtain the benefit of one
31 or more threshold provisions in relation to a facility for
32 an eligible financial year; or

EXPOSURE DRAFT

Part 3 Liable entities

Division 2 Direct emitters of greenhouse gases

Section ^23

- 1 (iii) enabling the holder of a liability transfer certificate to
2 obtain the benefit of one or more threshold provisions in
3 relation to a facility for an eligible financial year.

4 For this purpose, it is immaterial whether the controlling
5 corporation, non-group entity or the holder of the certificate, as the
6 case may be, is the person, or one of the persons, referred to in
7 paragraph (a).

8 *Cancellation of benefit of threshold provision*

- 9 (2) The Authority may, by writing, determine that this Act has, and is
10 taken always to have had, effect, as if the controlling corporation,
11 the non-group entity or the holder of the certificate, as the case
12 may be, were not entitled to obtain the benefit of the relevant
13 threshold provision or provisions in relation to the facility for that
14 eligible financial year.

- 15 (3) If the Authority makes a determination under subsection (2), the
16 Authority must publish a copy of the determination on the
17 Authority's website.

18 *Threshold provision*

- 19 (4) For the purposes of this section, each of the following is a
20 ***threshold provision***:
21 (a) subsection ^17(4);
22 (b) subsection ^17(5);
23 (c) subsection ^18(4);
24 (d) subsection ^18(5);
25 (e) subsection ^19(4);
26 (f) subsection ^19(5);
27 (g) subsection ^20(4);
28 (h) subsection ^20(5);
29 (i) subsection ^21(4);
30 (j) subsection ^21(5);
31 (k) subsection ^22(4);
32 (l) subsection ^22(5).

EXPOSURE DRAFT

Liabile entities **Part 3**
Direct emitters of greenhouse gases **Division 2**

Section ^24

1 **Subdivision D—Greenhouse gas emitted from the operation of**
2 **a facility**

3 **^24 Greenhouse gas emitted from the operation of a facility**

4 For the purposes of this Act, an *emission* of greenhouse gas from
5 the operation of a facility is a scope 1 emission of greenhouse gas,
6 where:

- 7 (a) the greenhouse gas is released into the atmosphere as a direct
8 result of the operation of the facility; and
9 (b) regulations made for the purposes of paragraph 10(2A)(a) of
10 the *National Greenhouse and Energy Reporting Act 2007*
11 declare that the emission is a scope 1 emission covered by the
12 carbon pollution reduction scheme.

13 **^25 Measurement of greenhouse gas emitted from the operation of a**
14 **facility**

15 For the purposes of this Act, greenhouse gas emitted from the
16 operation of a facility is to be measured using:

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

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

EXPOSURE DRAFT

Part 3 Liable entities

Division 3 Importers, manufacturers and suppliers of synthetic greenhouse gases

Section ^26

1

2 **Division 3—Importers, manufacturers and suppliers of** 3 **synthetic greenhouse gases**

4 **^26 Liable entity—import of synthetic greenhouse gas**

5 *Scope*

- 6 (1) This section applies if, during an eligible financial year, the total
7 amount of synthetic greenhouse gases imported by a person has a
8 carbon dioxide equivalence of a particular number of tonnes.

9 *Provisional emissions number*

- 10 (2) For the purposes of this Act, that number, reduced by the total of
11 any netted-out numbers of the person for the eligible financial year,
12 is a **provisional emissions number** of the person for the eligible
13 financial year.

14 Note: For netted-out numbers, see subsections (7) and (9).

15 *Liable entity*

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

18 *Exemption—small importers*

- 19 (4) If, during the eligible financial year, the total amount of synthetic
20 greenhouse gases imported by the person has a carbon dioxide
21 equivalence of less than 25,000 tonnes, the total amount does not
22 count for the purposes of subsection (1).

23 Note: See also section ^30 (anti-avoidance).

24 *Synthetic greenhouse gases in manufactured products*

- 25 (5) For the purposes of this section, disregard a synthetic greenhouse
26 gas if the gas is in a manufactured product that consists in part of
27 that gas only because the gas was used in the manufacturing
28 process.

EXPOSURE DRAFT

1 Note: For example, this subsection would apply to a gas that remained in a
2 foam product after the gas was used in the production of the foam.

3 *Synthetic greenhouse gas for use on board ships or aircraft*

4 (6) For the purposes of this section, disregard the import of a synthetic
5 greenhouse gas if:

6 (a) the synthetic greenhouse gas is on board a ship or aircraft;
7 and

8 (b) the ship or aircraft has air-conditioning or refrigeration
9 equipment; and

10 (c) the synthetic greenhouse gas is exclusively for use in meeting
11 the reasonable servicing requirements of that equipment
12 during, or in connection with, one or more periods when the
13 ship or aircraft is or will be engaged in a journey between:

- 14 (i) a place in Australia and a place outside Australia; or
15 (ii) 2 places outside Australia.

16 *Netted-out numbers*

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

18 (a) during an eligible financial year, the total amount of a
19 particular type of synthetic greenhouse gas imported by the
20 person has a carbon dioxide equivalence of a particular
21 number of tonnes (the *import number*); and

22 (b) during the eligible financial year, the total amount of the
23 same type of synthetic greenhouse gas exported by the person
24 has a carbon dioxide equivalence of a particular number of
25 tonnes (the *export number*);

26 the person's *netted-out number* for that type of synthetic
27 greenhouse gas for the eligible financial year is:

28 (c) if the import number exceeds the export number—the export
29 number; or

30 (d) otherwise—the import number.

31 (8) Paragraph (7)(b) does not apply to synthetic greenhouse gas
32 exported by the person if the synthetic greenhouse gas was
33 supplied in Australia to the person.

34 (9) For the purposes of this section, if:

EXPOSURE DRAFT

Part 3 Liable entities

Division 3 Importers, manufacturers and suppliers of synthetic greenhouse gases

Section ^27

- 1 (a) during the eligible financial year, the person supplies an
2 amount of synthetic greenhouse gas to another person; and
3 (b) the other person quoted the other person's OTN in relation to
4 the supply; and
5 (c) that amount has a carbon dioxide equivalence of a particular
6 number of tonnes;
7 that number is the person's *netted-out number* for that supply for
8 the eligible financial year.

9 **^27 Liable entity—manufacture of synthetic greenhouse gas**

10 *Scope*

- 11 (1) This section applies if, during an eligible financial year, the total
12 amount of synthetic greenhouse gases manufactured by a person
13 has a carbon dioxide equivalence of a particular number of tonnes.

14 *Provisional emissions number*

- 15 (2) For the purposes of this Act, that number, reduced by the total of
16 any netted-out numbers of the person for the eligible financial year,
17 is a *provisional emissions number* of the person for the eligible
18 financial year.

19 Note: For netted-out numbers, see subsections (7) and (8).

20 *Liable entity*

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

23 *Exemption—small manufacturers*

- 24 (4) If, during the eligible financial year, the total amount of synthetic
25 greenhouse gases manufactured by the person has a carbon dioxide
26 equivalence of less than 25,000 tonnes, the total amount does not
27 count for the purposes of subsection (1).

28 Note: See also section ^30 (anti-avoidance).

EXPOSURE DRAFT

1 *Recycling of synthetic greenhouse gas*

- 2 (5) For the purposes of this section, disregard a process by which a
3 quantity of synthetic greenhouse gas is produced by the recycling
4 of substances containing synthetic greenhouse gases of that
5 quantity.
- 6 (6) For the purposes of this section, if a process for the manufacture of
7 a quantity of synthetic greenhouse gas involves, in part, the
8 recycling of substances containing synthetic greenhouse gas of a
9 lesser quantity, the quantity of synthetic greenhouse gas
10 manufactured in the process is taken to be reduced by the quantity
11 of synthetic greenhouse gas in the substances recycled in the
12 process.

13 *Netted-out numbers*

- 14 (7) For the purposes of this section, if:
- 15 (a) during an eligible financial year, the total amount of a
16 particular type of synthetic greenhouse gas manufactured by
17 the person has a carbon dioxide equivalence of a particular
18 number of tonnes (the *manufacture number*); and
19 (b) during the eligible financial year, the total amount of the
20 same type of synthetic greenhouse gas exported by the person
21 has a carbon dioxide equivalence of a particular number of
22 tonnes (the *export number*);
- 23 the person's *netted-out number* for that type of synthetic
24 greenhouse gas for the eligible financial year is:
- 25 (c) if the manufacture number exceeds the export number—the
26 export number; or
27 (d) otherwise—the manufacture number.
- 28 (8) For the purposes of this section, if:
- 29 (a) during the eligible financial year, the person supplies an
30 amount of synthetic greenhouse gas to another person; and
31 (b) the other person quoted the other person's OTN in relation to
32 the supply; and
33 (c) that amount has a carbon dioxide equivalence of a particular
34 number of tonnes;

EXPOSURE DRAFT

Part 3 Liable entities

Division 3 Importers, manufacturers and suppliers of synthetic greenhouse gases

Section ^28

1 that number is the person's *netted-out number* for that supply for
2 the eligible financial year.

3 **^28 Liable entity—re-supply of synthetic greenhouse gas to** 4 **recipient who does not quote an OTN**

5 *Scope*

6 (1) This section applies if:

- 7 (a) during an eligible financial year, a person supplies an amount
8 of synthetic greenhouse gas to another person (the *OTN*
9 *holder*) who quotes the other person's OTN in relation to the
10 supply; and
11 (b) during that or a later eligible financial year, the OTN holder
12 re-supplies the whole or a part of that amount to a third
13 person; and
14 (c) the third person does not quote the third person's OTN in
15 relation to the re-supply; and
16 (d) the re-supplied amount has a carbon dioxide equivalence of a
17 particular number of tonnes.

18 *Provisional emissions number*

19 (2) For the purposes of this Act, that number is a *provisional*
20 *emissions number* of the OTN holder for the eligible financial year
21 in which the re-supply occurred.

22 *Liable entity*

23 (3) For the purposes of this Act, the OTN holder is a *liable entity* for
24 the eligible financial year in which the re-supply occurred.

25 **^29 Liable entity—supply of synthetic greenhouse gas to a person** 26 **who misuses the person's OTN**

27 *Scope*

28 (1) This section applies if:

- 29 (a) during an eligible financial year, a person supplies an amount
30 of synthetic greenhouse gas to another person (the *OTN*

EXPOSURE DRAFT

- 1 *holder*) who quotes the other person's OTN in relation to the
2 supply; and
3 (b) the OTN holder was not required or permitted by this Act to
4 quote the OTN holder's OTN; and
5 (c) the supplied amount has a carbon dioxide equivalence of a
6 particular number of tonnes.

7 *Provisional emissions number*

- 8 (2) For the purposes of this Act, that number is a *provisional*
9 *emissions number* of the OTN holder for the eligible financial
10 year.

11 *Liabile entity*

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

14 ^30 Anti-avoidance

15 *Scope*

- 16 (1) This section applies if:
17 (a) at any time after 15 December 2008, one or more persons
18 entered into, commenced to carry out, or carried out, a
19 scheme; and
20 (b) in the Authority's opinion, the person, or any of the persons,
21 who entered into, commenced to carry out, or carried out, the
22 scheme did so for the purpose, or for purposes that included
23 the substantial purpose, of:
24 (i) enabling the importer of one or more synthetic
25 greenhouse gases to obtain the benefit of subsection
26 ^26(4) for an eligible financial year; or
27 (ii) enabling a manufacturer of one or more synthetic
28 greenhouse gases to obtain the benefit of subsection
29 ^27(4) for an eligible financial year.

30 For this purpose, it is immaterial whether the importer or
31 manufacturer, as the case may be, is the person, or one of the
32 persons, referred to in paragraph (a).

EXPOSURE DRAFT

Part 3 Liable entities

Division 3 Importers, manufacturers and suppliers of synthetic greenhouse gases

Section ^30

1

Cancellation of benefit of threshold provision

2

(2) The Authority may, by writing, determine that this Act has, and is taken always to have had, effect, as if the importer or manufacturer, as the case may be, were not entitled to obtain the benefit of subsection ^26(4) or ^27(4), as the case may be, for that eligible financial year.

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(3) If the Authority makes a determination under subsection (2), the Authority must publish a copy of the determination on the Authority's website.

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EXPOSURE DRAFT

1

2 **Division 4—Importers, producers and suppliers of eligible**
3 **upstream fuels**

4 **^31 Liabe entity—import of liquid petroleum fuel**

5 *Scope*

- 6 (1) This section applies if:
- 7 (a) an amount of liquid petroleum fuel is entered for home
 - 8 consumption during an eligible financial year; and
 - 9 (b) import duty is or was payable by a person on that amount;
 - 10 and
 - 11 (c) the potential greenhouse gas emissions embodied in that
 - 12 amount has a carbon dioxide equivalence of a particular
 - 13 number of tonnes.

14 *Provisional emissions number*

- 15 (2) For the purposes of this Act, that number, reduced (but not below
- 16 zero) by the total of any netted-out numbers of the person for the
- 17 eligible financial year, is a ***provisional emissions number*** of the
- 18 person for the eligible financial year.

19 Note: For netted-out numbers, see subsection (4).

20 *Liabe entity*

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

23 *Netted-out numbers*

- 24 (4) If:
- 25 (a) during the eligible financial year, the person supplies an
 - 26 amount of liquid petroleum fuel to another person (the ***OTN***
 - 27 ***holder***) who quotes the other person's OTN in relation to the
 - 28 supply; and

EXPOSURE DRAFT

Part 3 Liable entities

Division 4 Importers, producers and suppliers of eligible upstream fuels

Section ^32

- 1 (b) the potential greenhouse gas emissions embodied in the
2 supplied amount have a carbon dioxide equivalence of a
3 particular number of tonnes;
4 the number is a *netted-out number* of the person for the eligible
5 financial year.

6 *Import duty*

- 7 (5) For the purposes of this section, in determining whether import
8 duty is or was payable on an amount of liquid petroleum fuel,
9 disregard:
10 (a) any remission, rebate or refund under section 163 of the
11 *Customs Act 1901*; or
12 (b) any drawback under regulations made for the purposes of
13 subsection 168(1) of the *Customs Act 1901*;
14 unless the remission, rebate, refund or drawback is prescribed by
15 regulations made for the purposes of this subsection.

16 **^32 Liable entity—production of liquid petroleum fuel**

17 *Scope*

- 18 (1) This section applies if:
19 (a) an amount of liquid petroleum fuel is manufactured or
20 produced in Australia during an eligible financial year; and
21 (b) excise duty is or was payable by a person on that amount;
22 and
23 (c) the potential greenhouse gas emissions embodied in that
24 amount has a carbon dioxide equivalence of a particular
25 number of tonnes.

26 *Provisional emissions number*

- 27 (2) For the purposes of this Act, that number, reduced (but not below
28 zero) by the total of any netted-out numbers of the person for the
29 eligible financial year, is a *provisional emissions number* of the
30 person for the eligible financial year.

31 Note: For netted-out numbers, see subsection (4).

EXPOSURE DRAFT

1 *Liabile entity*

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

4 *Netted-out numbers*

5 (4) If:

6 (a) during the eligible financial year, the person supplies an
7 amount of liquid petroleum fuel to another person (the *OTN*
8 *holder*) who quotes the other person's OTN in relation to the
9 supply; and

10 (b) the potential greenhouse gas emissions embodied in the
11 supplied amount have a carbon dioxide equivalence of a
12 particular number of tonnes;

13 the number is a *netted-out number* of the person for the eligible
14 financial year.

15 *Excise duty*

16 (5) For the purposes of this section, in determining whether excise
17 duty is or was payable on an amount of liquid petroleum fuel,
18 disregard:

19 (a) any remission, rebate or refund under section 78 of the *Excise*
20 *Act 1901*; or

21 (b) any drawback under regulations made for the purposes of
22 section 79 of the *Excise Act 1901*;

23 unless the remission, rebate, refund or drawback is prescribed by
24 regulations made for the purposes of this subsection.

25 **^33 Liabile entity—supply of untransformed eligible upstream fuel**
26 **(other than liquid petroleum fuel)**

27 *Scope*

28 (1) This section applies if:

29 (a) during an eligible financial year, a person (the *supplier*)
30 supplies an amount of eligible upstream fuel to another
31 person; and

EXPOSURE DRAFT

Part 3 Liable entities

Division 4 Importers, producers and suppliers of eligible upstream fuels

Section ^34

- 1 (b) the fuel is not the result of the carrying out by the supplier of
2 the recognised transformation of another type of eligible
3 upstream fuel; and
4 (c) the fuel is not liquid petroleum fuel; and
5 (d) the fuel was not supplied in Australia to the supplier; and
6 (e) the other person did not quote the other person's OTN in
7 relation to the supply mentioned in paragraph (a); and
8 (f) the potential greenhouse gas emissions embodied in the
9 amount mentioned in paragraph (a) have a carbon dioxide
10 equivalence of a particular number of tonnes.

11 *Provisional emissions number*

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

14 *Liable entity*

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

17 **^34 Liable entity—application to own use of untransformed eligible** 18 **upstream fuel (other than liquid petroleum fuel)**

19 *Scope*

- 20 (1) This section applies if:
21 (a) during an eligible financial year, a person applies an amount
22 of eligible upstream fuel to the person's own use; and
23 (b) greenhouse gas was released into the atmosphere as a result
24 of the application to own use; and
25 (c) the fuel is not the result of the carrying out by the person of
26 the recognised transformation of another type of eligible
27 upstream fuel; and
28 (d) the fuel is not liquid petroleum fuel; and
29 (e) the fuel was not supplied in Australia to the person; and
30 (f) the greenhouse gas mentioned in paragraph (b) does not
31 count for the purposes of subsection ^17(1), ^18(1), ^19(1),
32 ^20(1), ^21(1) or ^22(1); and

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- 1 (g) the potential greenhouse gas emissions embodied in the
2 amount mentioned in paragraph (a) have a carbon dioxide
3 equivalence of a particular number of tonnes.

4 *Provisional emissions number*

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

7 *Liabile entity*

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

10 [^]35 **Liabile entity—supply of transformed eligible upstream fuel**

11 *Scope*

- 12 (1) This section applies if:
13 (a) during an eligible financial year, a person supplies an amount
14 of eligible upstream fuel to another person; and
15 (b) the fuel is the result of the carrying out by the supplier of the
16 recognised transformation of another type of eligible
17 upstream fuel; and
18 (c) the other person did not quote the other person's OTN in
19 relation to the supply mentioned in paragraph (a); and
20 (d) the potential greenhouse gas emissions embodied in the
21 amount mentioned in paragraph (a) have a carbon dioxide
22 equivalence of a particular number of tonnes.

23 *Provisional emissions number*

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

26 *Liabile entity*

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

EXPOSURE DRAFT

Part 3 Liable entities

Division 4 Importers, producers and suppliers of eligible upstream fuels

Section ^36

1 **^36 Liable entity—application of transformed eligible upstream fuel**
2 **to own use**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) during an eligible financial year, a person applies an amount
 - 6 of eligible upstream fuel to the person's own use; and
 - 7 (b) greenhouse gas was released into the atmosphere as a result
 - 8 of the application to own use; and
 - 9 (c) the fuel is the result of the carrying out by the person of the
 - 10 recognised transformation of another type of eligible
 - 11 upstream fuel; and
 - 12 (d) the fuel was not supplied in Australia to the person; and
 - 13 (e) the greenhouse gas mentioned in paragraph (b) does not
 - 14 count for the purposes of subsection ^17(1), ^18(1), ^19(1),
 - 15 ^20(1), ^21(1) or ^22(1); and
 - 16 (f) the potential greenhouse gas emissions embodied in the
 - 17 amount mentioned in paragraph (a) have a carbon dioxide
 - 18 equivalence of a particular number of tonnes.

19 *Provisional emissions number*

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

22 *Liable entity*

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

25 **^37 Liable entity—re-supply of eligible upstream fuel**

26 *Scope*

- 27 (1) This section applies if:
- 28 (a) during an eligible financial year, a person supplies an amount
 - 29 of eligible upstream fuel to another person (the **OTN holder**)
 - 30 who quotes the other person's OTN in relation to the supply;
 - 31 and

EXPOSURE DRAFT

- 1 (b) during that or a later eligible financial year, the OTN holder
2 re-supplies the whole or a part of that amount to a third
3 person; and
4 (c) the third person does not quote the third person's OTN in
5 relation to the re-supply; and
6 (d) the potential greenhouse gas emissions embodied in the
7 amount re-supplied have a carbon dioxide equivalence of a
8 particular number of tonnes.

9 *Provisional emissions number*

- 10 (2) For the purposes of this Act, that number, reduced (but not below
11 zero) by the total of any netted-out numbers of the OTN holder for
12 the eligible financial year, is a *provisional emissions number* of
13 the OTN holder for the eligible financial year in which the
14 re-supply occurs.

15 Note: For netted-out numbers, see subsection (4).

16 *Liabile entity*

- 17 (3) For the purposes of this Act, the OTN holder is a *liable entity* for
18 the eligible financial year in which the re-supply occurs.

19 *Netted-out numbers*

- 20 (4) For the purposes of this section, if:
21 (a) during the eligible financial year, the OTN holder supplies an
22 amount of eligible upstream fuel to another person (the
23 *recipient*); and
24 (b) the recipient does not quote the recipient's OTN in relation to
25 the supply; and
26 (c) the supplied amount is:
27 (i) in a bottle, cylinder or other container; or
28 (ii) otherwise packaged;
29 for use otherwise than by way of combustion; and
30 (d) such other conditions (if any) as are specified in the
31 regulations are satisfied; and

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Part 3 Liable entities

Division 4 Importers, producers and suppliers of eligible upstream fuels

Section ^38

- 1 (e) the potential greenhouse gas emissions embodied in the
2 supplied amount have a carbon dioxide equivalence of a
3 particular number of tonnes;
4 that number is a *netted-out number* of the OTN holder for the
5 eligible financial year.

6 **^38 Liable entity—application of eligible upstream fuel to OTN** 7 **holder’s own use**

8 *Scope*

- 9 (1) This section applies if:
10 (a) during an eligible financial year, a person supplies an amount
11 of eligible upstream fuel to another person (the *recipient*);
12 and
13 (b) the recipient quoted the recipient’s OTN in relation to the
14 supply; and
15 (c) during that or a later eligible financial year, the recipient
16 applied the whole or a part of the amount of the fuel to the
17 recipient’s own use; and
18 (d) greenhouse gas was released into the atmosphere as a result
19 of the application to own use; and
20 (e) the greenhouse gas mentioned in paragraph (d) does not
21 count for the purposes of subsection ^17(1), ^18(1), ^19(1),
22 ^20(1), ^21(1) or ^22(1); and
23 (f) the potential greenhouse gas emissions embodied in the
24 amount applied to the recipient’s own use have a carbon
25 dioxide equivalence of a particular number of tonnes.

26 *Provisional emissions number*

- 27 (2) For the purposes of this Act, that number is a *provisional*
28 *emissions number* of the recipient for the eligible financial year in
29 which the amount was applied to the recipient’s own use.

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Liabile entities **Part 3**
Importers, producers and suppliers of eligible upstream fuels **Division 4**

Section ^{^39}

1 *Liabile entity*

2 (3) For the purposes of this Act, the recipient is a **liable entity** for the
3 eligible financial year in which the amount was applied to the
4 recipient's own use.

5 **^{^39} Liabile entity—application of transformed eligible upstream fuel**
6 **to OTN holder's own use**

7 *Scope*

- 8 (1) This section applies if:
- 9 (a) during an eligible financial year, a person supplies an amount
10 of eligible upstream fuel to another person (the **recipient**);
11 and
 - 12 (b) the recipient quoted the recipient's OTN in relation to the
13 supply; and
 - 14 (c) during that or a later eligible financial year, the recipient
15 applied the whole or a part of the amount of another type of
16 eligible upstream fuel to the recipient's own use; and
 - 17 (d) greenhouse gas was released into the atmosphere as a result
18 of the application to own use; and
 - 19 (e) the fuel mentioned in paragraph (c) is the result of the
20 carrying out by the recipient of the recognised transformation
21 of the fuel mentioned in paragraph (a); and
 - 22 (f) the greenhouse gas mentioned in paragraph (d) does not
23 count for the purposes of subsection ^{^17}(1), ^{^18}(1), ^{^19}(1),
24 ^{^20}(1), ^{^21}(1) or ^{^22}(1); and
 - 25 (g) the potential greenhouse gas emissions embodied in the
26 amount applied to the recipient's own use have a carbon
27 dioxide equivalence of a particular number of tonnes.

28 *Provisional emissions number*

29 (2) For the purposes of this Act, that number is a **provisional**
30 **emissions number** of the recipient for the eligible financial year in
31 which the amount was applied to the recipient's own use.

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Part 3 Liable entities

Division 4 Importers, producers and suppliers of eligible upstream fuels

Section ^40

1 *Liable entity*

2 (3) For the purposes of this Act, the recipient is a *liable entity* for the
3 eligible financial year in which the amount was applied to the
4 recipient's own use.

5 **^40 Liable entity—supply of eligible upstream fuel to a person who**
6 **misuses the person's OTN**

7 *Scope*

8 (1) This section applies if:
9 (a) during an eligible financial year, a person supplies an amount
10 of eligible upstream fuel to another person (the *OTN holder*)
11 who quotes the other person's OTN in relation to the supply;
12 and
13 (b) the OTN holder was not required or permitted by this Act to
14 quote the OTN holder's OTN; and
15 (c) the potential greenhouse gas emissions embodied in the
16 supplied amount have a carbon dioxide equivalence of a
17 particular number of tonnes.

18 *Provisional emissions number*

19 (2) For the purposes of this Act, that number is a *provisional*
20 *emissions number* of the OTN holder for the eligible financial
21 year.

22 *Liable entity*

23 (3) For the purposes of this Act, the OTN holder is a *liable entity* for
24 the eligible financial year.

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1

2 **Division 5—Obligation transfer numbers**

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

4 **^41 Issue of OTNs**

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

- 6 (a) as the result of an application (see section ^44);
7 (b) on the Authority's own initiative (see section ^45).

8 **^42 Application for OTN**

- 9 (1) A person may apply to the Authority for the issue to the person of
10 an OTN.
- 11 (2) An application must:
- 12 (a) be in writing; and
13 (b) be in a form approved, in writing, by the Authority; and
14 (c) be accompanied by:
- 15 (i) such information as is specified in the regulations; and
16 (ii) such documents (if any) as are specified in the
17 regulations; and
18 (d) be accompanied by the fee (if any) specified in the
19 regulations.
- 20 (3) The approved form of application may provide for verification by
21 statutory declaration of statements in applications.

22 **^43 Further information**

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

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Division 5 Obligation transfer numbers

Section ^44

- 1 (b) refuse to take any action, or any further action, in relation to
2 the application.

3 **^44 Issue of OTN as the result of an application**

4 *Scope*

- 5 (1) This section applies if an application under section ^42 has been
6 made for an OTN.

7 *Issue of OTN*

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

10 *Criteria for issue of OTN*

- 11 (3) The Authority must not issue the OTN unless:
12 (a) the Authority is satisfied that the applicant is, or is likely to
13 be, required or permitted by this Act to quote the person's
14 OTN in relation to the supply to the person of an amount of:
15 (i) eligible upstream fuel; or
16 (ii) synthetic greenhouse gas; and
17 (b) the Authority has carried out the applicable identification
18 procedure in respect of the applicant.

19 *Timing*

- 20 (4) The Authority must take all reasonable steps to ensure that a
21 decision is made on the application:
22 (a) if the Authority requires the applicant to give further
23 information under subsection ^43(1) in relation to the
24 application—within 90 days after the applicant gave the
25 Authority the information; or
26 (b) otherwise—within 90 days after the application was made.

27 *Refusal*

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

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1 **^45 Issue of OTN on the Authority's own initiative**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) the Authority is satisfied that a person is, or is likely to be,
5 required or permitted by this Act to quote the person's OTN
6 in relation to the supply to the person of an amount of:
- 7 (i) eligible upstream fuel; or
8 (ii) synthetic greenhouse gas; and
- 9 (b) the Authority has carried out the applicable identification
10 procedure in respect of the person.

11 *Issue of OTN*

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

14 **^46 Surrender of OTN**

15 *Scope*

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

17 *Surrender*

- 18 (2) The person may, with the written consent of the Authority,
19 surrender the OTN.
- 20 (3) The surrender takes effect when the consent is given by the
21 Authority.
- 22 (4) The Authority must not give consent to the surrender of the OTN
23 unless the Authority is satisfied that the person is not required, and
24 is unlikely to be required, by this Act to quote the OTN in relation
25 to the supply to the person of an amount of:
- 26 (a) eligible upstream fuel; or
27 (b) synthetic greenhouse gas.

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Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^47

1 **^47 Cancellation of OTN**

- 2 (1) If a person holds an OTN, the Authority may, by written notice
3 given to the person, cancel the OTN.
- 4 (2) The Authority must not cancel a person's OTN under
5 subsection (1) unless the Authority is satisfied that:
6 (a) the person is not required or permitted, and is unlikely to be
7 required or permitted, by this Act to quote the OTN in
8 relation to the supply to the person of an amount of:
9 (i) eligible upstream fuel; or
10 (ii) synthetic greenhouse gas; or
11 (b) the person has breached this Act or an associated provision.
- 12 (3) If:
13 (a) a person has ceased to exist; and
14 (b) immediately before the person ceased to exist, the person
15 held an OTN;
16 the Authority must cancel the OTN.

17 **^48 OTN is not transferable**

18 An OTN is not transferable.

19 **^49 OTN Register**

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

25 *Entry for an OTN*

- 26 (4) If an OTN is issued to a person, the Authority must make an entry
27 for the OTN in the OTN Register.
- 28 (5) An entry for a person's OTN must set out:
29 (a) the name of the person; and

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Liable entities **Part 3**
Obligation transfer numbers **Division 5**

Section ^50

1 (b) the person's address last known to the Authority.

2 (6) If:

3 (a) there is an entry for a person's OTN in the OTN Register;
4 and

5 (b) the person changes the person's name or address;
6 the Authority may make the appropriate alteration to the entry.

7 *Removal of entry for an OTN*

8 (7) If an OTN is surrendered or cancelled, the Authority must remove
9 the entry for the OTN from the OTN Register.

10 **^50 Evidentiary provisions**

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

14 (2) The certified copy or extract is admissible in evidence in all courts
15 and proceedings without further proof or production of the original.

16 (3) The Authority may charge a fee specified in the regulations for
17 supplying a copy or extract under subsection (1).

18 (4) A fee specified under subsection (3) must not be such as to amount
19 to taxation.

20 **Subdivision B—Method of quotation of obligation transfer** 21 **numbers**

22 **^51 Quotation of OTN**

23 *Scope*

24 (1) This section applies if a person (the *first person*) is the holder of an
25 OTN.

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Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^52

1

Quotation

2

(2) For the purposes of this Act, the first person *quotes* the OTN to another person in relation to:

3

4

(a) a particular supply of eligible upstream fuel to the first person; or

5

6

(b) a particular supply of synthetic greenhouse gas to the first person;

7

8

if:

9

(c) the first person makes a statement to the other person consisting of the words “quotation of OTN” followed by the OTN; and

10

11

12

(d) the statement is made in connection with the supply; and

13

14

(e) if:

(i) the supply is under a contract; and

15

(ii) the contract is entered into on or after 1 July 2010;

16

the statement is made before the contract was entered into;

17

and

18

(f) if:

19

(i) the supply is under a contract; and

20

(ii) the contract was entered into before 1 July 2010;

21

the statement is made before 1 July 2010.

22

(3) A statement under subsection (2) may be included in a contract, order or similar document, whether or not in electronic form.

23

24

Note 1: For example, if the first person’s OTN is 123456, an order for a particular supply of eligible upstream fuel could include the words “quotation of OTN 123456”.

25

26

27

Note 2: See also sections ^65 and ^66 (rejection of quotation of OTN).

28

Subdivision C—Mandatory quotation of obligation transfer numbers

29

30

^52 Mandatory quotation of OTN—large user of eligible upstream fuel

31

32

(1) If:

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- 1 (a) during an eligible financial year, a person supplies an amount
2 of a particular type of eligible upstream fuel (other than
3 liquid petroleum fuel) to another person (the *recipient*); and
4 (b) either:
5 (i) a facility was under the operational control of the
6 recipient throughout the previous financial year; or
7 (ii) a facility was under the operational control of the
8 recipient for a number of, but not all, days in the
9 previous financial year (the *control days*); and
10 (c) the fuel is for use in the facility; and
11 (d) so much of the total amount of greenhouse gases emitted
12 from the operation of the facility:
13 (i) if subparagraph (b)(i) applies—during the previous
14 financial year; or
15 (ii) if subparagraph (b)(ii) applies—during the control days;
16 as is attributable to the combustion of that type of eligible
17 upstream fuel has a carbon dioxide equivalence of at least:
18 (iii) if subparagraph (b)(i) applies—25,000 tonnes; or
19 (iv) if subparagraph (b)(ii) applies—the amount worked out
20 using the formula:

21
$$25,000 \text{ tonnes} \times \frac{\text{Number of control days}}{\text{Number of days in the previous eligible financial year}}$$

22 the recipient must quote the recipient's OTN in relation to the
23 supply.

24 *Ancillary contraventions*

- 25 (2) A person must not:
26 (a) aid, abet, counsel or procure a contravention of
27 subsection (1); or
28 (b) induce, whether by threats or promises or otherwise, a
29 contravention of subsection (1); or
30 (c) be in any way, directly or indirectly, knowingly concerned in,
31 or party to, a contravention of subsection (1); or

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Section ^53

- 1 (d) conspire with others to effect a contravention of
2 subsection (1).

3 *Civil penalty provisions*

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

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

7 *Liability transfer certificate*

- 8 (4) For the purposes of this section, if a person (the *certificate holder*)
9 was the holder of a liability transfer certificate in relation to a
10 facility on a particular day:
11 (a) the facility is taken to have been under the operational
12 control of the certificate holder on that day; and
13 (b) the facility is taken not to have been under the operational
14 control of any other person on that day.

15 **^53 Mandatory quotation of OTN—retailer of natural gas**

- 16 (1) If:
17 (a) during an eligible financial year, a person supplies an amount
18 of natural gas to another person (the *recipient*); and
19 (b) the recipient carries on a business of re-supplying natural gas
20 by way of retail sale;
21 the recipient must quote the recipient's OTN in relation to the
22 supply.

23 *Ancillary contraventions*

- 24 (2) A person must not:
25 (a) aid, abet, counsel or procure a contravention of
26 subsection (1); or
27 (b) induce, whether by threats or promises or otherwise, a
28 contravention of subsection (1); or
29 (c) be in any way, directly or indirectly, knowingly concerned in,
30 or party to, a contravention of subsection (1); or

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Obligation transfer numbers **Division 5**

Section ^54

1 (d) conspire with others to effect a contravention of
2 subsection (1).

3 *Civil penalty provisions*

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

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

7 **^54 Mandatory quotation of OTN—liquid petroleum gas marketer**

8 (1) If:

9 (a) during an eligible financial year, a person supplies an amount
10 of liquid petroleum gas to another person (the *recipient*); and

11 (b) the recipient is a liquid petroleum gas marketer;
12 the recipient must quote the recipient's OTN in relation to the
13 supply.

14 *Ancillary contraventions*

15 (2) A person must not:

16 (a) aid, abet, counsel or procure a contravention of
17 subsection (1); or

18 (b) induce, whether by threats or promises or otherwise, a
19 contravention of subsection (1); or

20 (c) be in any way, directly or indirectly, knowingly concerned in,
21 or party to, a contravention of subsection (1); or

22 (d) conspire with others to effect a contravention of
23 subsection (1).

24 *Civil penalty provisions*

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

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

28 **^55 Mandatory quotation of OTN—use of liquid petroleum gas as a**
29 **feedstock**

30 (1) If:

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Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^56

- 1 (a) during an eligible financial year, a person supplies an amount
2 of liquid petroleum gas to another person (the *recipient*); and
3 (b) the recipient carries on a business that involves using the
4 liquid petroleum gas as a feedstock;
5 the recipient must quote the recipient's OTN in relation to the
6 supply.

7 *Ancillary contraventions*

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

17 *Civil penalty provisions*

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

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

21 **Subdivision D—Voluntary quotation of obligation transfer** 22 **numbers**

23 **^56 Voluntary quotation of OTN—large user of eligible upstream** 24 **fuel**

- 25 (1) If:
26 (a) during an eligible financial year, a person supplies an amount
27 of eligible upstream fuel to another person (the *recipient*);
28 and
29 (b) at the time of the supply, a facility is under the operational
30 control of the recipient; and
31 (c) so much of the total amount of greenhouse gases emitted
32 from the operation of the facility during the eligible financial

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1 year as is attributable to the combustion of any one type of
2 eligible upstream fuel has a carbon dioxide equivalence of at
3 least the number of tonnes specified in the regulations;
4 the recipient may quote the recipient's OTN in relation to the
5 supply.

- 6 (2) If:
- 7 (a) during an eligible financial year, a person supplies an amount
8 of eligible upstream fuel to another person (the *recipient*);
9 and
 - 10 (b) at the time of the supply, a facility is under the operational
11 control of the recipient; and
 - 12 (c) the recipient is an approved person for the purposes of the
13 application of this subsection to the eligible financial year;
- 14 the recipient may quote the recipient's OTN in relation to the
15 supply.

16 Note: For *approved person*, see subsection (6).

17 *Approved person*

- 18 (3) A person may apply to the Authority to be an approved person for
19 the purposes of the application of subsection (2) to a specified
20 eligible financial year.
- 21 (4) An application must:
- 22 (a) be in writing; and
 - 23 (b) be in a form approved, in writing, by the Authority; and
 - 24 (c) be accompanied by such information as is specified in the
25 regulations; and
 - 26 (d) be accompanied by such documents (if any) as are specified
27 in the regulations.
- 28 (5) The approved form of application may provide for verification by
29 statutory declaration of statements in applications.
- 30 (6) After considering an application under subsection (3), the
31 Authority may, by written notice given to the applicant, declare
32 that the applicant is an *approved person* for the purposes of the
33 application of subsection (2) to the eligible financial year specified
34 in the application.
-

EXPOSURE DRAFT

Part 3 Liabile entities

Division 5 Obligation transfer numbers

Section ^57

1 (7) The Authority must not declare the applicant is an approved person
2 for the purposes of the application of subsection (2) to an eligible
3 financial year unless the Authority is satisfied that it is likely that
4 so much of the total amount of greenhouse gases emitted from the
5 operation of the facility during the eligible financial year as is
6 attributable to the combustion of eligible upstream fuel will have a
7 carbon dioxide equivalence of least the number of tonnes specified
8 in the regulations.

9 (8) If the Authority decides to refuse to approve the applicant, the
10 Authority must give written notice of the decision to the applicant.

11 *Liability transfer certificate*

12 (9) For the purposes of this section, if a person (the *certificate holder*)
13 was the holder of a liability transfer certificate in relation to a
14 facility on a particular day:

15 (a) the facility is taken to have been under the operational
16 control of the certificate holder on that day; and

17 (b) the facility is taken not to have been under the operational
18 control of any other person on that day.

19 **^57 Voluntary quotation of OTN—packaging of fuel for use** 20 **otherwise than by combustion**

21 If:

22 (a) during an eligible financial year, a person supplies an amount
23 of eligible upstream fuel to another person (the *recipient*);
24 and

25 (b) the recipient carries on a business that involves:

26 (i) putting the fuel in bottles, cylinders or other containers;
27 or

28 (ii) otherwise packaging the fuel;

29 for use otherwise than by way of combustion; and

30 (c) the conditions specified in the regulations are satisfied;

31 the recipient may quote the recipient's OTN in relation to the
32 supply.

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1 **^{^58} Voluntary quotation of OTN—use of fuel in manufacturing**
2 **other products etc.**

3 If:

4 (a) during an eligible financial year, a person supplies an amount
5 of eligible upstream fuel to another person (the *recipient*);
6 and

7 (b) the recipient carries on:

8 (i) a business that involves using the fuel (otherwise than
9 by way of combustion) to manufacture a product; or

10 (ii) a business that involves consuming the fuel (otherwise
11 than by way of combustion);

12 the recipient may quote the recipient's OTN in relation to the
13 supply.

14 **^{^59} Voluntary quotation of OTN—transformation of fuel**

15 If:

16 (a) during an eligible financial year, a person supplies an amount
17 of eligible upstream fuel to another person (the *recipient*);
18 and

19 (b) the recipient carries on a business that involves the
20 recognised transformation of the fuel into another type of
21 eligible upstream fuel;

22 the recipient may quote the recipient's OTN in relation to the
23 supply.

24 **^{^60} Voluntary quotation of OTN—export or re-supply of black coal**

25 (1) If:

26 (a) during an eligible financial year, a person supplies an amount
27 of black coal to another person (the *recipient*); and

28 (b) the recipient carries on a business of exporting or
29 re-supplying black coal;

30 the recipient may quote the recipient's OTN in relation to the
31 supply.

32 (2) For the purposes of this section, if black coal is treated at a coal
33 washery, the black coal retains its identity.

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Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^61

1 **^61 Voluntary quotation of OTN—export or re-supply of liquid**
2 **petroleum gas**

3 If:

4 (a) during an eligible financial year, a person supplies an amount
5 of prescribed liquid petroleum gas to another person (the
6 *recipient*); and

7 (b) the recipient carries on a business of exporting or
8 re-supplying prescribed liquid petroleum gas;

9 the recipient may quote the recipient's OTN in relation to the
10 supply.

11 **^62 Voluntary quotation of OTN—export or re-supply of prescribed**
12 **eligible upstream fuel**

13 If:

14 (a) during an eligible financial year, a person supplies an amount
15 of a prescribed type of eligible upstream fuel to another
16 person (the *recipient*); and

17 (b) the recipient carries on a business of exporting or
18 re-supplying that type of eligible upstream fuel;

19 the recipient may quote the recipient's OTN in relation to the
20 supply.

21 **^63 Voluntary quotation of OTN—re-supply of synthetic**
22 **greenhouse gas**

23 If:

24 (a) during an eligible financial year, person supplies an amount
25 of synthetic greenhouse gas to another person (the *recipient*);
26 and

27 (b) the recipient carries on a business of re-supplying synthetic
28 greenhouse gas; and

29 (c) the amount of synthetic greenhouse gas mentioned in
30 paragraph (a) is to be re-supplied by the recipient during that
31 or a later eligible financial year;

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

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1 **^64 Voluntary quotation of OTN—export of synthetic greenhouse**
2 **gas**

3 If:

- 4 (a) during an eligible financial year, a person supplies an amount
5 of synthetic greenhouse gas to another person (the *recipient*);
6 and
7 (b) that amount is to be exported by the recipient during that or a
8 later eligible financial year; and
9 (c) the recipient carries on a business of exporting synthetic
10 greenhouse gas;

11 the recipient may quote the recipient's OTN in relation to the
12 supply.

13 **Subdivision E—General provisions**

14 **^65 Rejection of quotation of OTN—re-supply of eligible upstream**
15 **fuel**

16 *Scope*

- 17 (1) This section applies if:
18 (a) during an eligible financial year, a person supplies an amount
19 of eligible upstream fuel to another person (the *second*
20 *person*) who does not quote the second person's OTN in
21 relation to the supply; and
22 (b) during that or a later eligible financial year, the second
23 person re-supplies the whole or a part of that amount to a
24 third person; and
25 (c) the third person quotes the third person's OTN in relation to
26 the re-supply.

27 *Rejection of quotation*

- 28 (2) The second person must, in accordance with the regulations, reject
29 the quotation of the third person's OTN in relation to the re-supply.
30 (3) If the quotation of the third person's OTN is rejected, this Act
31 (other than this section and sections ^67 and ^304) has effect as if

EXPOSURE DRAFT

Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^66

1 the third person had not quoted the third person's OTN in relation
2 to the re-supply.

3 *Ancillary contraventions*

4 (4) A person must not:

5 (a) aid, abet, counsel or procure a contravention of
6 subsection (2); or

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

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

11 (d) conspire with others to effect a contravention of
12 subsection (2).

13 *Civil penalty provisions*

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

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

17 **^66 Rejection of voluntary quotation of OTN**

18 *Scope*

19 (1) This section applies if:

20 (a) a person (the *supplier*) supplies an amount of:

21 (i) eligible upstream fuel; or

22 (ii) synthetic greenhouse gas;

23 to another person (the *recipient*); and

24 (b) the recipient quotes the recipient's OTN in relation to the
25 supply; and

26 (c) the recipient is not required to quote the recipient's OTN in
27 relation to the supply.

28 *Rejection of quotation*

29 (2) The supplier may, in accordance with the regulations, reject the
30 quotation of the recipient's OTN in relation to the supply.

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- 1 (3) If the quotation of the recipient's OTN is rejected, this Act (other
2 than this section and sections ^67 and ^304) has effect as if the
3 recipient had not quoted the recipient's OTN in relation to the
4 supply.

5 **^67 Misuse of OTN**

- 6 (1) A person must not quote the person's OTN in relation to the supply
7 of:
8 (a) eligible upstream fuel; or
9 (b) synthetic greenhouse gas;
10 unless the person is required or permitted to do so by this Act.

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

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

25 *Consequences of misuse of OTN*

- 26 (4) If:
27 (a) a person quotes the person's OTN in relation to the supply of:
28 (i) eligible upstream fuel; or
29 (ii) synthetic greenhouse gas; and
30 (b) the quotation breaches subsection (1); and

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Part 3 Liable entities

Division 5 Obligation transfer numbers

Section ^68

- 1 (c) the quotation was not rejected by the person who supplied the
2 fuel or gas;
3 the following provisions have effect:
4 (d) the breach does not affect the validity of any transaction;
5 (e) this Part (other than this section and sections ^29 and ^40)
6 has effect as if the quotation had been authorised under this
7 Act.

8 Note: See also sections ^29 and ^40.

9 **^68 Quotation of bogus OTN**

- 10 (1) A person must not purport to quote a number as the person's OTN
11 in relation to the supply of:
12 (a) eligible upstream fuel; or
13 (b) synthetic greenhouse gas;
14 if the number is not the person's OTN.
- 15 (2) A person must not supply:
16 (a) eligible upstream fuel; or
17 (b) synthetic greenhouse gas;
18 to another person (the *recipient*) if:
19 (c) the recipient purports to quote a number as the recipient's
20 OTN in relation to the supply; and
21 (d) the number is not shown in the OTN Register as the
22 recipient's OTN.
- 23 (3) A person must not:
24 (a) aid, abet, counsel or procure a contravention of subsection (1)
25 or (2); or
26 (b) induce, whether by threats or promises or otherwise, a
27 contravention of subsection (1) or (2); or
28 (c) be in any way, directly or indirectly, knowingly concerned in,
29 or party to, a contravention of subsection (1) or (2); or
30 (d) conspire with others to effect a contravention of
31 subsection (1) or (2).

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Liable entities **Part 3**
Obligation transfer numbers **Division 5**

Section ^68

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2
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4

Civil penalty provisions

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

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

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Part 3 Liable entities

Division 6 Liability transfer certificates

Section ^69

1

2 **Division 6—Liability transfer certificates**

3 **Subdivision A—Transfer of liability to another member of a**
4 **controlling corporation’s group**

5 **^69 Category A transfer test**

6 A company passes the *category A transfer test* in relation to a
7 facility if:

- 8 (a) the company is a member of a controlling corporation’s
9 group; and
10 (b) the company is registered as a company under Part 2A.2 of
11 the *Corporations Act 2001*; and
12 (c) the facility is under the operational control of a member of
13 the group (other than the controlling corporation).

14 **^70 Application for liability transfer certificate**

15 *Scope*

- 16 (1) This section applies if a company passes the category A transfer
17 test in relation to a facility.

18 *Application*

- 19 (2) The company may, with the written consent of the controlling
20 corporation mentioned in section ^69, apply to the Authority for
21 the issue to the company of a liability transfer certificate in relation
22 to the facility.

23 *Form of application*

- 24 (3) An application must:
25 (a) be in writing; and
26 (b) be in a form approved, in writing, by the Authority; and
27 (c) be accompanied by:
28 (i) the consent of the controlling corporation mentioned in
29 section ^69 to the making of the application; and

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- 1 (ii) such information as is specified in the regulations; and
2 (iii) such documents (if any) as are specified in the
3 regulations.
- 4 (4) The approved form of application may provide for verification by
5 statutory declaration of statements in applications.

[^]71 Further information

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

[^]72 Issue of liability transfer certificate

Scope

- 16
- 17 (1) This section applies if an application under section [^]70 has been
18 made for a liability transfer certificate in relation to a facility.

Issue of certificate

- 19
- 20 (2) After considering the application, the Authority may issue to the
21 applicant a liability transfer certificate in relation to the facility.

Criteria for issue of certificate

- 22
- 23 (3) The Authority must not issue the liability transfer certificate unless
24 the Authority is satisfied that:
25 (a) the applicant passes the category A transfer test in relation to
26 the facility; and
27 (b) the applicant has, and is likely to continue to have:
28 (i) the capacity; and
29 (ii) the access to information; and
-

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Part 3 Liable entities

Division 6 Liability transfer certificates

Section ^73

- 1 (iii) the financial resources;
2 necessary for it to comply with obligations that will be
3 imposed on the applicant by the following laws:
4 (iv) this Act;
5 (v) the regulations;
6 (vi) the *National Greenhouse and Energy Reporting Act*
7 *2007*;
8 if the certificate is issued; and
9 (c) if the regulations specify one or more other requirements—
10 those requirements are met.

11 *Timing*

- 12 (5) The Authority must take all reasonable steps to ensure that a
13 decision is made on the application:
14 (a) if the Authority requires the applicant to give further
15 information under subsection ^71(1) in relation to the
16 application—within 90 days after the applicant gave the
17 Authority the information; or
18 (b) otherwise—within 90 days after the application was made.

19 *Refusal*

- 20 (6) If the Authority decides to refuse to issue the liability transfer
21 certificate, the Authority must give written notice of the decision to
22 the applicant.

23 **Subdivision B—Transfer of liability to a company that has** 24 **financial control of a facility etc.**

25 **^73 Category B transfer test**

26 A member of a controlling corporation's group (the *first group*)
27 passes the *category B transfer test* in relation to a facility if:

- 28 (a) the member is:
29 (i) registered as a company under Part 2A.2 of the
30 *Corporations Act 2001*; or
31 (ii) a statutory authority of the Commonwealth; or

EXPOSURE DRAFT

- 1 (iii) a statutory authority of a State; or
2 (iv) a statutory authority of a Territory; and
3 (b) the facility is under the operational control of a person (the
4 ***operator***); and
5 (c) the operator is a member of another controlling corporation's
6 group; and
7 (d) a company (who may be the first-mentioned member) has
8 financial control over the facility; and
9 (e) the company is a member of the first group.

10 Note: For ***financial control***, see section ^81.

11 **^74 Application for liability transfer certificate**

12 *Scope*

- 13 (1) This section applies if a member of a controlling corporation's
14 group passes the category B transfer test in relation to a facility.

15 *Application*

- 16 (2) The member may, with the written consent of the controlling
17 corporation of the group mentioned in paragraph ^73(c), apply to
18 the Authority for the issue to the member of a liability transfer
19 certificate in relation to the facility.

20 *Form of application*

- 21 (3) An application must:
22 (a) be in writing; and
23 (b) be in a form approved, in writing, by the Authority; and
24 (c) be accompanied by:
25 (i) the consent of the controlling corporation of the group
26 mentioned in paragraph ^73(c) to the making of the
27 application; and
28 (ii) such information as is specified in the regulations; and
29 (iii) such documents (if any) as are specified in the
30 regulations.

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Part 3 Liable entities

Division 6 Liability transfer certificates

Section ^75

- 1 (4) The approved form of application may provide for verification by
2 statutory declaration of statements in applications.

3 **^75 Further information**

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

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

12 **^76 Issue of liability transfer certificate**

13 *Scope*

- 14 (1) This section applies if an application under section ^74 has been
15 made for a liability transfer certificate in relation to a facility.

16 *Issue of certificate*

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

19 *Criteria for issue of certificate*

- 20 (3) The Authority must not issue the liability transfer certificate unless
21 the Authority is satisfied that:
22 (a) the applicant passes the category B transfer test in relation to
23 the facility; and
24 (b) the applicant has, and is likely to continue to have:
25 (i) the capacity; and
26 (ii) the access to information; and
27 (iii) the financial resources;
28 necessary for it to comply with obligations that will be
29 imposed on the applicant by the following laws:
30 (iv) this Act;
-

EXPOSURE DRAFT

- 1 (v) the regulations;
2 (vi) the *National Greenhouse and Energy Reporting Act*
3 *2007*;
4 if the certificate is issued; and
5 (c) if the regulations specify one or more other requirements—
6 those requirements are met.

7 *Timing*

- 8 (4) The Authority must take all reasonable steps to ensure that a
9 decision is made on the application:
10 (a) if the Authority requires the applicant to give further
11 information under subsection ^{^75}(1) in relation to the
12 application—within 90 days after the applicant gave the
13 Authority the information; or
14 (b) otherwise—within 90 days after the application was made.

15 *Refusal*

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

19 **Subdivision C—Other provisions**

20 **^{^77} Duration of liability transfer certificate**

- 21 (1) A liability transfer certificate comes into force on the day specified
22 in the certificate as the day on which the certificate is to come into
23 force (the *start day*).
24 (2) The start day may be earlier than the day on which the certificate is
25 issued, so long as:
26 (a) the start day occurs in the same financial year as the day on
27 which the certificate is issued; and
28 (b) each of the following has consented to the specification of
29 the start day:
30 (i) the applicant;

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Part 3 Liable entities

Division 6 Liability transfer certificates

Section ^78

- 1 (ii) in the case of a certificate issued under section ^72—the
2 controlling corporation that consented under subsection
3 ^70(2) to the making of the application for the
4 certificate;
5 (iii) in the case of a certificate issued under section ^76—the
6 controlling corporation that consented under subsection
7 ^74(2) to the making of the application for the
8 certificate.
- 9 (3) A liability transfer certificate issued remains in force indefinitely.
- 10 (4) Subsection (3) has effect subject to this Division.

11 **^78 Surrender of liability transfer certificate**

12 *Scope*

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

15 *Surrender*

- 16 (2) The person may, with the written consent of the Authority,
17 surrender the certificate.
- 18 (3) The surrender takes effect when the consent is given by the
19 Authority.

20 *Consent to surrender*

- 21 (4) The Authority must not consent to the surrender of the certificate
22 unless:
- 23 (a) in the case of a certificate issued under section ^72—the
24 controlling corporation that consented under subsection
25 ^70(2) to the making of the application for the certificate has
26 agreed to the surrender of the certificate; and
- 27 (b) in the case of a certificate issued under section ^76—the
28 controlling corporation that consented under subsection
29 ^74(2) to the making of the application for the certificate has
30 agreed to the surrender of the certificate; and
- 31 (c) either:

EXPOSURE DRAFT

- 1 (i) the certificate has been in force for at least 4 years; or
2 (ii) the certificate has been in force for less than 4 years, but
3 the Authority is satisfied that there are special
4 circumstances that warrant the giving of consent to the
5 surrender of the certificate.

6 **[^]79 Cancellation of liability transfer certificate**

7 *Scope*

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

10 *Cancellation*

- 11 (2) The Authority must, by written notice given to the person, cancel
12 the certificate if:
- 13 (a) in a case where the certificate was issued under section [^]72
14 to a company—the Authority is satisfied that:
- 15 (i) the company does not pass the category A transfer test
16 in relation to the facility; or
17 (ii) an amount payable by the company under section [^]133
18 remains unpaid more than 30 days after it became due
19 for payment; or
20 (iii) the company has become an externally-administered
21 body corporate (within the meaning of the *Corporations*
22 *Act 2001*); or
23 (iv) if the regulations specify one or more other grounds for
24 cancellation—at least one of those grounds is applicable
25 to the company; or
- 26 (b) in a case where the certificate was issued under section [^]76
27 to a member of a group—the Authority is satisfied that:
- 28 (i) the member does not pass the category B transfer test in
29 relation to the facility concerned; or
30 (ii) an amount payable by the member under section [^]133
31 remains unpaid more than 30 days after it became due
32 for payment; or

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Part 3 Liabile entities

Division 6 Liability transfer certificates

Section ^80

- 1 (iii) the member has become an externally-administered
2 body corporate (within the meaning of the *Corporations*
3 *Act 2001*); or
4 (iv) if the regulations specify one or more other grounds for
5 cancellation—at least one of those grounds is applicable
6 to the member.

7 **^80 Liability transfer certificate is not transferable**

8 A liability transfer certificate is not transferable.

9 **^81 Financial control**

- 10 (1) For the purposes of this Act, if a person (the *operator*) has
11 operational control over a facility, another person (the *second*
12 *person*) has *financial control* over the facility if:
13 (a) under a contract between:
14 (i) the operator; and
15 (ii) the second person;
16 the operator operates the facility on behalf of the second
17 person; or
18 (b) under a contract between:
19 (i) the operator; and
20 (ii) the second person and one or more other persons;
21 the operator operates the facility on behalf of the second
22 person and those other persons; or
23 (c) the second person is able to control the trading or financial
24 relationships of the operator; or
25 (d) both:
26 (i) the economic benefits from the facility are shared
27 among the second person and one or more other
28 persons; and
29 (ii) the second person's share equals or exceeds the
30 remaining share or shares; or
31 (e) the second person is able to direct or sell the output of the
32 facility; or
33 (f) under the regulations, the second person is taken to have
34 financial control over the facility.

EXPOSURE DRAFT

Liable entities **Part 3**
Liability transfer certificates **Division 6**

Section [^]81

- 1 (2) In determining whether the second person has that financial
2 control, regard must be had to the economic and commercial
3 substance of the matters mentioned in subsection (1).

EXPOSURE DRAFT

Part 4 Emissions units

Division 1 Introduction

Section ^82

1

2 **Part 4—Emissions units**

3 **Division 1—Introduction**

4 **^82 Simplified outline**

5

The following is a simplified outline of this Part:

6

- The Authority may issue Australian emissions units.

7

- Most Australian emissions units will be issued as the result of an auction.

8

9

- Some Australian emissions units may be issued free of charge or for a fixed charge.

10

11

- The national scheme cap limits:

12

- (a) the total number of auctioned Australian emissions units; and

13

14

- (b) the total number of free Australian emissions units issued in accordance with the emissions-intensive trade-exposed assistance program; and

15

16

17

- (c) the total number of free Australian emissions units issued in accordance with Part 9 (coal-fired electricity generation).

18

19

20

- An Australian emissions unit will have a vintage year that consists of a particular financial year.

21

22

- An Australian emissions unit is transferable.

23

- Entries may be made in Registry accounts for:

24

- (a) Australian emissions units; and

EXPOSURE DRAFT

Emissions units **Part 4**
Introduction **Division 1**

Section [^]82

1

(b) Kyoto units; and

2

(c) non-Kyoto international emissions units.

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section ^83

1

2 **Division 2—Australian emissions units**

3 **Subdivision A—Issue of Australian emissions units**

4 **^83 Issue of Australian emissions units**

5 The Authority may, on behalf of the Commonwealth, issue units,
6 to be known as Australian emissions units.

7 **^84 Identification number**

8 An Australian emissions unit is to be identified by a unique
9 number, to be known as the *identification number* of the unit.

10 **^85 Vintage year**

11 (1) The last 4 digits of an Australian emissions unit's identification
12 number are to be the digits of:

- 13 (a) the calendar year 2011; or
14 (b) a later calendar year.

15 (2) The *vintage year* of an Australian emissions unit is the eligible
16 financial year that ends on 30 June in that calendar year.

17 Note: For example, if the last 4 digits of an Australian emissions unit's
18 identification number are 2011, the vintage year of the unit is the
19 eligible financial year that ends on 30 June 2011.

20 **^86 When Australian emissions units may be issued**

21 The Authority may issue an Australian emissions unit with a
22 particular vintage year at any time before the end of 15 December
23 next following the vintage year.

24 Note: For example, the Authority may, at any time before the end of
25 15 December 2011, issue an Australian emissions unit with the
26 vintage year beginning on 1 July 2010.

EXPOSURE DRAFT

1 **^87 How Australian emissions units are to be issued**

- 2 (1) The Authority is to issue an Australian emissions unit to a person
3 by making an entry for the unit in a Registry account kept by the
4 person.
- 5 (2) An entry for an Australian emissions unit in a Registry account is
6 to consist of the identification number of the unit.
- 7 (3) The Authority must not issue an Australian emissions unit to a
8 person unless the person has a Registry account.

9 **^88 Circumstances in which Australian emissions units may be**
10 **issued**

- 11 The Authority must not issue an Australian emissions unit
12 otherwise than:
- 13 (a) as the result of an auction conducted by the Authority; or
14 (b) in accordance with section **^89** (issue of units for a fixed
15 charge); or
16 (c) in accordance with the emissions-intensive trade-exposed
17 assistance program; or
18 (d) in accordance with Part 9 (coal-fired electricity generation);
19 or
20 (e) in accordance with Part 10 (reforestation); or
21 (f) in accordance with Part 11 (destruction of synthetic
22 greenhouse gases).

23 **^89 Issue of Australian emissions units for a fixed charge**

24 *Application*

- 25 (1) During the issue period set out in an item in the following table, a
26 person who has a Registry account may apply to the Authority for
27 the issue to the person of a specified number of Australian
28 emissions units:
- 29 (a) with a vintage year set out in the item; and
30 (b) for the per unit charge set out in the item.
- 31

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section 89

Issue of Australian emissions units for a fixed charge			
Item	Issue period	Vintage year	Charge
1	The period: (a) beginning at whichever of the following times occurs first: (i) the start of 31 October 2011; (ii) the emissions number publication time of the person for the eligible financial year beginning on 1 July 2010; and (b) ending at the end of 15 December 2011.	the eligible financial year beginning on 1 July 2010	\$40 per unit
2	The period: (a) beginning at whichever of the following times occurs first: (i) the start of 31 October 2012; (ii) the emissions number publication time of the person for the eligible financial year beginning on 1 July 2011; and (b) ending at the end of 15 December 2012.	the eligible financial year beginning on 1 July 2011	\$43 per unit
3	The period: (a) beginning at whichever of the following times occurs first: (i) the start of 31 October 2013; (ii) the emissions number publication time of the person for the eligible financial year beginning on 1 July 2012; and	the eligible financial year beginning on 1 July 2012	\$46.23 per unit

EXPOSURE DRAFT

Emissions units **Part 4**
Australian emissions units **Division 2**

Section ^89

Issue of Australian emissions units for a fixed charge

Item	Issue period	Vintage year	Charge
	(b) ending at the end of 15 December 2013.		
4	The period: (a) beginning at whichever of the following times occurs first: (i) the start of 31 October 2014; (ii) 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 15 December 2014.	the eligible financial year beginning on 1 July 2013	\$49.69 per unit
5	The period: (a) beginning at whichever of the following times occurs first: (i) the start of 31 October 2015; (ii) 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 15 December 2015.	the eligible financial year beginning on 1 July 2014	\$53.42 per unit

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

2 *Maximum number of units*

3 (2) The number of Australian emissions units specified in the
4 application must not exceed the number worked out using the
5 following formula:

EXPOSURE DRAFT

1 [^]90 **Payment of charges for the issue of Australian emissions units**

2 *Scope*

3 (1) This section applies if:

4 (a) an amount is payable by a person by way of a charge for the
5 issue to the person of an Australian emissions unit; and

6 (b) the unit is to be issued:

7 (i) as the result of an auction; or

8 (ii) in accordance with section [^]89 (issue of units for a fixed
9 charge).

10 *Payment of charge*

11 (2) The charge is payable to the Authority on behalf of the
12 Commonwealth.

13 (3) The Authority must not issue the unit unless the person pays the
14 charge.

15 [^]91 **Imposition of charges for the issue of Australian emissions units**

16 If a charge payable for the issue of an Australian emissions unit is
17 taxation within the meaning of section 55 of the Constitution:

18 (a) the charge is not imposed by this Act; and

19 (b) the charge is imposed by whichever of the following Acts is
20 applicable:

21 (i) the *Carbon Pollution Reduction Scheme (Charges—*
22 *Customs) Act 2009*;

23 (ii) the *Carbon Pollution Reduction Scheme (Charges—*
24 *Excise) Act 2009*;

25 (iii) the *Carbon Pollution Reduction Scheme (Charges—*
26 *General) Act 2009*.

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section ⁹²

1 ⁹² **Issue of Australian emissions units—national scheme cap**
2 **number**

- 3 (1) The Authority must not issue an Australian emissions unit with a
4 particular vintage year unless there is a national scheme cap
5 number for the vintage year.
- 6 (2) Subsection (1) has effect despite any other provision of this Act.

7 ⁹³ **Australian emissions units—total number**

- 8 (1) The Authority must ensure that the sum of:
9 (a) the total number of Australian emissions units with a
10 particular vintage year that are offered at auctions conducted
11 by the Authority; and
12 (b) the total number of free Australian emissions units with that
13 vintage year issued in accordance with the
14 emissions-intensive trade-exposed assistance program; and
15 (c) the total number of free Australian emissions units with that
16 vintage year issued in accordance with Part 9 (coal-fired
17 electricity generation);
18 equals the national scheme cap number for that vintage year.
- 19 (2) If an Australian emissions unit is offered at auction on 2 or more
20 occasions, the unit is only counted for the purposes of
21 paragraph (1)(a) on the first of those occasions.
- 22 (3) Paragraph (1)(a) does not apply to an auction conducted under
23 section ¹⁰⁰ or ¹⁰¹.

24 **Subdivision B—Property in, and transfer of, Australian**
25 **emissions units**

26 ⁹⁴ **An Australian emissions unit is personal property**

27 An Australian emissions unit is personal property and, subject to
28 sections ⁹⁶ and ⁹⁷, is transmissible by assignment, by will and
29 by devolution by operation of law.

EXPOSURE DRAFT

1 **^95 Transfer of Australian emissions units**

2 For the purposes of this Act, if there is an entry for an Australian
3 emissions unit in a Registry account (the *first Registry account*)
4 kept by a person (the *first person*):

5 (a) a *transfer* of the unit from the first Registry account to a
6 Registry account kept by another person consists of:

7 (i) the removal of the entry for the unit from the first
8 Registry account; and

9 (ii) the making of an entry for the unit in the Registry
10 account kept by the other person; and

11 (b) the *transfer* of the unit from the first Registry account to
12 another Registry account kept by the first person consists of:

13 (i) the removal of the entry for the unit from the first
14 Registry account; and

15 (ii) the making of an entry for the unit in the other Registry
16 account kept by the first person.

17 **^96 Transmission of Australian emissions units by assignment**

18 (1) A transmission by assignment of an Australian emissions unit is of
19 no force until:

20 (a) the transferor, by electronic notice transmitted to the
21 Authority, instructs the Authority to transfer the unit from the
22 relevant Registry account kept by the transferor to a Registry
23 account kept by the transferee; and

24 (b) the Authority complies with that instruction.

25 (2) An instruction under paragraph (1)(a) must set out:

26 (a) the account number of the transferor's Registry account; and

27 (b) the account number of the transferee's Registry account.

28 (3) If the Authority receives an instruction under paragraph (1)(a), the
29 Authority must comply with the instruction as soon as practicable
30 after receiving it.

31 (4) The Registry must set out a record of each instruction under
32 paragraph (1)(a).

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section ^97

- 1 (5) If the transferor is the Commonwealth, the Minister may give an
2 instruction under subsection (1) on behalf of the transferor.

3 **^97 Transmission of Australian emissions units by operation of law**
4 **etc.**

5 *Scope*

- 6 (1) This section applies if an Australian emissions unit is transmitted
7 from a person (the *transferor*) to another person (the *transferee*)
8 by any lawful means other than by a transfer under section ^96.

9 *Declaration of transmission*

- 10 (2) The transferee must, within 14 days after the transmission, give the
11 Authority:
12 (a) a declaration of transmission; and
13 (b) such evidence of transmission as is specified in the
14 regulations.
- 15 (3) A declaration of transmission must be made in accordance with the
16 regulations.
- 17 (4) If the transferee does not already have a Registry account, the
18 declaration of transmission must be accompanied by a request
19 under section ^147 for the Authority to open a Registry account in
20 the name of the transferee.
- 21 (5) If the Authority is satisfied that special circumstances warrant the
22 extension of the 14-day period mentioned in subsection (2), the
23 Authority may extend that period.

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

- 25 (6) If the transferee already has a Registry account, the Authority
26 must, as soon as practicable after receiving the declaration of
27 transmission, transfer the unit from the relevant Registry account
28 kept by the transferor to a Registry account kept by the transferee.

EXPOSURE DRAFT

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

- 2 (7) If:
- 3 (a) the transferee does not already have a Registry account; and
- 4 (b) in accordance with the request under section [^]147, the
- 5 Authority has opened a Registry account in the name of the
- 6 transferee;
- 7 the Authority must, as soon as practicable after opening the
- 8 Registry account, transfer the unit from the relevant Registry
- 9 account kept by the transferor to the Registry account kept by the
- 10 transferee.

11 *Record*

- 12 (8) If the Authority transfers the unit under subsection (6) or (7), the
- 13 Registry must set out a record of the declaration of transmission.

14 *When the transferee is the Commonwealth*

- 15 (9) If the transferee is the Commonwealth, the Minister may give:
- 16 (a) the declaration of transmission; and
- 17 (b) the evidence mentioned in paragraph (2)(b);
- 18 on behalf of the transferee.

19 **[^]98 Transfer of Australian emissions units to another Registry**

20 **account held by the transferor**

21 *Scope*

- 22 (1) This section applies if:
- 23 (a) a person keeps a Registry account (the *first Registry*
- 24 *account*) in which there is an entry for an Australian
- 25 emissions unit; and
- 26 (b) the person, by electronic notice transmitted to the Authority,
- 27 instructs the Authority to transfer the unit from the first
- 28 Registry account to another Registry account kept by the
- 29 person; and
- 30 (c) the instruction sets out:
- 31 (i) the account number of the first Registry account; and

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section ^99

1 (ii) the account number of the other Registry account.

2 *Compliance with instruction*

3 (2) If a person gives the Authority an instruction under
4 paragraph (1)(b), the Authority must comply with the instruction as
5 soon as practicable after receiving it.

6 (3) The Registry must set out a record of the instruction under
7 paragraph (1)(b).

8 **Subdivision C—Auctions of Australian emissions units**

9 **^99 Issue of Australian emissions units as the result of an auction**

10 The Authority may issue Australian emissions units as the result of
11 an auction conducted by the Authority.

12 **^100 Secondary market auctions of relinquished Australian 13 emissions units**

14 *Scope*

15 (1) This section applies if there is an entry for an Australian emissions
16 unit in the Commonwealth relinquished units account.

17 *Authority may auction unit*

18 (2) The Authority may, on behalf of the Commonwealth, auction the
19 unit.

20 **^101 Secondary market auctions of free Australian emissions units**

21 *Scope*

22 (1) This section applies if:

23 (a) a free Australian emissions unit has been issued to a person:

24 (i) in accordance with the emissions-intensive
25 trade-exposed assistance program; or

26 (ii) in accordance with Part 9 (coal-fired electricity
27 generation; or

EXPOSURE DRAFT

- 1 (iii) in accordance with Part 10 (reforestation); or
2 (iv) in accordance with Part 11 (destruction of synthetic
3 greenhouse gases); and
4 (b) that unit has not been transferred.

5 *Authority may auction unit*

- 6 (2) The Authority may, on behalf of the person, auction the unit.

7 *Sunset*

- 8 (3) This section ceases to have effect at the end of 31 December 2011.

9 **^102 Combined auctions of Australian emissions units**

10 The Authority may conduct an auction under section ^100 or ^101
11 in combination with an auction referred to in section ^99.

12 **^103 Policies, procedures and rules for auctioning Australian**
13 **emissions units**

- 14 (1) The Minister may, by legislative instrument, determine the
15 policies, procedures and rules that apply in relation to the
16 auctioning of Australian emissions units by the Authority.
- 17 (2) The Authority may, by legislative instrument, determine the
18 policies, procedures and rules that apply in relation to the
19 auctioning of Australian emissions units by the Authority.
- 20 (3) A determination under subsection (2) does not apply in relation to
21 an auction that takes place before 1 January 2012.
- 22 (4) A determination under subsection (1) does not apply in relation to
23 an auction of Australian emissions units if a determination under
24 subsection (2) applies in relation to the auction.
- 25 (5) A determination under subsection (1) or (2) may deal with any or
26 all of the following matters:
27 (a) the types of auction;
28 (b) the timing of auctions;
29 (c) advertising of auctions;

EXPOSURE DRAFT

Part 4 Emissions units

Division 2 Australian emissions units

Section ^103

- 1 (d) participants in auctions;
2 (e) fees for participants in auctions;
3 (f) proxy bidding;
4 (g) representatives of participants in auctions;
5 (h) the minimum number of Australian emissions units to which
6 a bid may relate;
7 (i) variation of bids;
8 (j) the total number of units with a particular vintage year that
9 are to be offered at a particular auction under section ^99;
10 (k) limits on the total number of units with a particular vintage
11 year that may be acquired by a person as a result of a
12 particular auction;
13 (l) limits on the total number of units with a particular vintage
14 year that may be acquired by the members of a controlling
15 corporation's group as a result of a particular auction;
16 (m) reserve prices or charges (if any);
17 (n) deposits (if any) to be lodged by participants in auctions;
18 (o) the refund or forfeiture of such deposits;
19 (p) guarantees (if any) to be given in respect of payment
20 obligations that are incurred by participants in auctions;
21 (q) timing and methods of payment of prices or charges.
- 22 (6) Subsection (5) does not limit subsection (1) or (2).
- 23 (7) A fee specified under paragraph (5)(e) must not be such as to
24 amount to taxation.
- 25 (8) A determination under subsection (1) or (2) may make provision in
26 relation to a matter by conferring a power to make a decision of an
27 administrative character on the Authority.
- 28 (9) To avoid doubt, a determination under subsection (1) or (2) is
29 taken to be a law for the purposes of section 28 of the *Financial*
30 *Management and Accountability Act 1997*.

EXPOSURE DRAFT

Emissions units **Part 4**

Kyoto units **Division 3**

Section **^104**

1

2 **Division 3—Kyoto units**

3 **^104 Entries for Kyoto units**

4 An entry for a Kyoto unit in a Registry account is to consist of the
5 serial number of the unit.

6 **^105 Issue of Australia's assigned amount units**

7 *Object*

8 (1) The object of this section is to provide for the issue of Australia's
9 assigned amount units for a commitment period.

10 *Issue*

11 (2) The Minister may, by written notice given to the Authority, direct
12 the Authority to issue to the Commonwealth, in accordance with
13 the Kyoto rules, a specified number of assigned amount units for a
14 specified commitment period.

15 (3) The Authority must comply with a direction under subsection (2).

16 (4) The Authority is to issue an assigned amount unit by making an
17 entry for the unit in a Commonwealth holding account.

18 (5) This section does not, by implication, affect the validity of the
19 issue of assigned amount units, where the units were issued before
20 the commencement of this section under the executive power of the
21 Commonwealth.

22 **^106 Issue of removal units**

23 *Object*

24 (1) The object of this section is to provide for the issue of Australia's
25 removal units.

EXPOSURE DRAFT

Part 4 Emissions units

Division 3 Kyoto units

Section ^107

1

Issue

2

(2) The Minister may, by written notice given to the Authority, direct the Authority to issue to the Commonwealth, in accordance with the Kyoto rules, a specified number of removal units.

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(3) The Authority must comply with a direction under subsection (2).

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(4) The Authority is to issue a removal unit by making an entry for the unit in a Commonwealth holding account.

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(5) This section does not, by implication, affect the validity of the issue of removal units, where the units were issued before the commencement of this section under the executive power of the Commonwealth.

12

^107 Transfer of Kyoto units

13

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(1) For the purposes of this Act, if there is an entry for a Kyoto unit in a Registry account (the *first Registry account*) kept by a person (the *first person*):

16

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(a) a *transfer* of the unit from the first Registry account to a Registry account kept by another person consists of:

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(i) the removal of the entry for the unit from the first Registry account; and

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(ii) the making of an entry for the unit in the Registry account kept by the other person; and

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(b) the *transfer* of the unit from the first Registry account to another Registry account kept by the first person consists of:

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25

(i) the removal of the entry for the unit from the first Registry account; and

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(ii) the making of an entry for the unit in the other Registry account kept by the first person; and

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(c) the *transfer* of the unit from the first Registry account to a foreign account kept by another person consists of:

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(i) the removal of the entry for the unit from the first Registry account; and

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(ii) the making of an entry for the unit in the foreign account kept by the other person; and

EXPOSURE DRAFT

Emissions units **Part 4**

Kyoto units **Division 3**

Section ^108

- 1 (d) the *transfer* of the unit from the first Registry account to a
2 foreign account kept by the first person consists of:
3 (i) the removal of the entry for the unit from the first
4 Registry account; and
5 (ii) the making of an entry for the unit in the foreign
6 account kept by the first person.
- 7 (2) For the purposes of this Act, if there is an entry for a Kyoto unit in
8 a foreign account, a *transfer* of the unit from the foreign account to
9 a Registry account consists of:
10 (a) the removal of the entry for the unit from the foreign account;
11 and
12 (b) the making of an entry for the unit in the Registry account.

13 ^108 Domestic transfers of Kyoto units

- 14 (1) If a person (the *first person*) is the registered holder of one or more
15 Kyoto units, the person may, by electronic notice transmitted to the
16 Authority, instruct the Authority to transfer the units from the
17 relevant Registry account kept by the person (the *first Registry*
18 *account*) to:
19 (a) a Registry account kept by another person; or
20 (b) another Registry account kept by the first person.
- 21 (2) An instruction under subsection (1) must set out:
22 (a) the account number of the first Registry account; and
23 (b) the account number of the Registry account mentioned in
24 paragraph (1)(a) or (b); and
25 (c) such other information as is specified in the regulations.

26 *Compliance with instruction*

- 27 (3) If the Authority receives an instruction under subsection (1):
28 (a) if the Authority is satisfied that giving effect to the
29 instruction would breach:
30 (i) regulations made for the purposes of section ^112
31 (Kyoto rules); or
32 (ii) regulations made for the purposes of section ^114
33 (commitment period reserve);

EXPOSURE DRAFT

Part 4 Emissions units

Division 3 Kyoto units

Section ^109

- 1 the Authority must, by written notice given to the first
2 person, refuse to give effect to the instruction; and
3 (b) if paragraph (a) does not apply—the Authority must give
4 effect to the instruction as soon as practicable after receiving
5 it.
- 6 (4) If the Authority gives effect to an instruction under subsection (1),
7 the Registry must set out a record of the instruction.
- 8 (5) If the first person is the Commonwealth, the Minister may give an
9 instruction under subsection (1) on behalf of the first person.

10 **^109 Outgoing international transfers of Kyoto units**

- 11 (1) If:
12 (a) there is in force a declaration under section ^111 that
13 Australia is in compliance with the emissions trading
14 eligibility requirements under the Kyoto rules; and
15 (b) a person (the *first person*) is the registered holder of one or
16 more Kyoto units;
17 the person may, by electronic notice transmitted to the Authority,
18 instruct the Authority to transfer the units from the relevant
19 Registry account kept by the person (the *first Registry account*) to:
20 (c) a foreign account kept by another person; or
21 (d) a foreign account kept by the first person.
- 22 (2) An instruction under subsection (1) must set out:
23 (a) the account number of the relevant Registry account kept by
24 the first person; and
25 (b) such other information as is specified in the regulations.

26 *Compliance with instruction*

- 27 (3) If the Authority receives an instruction under subsection (1):
28 (a) if the Authority is satisfied that giving effect to the
29 instruction would breach:
30 (i) regulations made for the purposes of section ^112
31 (Kyoto rules); or

EXPOSURE DRAFT

Emissions units **Part 4**

Kyoto units **Division 3**

Section ^110

- 1 (ii) regulations made for the purposes of section ^114
2 (commitment period reserve);
3 the Authority must, by written notice given to the first
4 person, refuse to give effect to the instruction; and
5 (b) if paragraph (a) does not apply—the Authority must take
6 such steps as are required by regulations made for the
7 purposes of section ^112.
- 8 (4) Regulations made for the purposes of section ^112 may require the
9 Authority to remove the entry for the unit or units from the relevant
10 Registry account.
- 11 (5) Subsection (4) does not limit section ^112.
- 12 (6) If the Authority takes steps under paragraph (3)(b) in relation to an
13 instruction, the Registry must set out a record of the instruction.
- 14 (7) If the first person is the Commonwealth, the Minister may give an
15 instruction under subsection (1) on behalf of the first person.

^110 Incoming international transfers of Kyoto units

- 17 (1) If:
- 18 (a) there is in force a declaration under section ^111 that
19 Australia is in compliance with the emissions trading
20 eligibility requirements under the Kyoto rules; and
21 (b) the international transaction log forwards to the Authority an
22 instruction for the transfer of a Kyoto unit from a foreign
23 account; and
24 (c) the Kyoto unit is not specified in the regulations as a unit that
25 cannot be transferred to a Registry account; and
26 (d) making an entry for the Kyoto unit in the relevant Registry
27 account would not breach regulations made for the purposes
28 of section ^112 (Kyoto rules);

29 the Authority must make an entry for the Kyoto unit in the relevant
30 Registry account.

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

EXPOSURE DRAFT

Part 4 Emissions units

Division 3 Kyoto units

Section ^111

- 1 (2) However, the Authority may refuse to make an entry for the Kyoto
2 unit in the relevant Registry account if the Authority has
3 reasonable grounds to suspect that the instruction is fraudulent.

4 **^111 Compliance by Australia with emissions trading eligibility** 5 **requirements under the Kyoto rules**

6 *Declaration*

- 7 (1) If the Minister is satisfied that Australia is in compliance with the
8 eligibility requirements mentioned in paragraph 2 of the Annex to
9 Decision 11/CMP.1 of the Meeting of the Kyoto Parties, the
10 Minister must, by writing, declare that Australia is in compliance
11 with the emissions trading eligibility requirements under the Kyoto
12 rules.

13 *Revocation of declaration*

- 14 (2) If:
15 (a) a declaration is in force under subsection (1); and
16 (b) the Minister is not satisfied that Australia is in compliance
17 with the eligibility requirements mentioned in paragraph 2 of
18 the Annex to Decision 11/CMP.1 of the Meeting of the
19 Kyoto Parties;
20 the Minister must, by writing, revoke the declaration.

21 *Declaration or revocation is not a legislative instrument*

- 22 (3) An instrument made under subsection (1) or (2) is not a legislative
23 instrument.

24 **^112 Kyoto rules**

- 25 (1) The regulations may make provision for, or in relation to, giving
26 effect to the Kyoto rules, so far as the Kyoto rules relate to:
27 (a) the transfer of a Kyoto unit from a Registry account to a
28 foreign account; or
29 (b) the transfer of a Kyoto unit from a foreign account to a
30 Registry account; or

EXPOSURE DRAFT

Emissions units **Part 4**

Kyoto units **Division 3**

Section ^113

- 1 (c) the transfer of a Kyoto unit from a Registry account to a
2 Commonwealth Registry account; or
3 (d) the issue of a Kyoto unit.
- 4 (2) Regulations made for the purposes of subsection (1) may:
5 (a) prevent, restrict or limit the transfer of Kyoto units from a
6 Registry account to:
7 (i) a foreign account; or
8 (ii) a voluntary cancellation account; or
9 (b) prevent, restrict or limit the transfer of Kyoto units from a
10 foreign account to a Registry account.
- 11 (3) Subsection (2) does not limit subsection (1).

^113 Carry-over restrictions

12 *Kyoto units for which carry-over is permitted*

- 13
- 14 (1) The regulations may make provision for, or in relation to, the
15 following matters:
16 (a) the identification of:
17 (i) assigned amount units in Registry accounts; or
18 (ii) certified emission reductions (other than temporary
19 certified emission reductions or long-term certified
20 emission reductions) in Registry accounts; or
21 (iii) emission reduction units (other than emission reduction
22 units that have been converted from removal units) in
23 Registry accounts;
24 as Kyoto units for which carry-over is permitted subject to
25 such limits or restrictions (if any) as are specified in the
26 regulations;
27 (b) the procedures for the carry-over of such Kyoto units;
28 (c) requiring the Authority to transfer from the relevant Registry
29 account to a mandatory cancellation account any such Kyoto
30 units that have not been carried over in accordance with those
31 procedures;
32 (d) prohibiting the surrender of any or all such Kyoto units
33 during a period ascertained in accordance with the
34 regulations.

EXPOSURE DRAFT

Part 4 Emissions units

Division 3 Kyoto units

Section ^114

- 1 *Kyoto units for which carry-over is not permitted*
- 2 (2) The regulations may make provision for, or in relation to, the
- 3 following matters:
- 4 (a) the identification of Kyoto units for which carry-over is not
- 5 permitted;
- 6 (b) requiring the Authority to transfer from the relevant Registry
- 7 account to a mandatory cancellation account any such Kyoto
- 8 units held in the Registry account at a time ascertained in
- 9 accordance with the regulations;
- 10 (c) prohibiting the surrender of any such Kyoto units after a time
- 11 ascertained in accordance with the regulations.
- 12 (3) Regulations made for the purposes of paragraph (2)(a) must
- 13 identify the following units as units for which carry-over is not
- 14 permitted:
- 15 (a) removal units;
- 16 (b) temporary certified emission reductions;
- 17 (c) long-term certified emission reductions;
- 18 (d) emission reduction units that have been converted from
- 19 removal units.

20 *Kyoto rules*

- 21 (4) Regulations made for the purposes of this section must not be
- 22 inconsistent with the Kyoto rules.

23 **^114 Commitment period reserve**

- 24 (1) The regulations may make provision for, or in relation to, the
- 25 management of Australia's commitment period reserve.
- 26 (2) Regulations made for the purposes of subsection (1) may prevent,
- 27 restrict or limit the transfer of Kyoto units from a Registry account
- 28 to:
- 29 (a) a foreign account; or
- 30 (b) a voluntary cancellation account.

EXPOSURE DRAFT

Emissions units **Part 4**

Kyoto units **Division 3**

Section **^115**

1 **^115 Cancellation of temporary certified emission reductions or**
2 **long-term certified emission reductions**

3 *Scope*

- 4 (1) This section applies if:
5 (a) a person is the holder of a Registry account in which there is
6 an entry for a temporary certified emission reduction or a
7 long-term certified emission reduction; and
8 (b) the temporary certified emission reduction or long-term
9 certified emission reduction expires.

10 *Transfer to voluntary cancellation account*

- 11 (2) The Authority must, in accordance with the regulations, transfer
12 the temporary certified emission reduction or long-term certified
13 emission reduction to a voluntary cancellation account.

14 **^116 Replacement of long-term certified emission reductions**

15 *Scope*

- 16 (1) This section applies if:
17 (a) a person is the holder of a Registry account in which there is
18 an entry for a long-term certified emission reduction; and
19 (b) under the regulations, the person is required to replace the
20 long-term certified emission reduction by a particular time
21 ascertained in accordance with the regulations; and
22 (c) the person breaches that requirement.

23 *Transfer to voluntary cancellation account*

- 24 (2) The Authority must, in accordance with the regulations, transfer
25 the long-term certified emission reduction to a voluntary
26 cancellation account.

27 *Replacement of long-term certified emission reduction*

- 28 (3) For the purposes of this section, if a long-term certified emission
29 reduction relates to a clean development mechanism project, the

EXPOSURE DRAFT

Part 4 Emissions units

Division 3 Kyoto units

Section ^116

- 1 **replacement** by the person of the long-term certified emission
2 reduction consists of instructing the Authority under section ^108
3 to transfer:
- 4 (a) an assigned amount unit; or
 - 5 (b) a removal unit; or
 - 6 (c) a certified emission reduction (other than a temporary
7 certified emission reduction or a long-term certified emission
8 reduction); or
 - 9 (d) a long-term certified emission reduction relating to the
10 project;
- 11 from a Registry account kept by the person to whichever of the
12 following accounts is taken, under the regulations, to be the
13 appropriate account:
- 14 (e) the long-term certified emission reduction replacement
15 (storage reversal) account;
 - 16 (f) the long-term certified emission reduction replacement
17 (non-certification) account.

EXPOSURE DRAFT

1

2 **Division 4—Non-Kyoto international emissions units**

3 **^117 Entries for non-Kyoto international emissions units**

4 An entry for a non-Kyoto international emissions unit in a Registry
5 account is to consist of the serial number (however described) of
6 the unit.

7 **^118 Transfer of non-Kyoto international emissions units**

- 8 (1) For the purposes of this Act, if there is an entry for a non-Kyoto
9 international emissions unit in a Registry account (the *first*
10 *Registry account*) kept by a person (the *first person*):
- 11 (a) a *transfer* of the unit from the first Registry account to a
12 Registry account kept by another person consists of:
- 13 (i) the removal of the entry for the unit from the first
14 Registry account; and
- 15 (ii) the making of an entry for the unit in the Registry
16 account kept by the other person; and
- 17 (b) the *transfer* of the unit from the first Registry account to
18 another Registry account kept by the first person consists of:
- 19 (i) the removal of the entry for the unit from the first
20 Registry account; and
- 21 (ii) the making of an entry for the unit in the other Registry
22 account kept by the first person; and
- 23 (c) the *transfer* of the unit from the first Registry account to a
24 foreign account kept by another person consists of:
- 25 (i) the removal of the entry for the unit from the first
26 Registry account; and
- 27 (ii) the making of an entry for the unit in the foreign
28 account kept by the other person; and
- 29 (d) the *transfer* of the unit from the first Registry account to a
30 foreign account kept by the first person consists of:
- 31 (i) the removal of the entry for the unit from the first
32 Registry account; and

EXPOSURE DRAFT

Part 4 Emissions units

Division 4 Non-Kyoto international emissions units

Section ^119

- 1 (ii) the making of an entry for the unit in the foreign
2 account kept by the first person.
- 3 (2) For the purposes of this Act, if there is an entry for a non-Kyoto
4 international emissions unit in a foreign account, a *transfer* of the
5 unit from the foreign account to a Registry account consists of:
6 (a) the removal of the entry for the unit from the foreign account;
7 and
8 (b) the making of an entry for the unit in the Registry account.

9 **^119 Domestic transfers of non-Kyoto international emissions units**

- 10 (1) If a person (the *first person*) is the registered holder of one or more
11 non-Kyoto international emissions units, the person may, by
12 electronic notice transmitted to the Authority, instruct the
13 Authority to transfer the units from the relevant Registry account
14 kept by the person (the *first Registry account*) to:
15 (a) a Registry account kept by another person; or
16 (b) another Registry account kept by the first person.
- 17 (2) An instruction under subsection (1) must set out:
18 (a) the account number of the first Registry account; and
19 (b) the account number of the Registry account mentioned in
20 paragraph (1)(a) or (b); and
21 (c) such other information as is specified in the regulations.

22 *Compliance with instruction*

- 23 (3) If:
24 (a) the Authority receives an instruction under subsection (1);
25 and
26 (b) the conditions (if any) specified in the regulations are
27 satisfied;
28 the Authority must give effect to the instruction as soon as
29 practicable after receiving it.
- 30 (4) If the Authority gives effect to an instruction under subsection (1),
31 the Registry must set out a record of the instruction.

EXPOSURE DRAFT

- 1 (5) If the first person is the Commonwealth, the Minister may give an
2 instruction under subsection (1) on behalf of the first person.

3 **^120 Outgoing international transfers of non-Kyoto international**
4 **emissions units**

- 5 (1) If a person (the *first person*) is the registered holder of one or more
6 non-Kyoto international emissions units, the person may, by
7 electronic notice transmitted to the Authority, instruct the
8 Authority to transfer the units from the relevant Registry account
9 kept by the person (the *first Registry account*) to:
10 (a) a foreign account kept by another person; or
11 (b) a foreign account kept by the first person.
- 12 (2) An instruction under subsection (1) must set out:
13 (a) the account number of the relevant Registry account kept by
14 the first person; and
15 (b) such other information as is specified in the regulations.

16 *Compliance with instruction*

- 17 (3) If:
18 (a) the Authority receives an instruction under subsection (1);
19 and
20 (b) the conditions (if any) specified in the regulations are
21 satisfied;
22 the Authority must take such steps as are required by the
23 regulations.
- 24 (4) Regulations made for the purposes of subsection (3) may require
25 the Authority to remove the entry for the unit or units from the
26 relevant Registry account.
- 27 (5) Subsection (4) does not limit subsection (3).
- 28 (6) If the Authority takes steps under subsection (3) in relation to an
29 instruction, the Registry must set out a record of the instruction.
- 30 (7) If the first person is the Commonwealth, the Minister may give an
31 instruction under subsection (1) on behalf of the first person.

EXPOSURE DRAFT

Part 4 Emissions units

Division 4 Non-Kyoto international emissions units

Section ^121

1 **^121 Incoming international transfers of non-Kyoto international**
2 **emissions units**

3 (1) If:

4 (a) the Authority receives an instruction for the transfer of a
5 non-Kyoto international emissions unit from a foreign
6 account; and

7 (b) the conditions (if any) specified in the regulations are
8 satisfied;

9 the Authority must make an entry for the non-Kyoto international
10 emissions unit in the relevant Registry account.

11 (2) However, the Authority may refuse to make an entry for the
12 non-Kyoto international emissions unit in the relevant Registry
13 account if the Authority has reasonable grounds to suspect that the
14 instruction is fraudulent.

15 **^122 Surrender restrictions**

16 The regulations may make provision for, or in relation to,
17 prohibiting the surrender of non-Kyoto international emissions
18 units.

19 **^123 Regulations about non-Kyoto international emissions units**

20 The regulations may make further provision in relation to
21 non-Kyoto international emissions units.

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Part 5—Emissions number

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[^]124 Simplified outline

5

The following is a simplified outline of this Part:

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- 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.

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- A person's emissions number will be increased if the person failed to surrender sufficient units for the previous financial year.

12

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- A person's emissions number will be reduced if the person surrendered an excess number of eligible emissions units for the previous financial year.

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- The Authority may make an advisory assessment of a person's emissions number for a financial year.

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Note 1: If a person is a liable entity for a financial year, the person must surrender a number of eligible emissions units equal to the person's emissions number for the financial year—see section [^]132.

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Note 2: An emissions number is reported under section 22A of the *National Greenhouse and Energy Reporting Act 2007*.

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[^]125 Emissions number

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Scope

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- (1) This section applies if a person is a liable entity for an eligible financial year (the *current eligible financial year*).

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Emissions number

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- (2) For the purposes of this Act, the person's *emissions number* for the current eligible financial year is the sum of:

EXPOSURE DRAFT

Part 5 Emissions number

Section ^126

- 1 (a) the total of the person's provisional emissions numbers (if
2 any) for the current eligible financial year; and
3 (b) the person's make-good number (if any) for the previous
4 eligible financial year;
5 reduced (but not below zero) by the person's excess surrender
6 number (if any) for the previous eligible financial year.
- 7 (3) If the person's emissions number for the current eligible financial
8 year is not a whole number, the emissions number is to be rounded
9 to the nearest whole number (with a number ending in .5 being
10 rounded down).
- 11 (4) For the purposes of subsection (3), zero is taken to be a whole
12 number.
- 13 (5) The person's emissions number for the current eligible financial
14 year may be zero.

^126 Assessment of emissions number—incorrect report given by liable entity

Scope

- 17
- 18 (1) This section applies if:
19 (a) a report relating to an eligible financial year was given under
20 section 22A of the *National Greenhouse and Energy*
21 *Reporting Act 2007* by a person who was a liable entity for
22 the eligible financial year; and
23 (b) the report was given before the end of 4 months after the end
24 of the current eligible financial year; and
25 (c) the Authority has reasonable grounds to believe that the
26 number specified in the report as the person's emissions
27 number for the eligible financial year is incorrect.

Assessment

- 28
- 29 (2) The Authority may:
30 (a) make an assessment of the person's emissions number for the
31 eligible financial year; and
32 (b) give written notice of the assessment to the person.

EXPOSURE DRAFT

Emissions number **Part 5**

Section ^{^127}

- 1 (3) A notice of assessment under paragraph (2)(b) must be
2 accompanied by a statement setting out the effect of section ^{^132}.

3 *Amendment of assessments*

- 4 (4) The Authority may amend an assessment under this section at any
5 time.

- 6 (5) If the Authority amends an assessment, the Authority must give
7 written notice of the amendment to the person to whom the
8 assessment relates.

- 9 (6) For the purposes of this Act, an amended assessment is taken to be
10 an assessment under this section.

11 *Advisory character of assessment*

- 12 (7) A notice of assessment under this section is an instrument of an
13 advisory character.

14 **^{^127} Assessment of emissions number—no report given by liable
15 entity**

16 *Scope*

- 17 (1) This section applies if:
18 (a) a person has not, before the end of 4 months after the end of
19 an eligible financial year, given a report under section 22A of
20 the *National Greenhouse and Energy Reporting Act 2007* in
21 relation to the eligible financial year; and
22 (b) the Authority has reasonable grounds to believe that the
23 person is a liable entity for the eligible financial year.

24 *Assessment*

- 25 (2) The Authority may:
26 (a) make an assessment of the person's emissions number for the
27 eligible financial year; and
28 (b) give written notice of the assessment to the person.

EXPOSURE DRAFT

Part 5 Emissions number

Section ^127

1 (3) A notice of assessment under paragraph (2)(b) must be
2 accompanied by a statement setting out the effect of section ^132.

3 *Amendment of assessments*

4 (4) The Authority may amend an assessment under this section at any
5 time.

6 (5) If the Authority amends an assessment, the Authority must give
7 written notice of the amendment to the person to whom the
8 assessment relates.

9 (6) For the purposes of this Act, an amended assessment is taken to be
10 an assessment under this section.

11 *Advisory character of assessment*

12 (7) A notice of assessment under this section is an instrument of an
13 advisory character.

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**

Introduction **Division 1**

Section ^128

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Part 6—Surrender of eligible emissions units

3

Division 1—Introduction

4

^128 Simplified outline

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The following is a simplified outline of this Part:

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- If a person is the registered holder of one or more eligible emissions units, the person may, by electronic notice transmitted to the Authority, surrender any or all of those units.
- If a person is a liable entity for a financial year, and the person does not surrender any eligible emissions units by the end of 15 December next following the financial year:
 - (a) the person will have a unit shortfall for the financial year; and
 - (b) the number of units in that shortfall is equal to the person's emissions number for the financial year.
- If a person is a liable entity for a financial year, and by the end of 15 December next following the financial year, the number of surrendered eligible emissions units is less than the person's emissions number for the financial year:
 - (a) the person will have a unit shortfall for the financial year; and
 - (b) the number of units in that shortfall is equal to the difference between the emissions number and the number of surrendered units.
- The Authority may make an assessment of a unit shortfall.

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 1 Introduction

Section ^128

1

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- A person who is a liable entity for a financial year must take such action, by way of the surrender of eligible emissions units, as is necessary to ensure that at the end of 15 December next following the financial year, the person does not have a unit shortfall for the financial year.

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- An administrative penalty is payable if a person has a unit shortfall for a financial year.

8

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Note 1: If a person has a unit shortfall for a financial year, the person will be required to make good the shortfall in the next financial year.

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Note 2: If a person surrenders an excess number of eligible emissions units in relation to a financial year, the excess will reduce the person's liability for the next financial year.

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
How eligible emissions units are surrendered **Division 2**

Section ^129

1

2 **Division 2—How eligible emissions units are surrendered**

3 **^129 How eligible emissions units are surrendered**

4 (1) If a person is the registered holder of one or more eligible
5 emissions units, the person may, by electronic notice transmitted to
6 the Authority during an eligible financial year, surrender any or all
7 of those units.

8 Note: A liable entity may be required to surrender units—see section ^132.

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

- 10 (a) specify the eligible emissions unit or units that are being
11 surrendered; and
12 (b) specify the eligible financial year to which the surrender
13 relates; and
14 (c) specify the account number or account numbers of the
15 person's Registry account, or the person's Registry accounts,
16 in which there is an entry or entries for the eligible emissions
17 unit or units that are being surrendered.

18 (3) The eligible financial year specified under paragraph (2)(b) must
19 be:

- 20 (a) the eligible financial year in which the electronic notice was
21 transmitted; or
22 (b) an earlier eligible financial year.

23 (4) An Australian emissions unit must not be surrendered in relation to
24 an eligible financial year unless that eligible financial year is:

- 25 (a) the vintage year of the unit; or
26 (b) an eligible financial year later than the vintage year of the
27 unit; or
28 (c) the eligible financial year immediately preceding the vintage
29 year of the unit.

30 Note: See also subsection ^130(4) (borrowing limit).

31 (5) A person must not surrender, in relation to an eligible financial
32 year, an Australian emissions unit that has a vintage year that next

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 2 How eligible emissions units are surrendered

Section ^129

- 1 follows the eligible financial year unless the electronic notice is
2 transmitted after:
- 3 (a) 31 October next following the eligible financial year; or
4 (b) the emissions number publication time of the person for the
5 eligible financial year;
6 whichever happens first.
- 7 Note: For *emissions number publication time*, see section ^5.
- 8 (6) A Kyoto unit must not be surrendered if the surrender would
9 breach regulations made for the purposes of section ^113
10 (carry-over restrictions).
- 11 (7) An eligible international emissions unit specified in the regulations
12 must not be surrendered in relation to an eligible financial year
13 specified in the regulations. Regulations made for the purposes of
14 this subsection must not specify an eligible financial year that
15 begins before the regulations are registered under the *Legislative
16 Instruments Act 2003*.
- 17 Note: For specification by class, see subsection 13(3) of the *Legislative
18 Instruments Act 2003*.
- 19 (8) Any of the following:
20 (a) a removal unit issued during the first commitment period;
21 (b) an emission reduction unit:
22 (i) issued during the first commitment period; and
23 (ii) that has been converted from a removal unit;
24 must not be surrendered in relation to:
25 (c) the eligible financial year beginning on 1 July 2013; or
26 (d) a later eligible financial year.
- 27 (9) A non-Kyoto international emissions unit must not be surrendered
28 if the surrender would breach regulations made for the purposes of
29 section ^122 (surrender restrictions).
- 30 (10) If an Australian emissions unit is surrendered by a person:
31 (a) the unit is cancelled; and
32 (b) the Authority must remove the entry for the unit from the
33 person's Registry account in which there is an entry for the
34 unit.

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
How eligible emissions units are surrendered **Division 2**

Section ^129

- 1 (11) If a Kyoto unit is surrendered by a person:
2 (a) the Authority must remove the entry for the unit from the
3 person's Registry account in which there is an entry for the
4 unit; and
5 (b) the Authority must make an entry for the unit in a
6 Commonwealth holding account.
- 7 (12) If a non-Kyoto international emissions unit is surrendered by a
8 person:
9 (a) the Authority must take such action in relation to the unit as
10 is specified in the regulations; and
11 (b) the Authority must remove the entry for the unit from the
12 person's Registry account in which there is an entry for the
13 unit.
- 14 (13) The Registry must set out a record of each notice under
15 subsection (1).

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 3 Unit shortfalls

Section ^130

1

2 **Division 3—Unit shortfalls**

3 **^130 Unit shortfalls**

4 *Scope*

5 (1) This section applies if:

- 6 (a) a person is a liable entity for an eligible financial year (the
7 *current eligible financial year*); and
8 (b) the person's emissions number for the current eligible
9 financial year is 1 or more.

10 *No units surrendered*

11 (2) If, during the period (the *surrender period*):

- 12 (a) beginning at the start of the current eligible financial year;
13 and
14 (b) ending at the end of 15 December in the next eligible
15 financial year;

16 the person has not surrendered any eligible emissions units in
17 relation to the current eligible financial year, then, at the end of the
18 surrender period:

- 19 (c) the person has a *unit shortfall* for the current eligible
20 financial year; and
21 (d) the number of units in that shortfall is equal to the person's
22 emissions number for the current eligible financial year.

23 *Surrender of insufficient units*

24 (3) If, during the period (the *surrender period*):

- 25 (a) beginning at the start of the current eligible financial year;
26 and
27 (b) ending at the end of 15 December in the next eligible
28 financial year;

29 the person surrendered one or more eligible emissions units in
30 relation to the current eligible financial year, but the number of
31 surrendered units is less than the person's emissions number for the

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**

Unit shortfalls **Division 3**

Section ^131

1 current eligible financial year, then, at the end of the surrender
2 period:

- 3 (c) the person has a ***unit shortfall*** for the current eligible
4 financial year; and
5 (d) the number of units in that shortfall is worked out using the
6 formula:

7 Emissions number – Number of surrendered units

8 *Borrowing limit*

9 (4) If:

- 10 (a) during the surrender period mentioned in subsection (3), the
11 person surrendered, in relation to the current eligible
12 financial year, Australian emissions units (the ***borrowed***
13 ***units***) that have a vintage year that next follows the eligible
14 financial year; and
15 (b) the number of borrowed units exceeds 5% of the person's
16 emissions number for the current eligible financial year;
17 subsection (3) has effect as if, during the surrender period, the
18 person had not surrendered, in relation to the current eligible
19 financial year, the number of borrowed units that equals the excess.

20 **^131 Assessment of unit shortfall**

21 *Scope*

- 22 (1) This section applies if the Authority has reasonable grounds to
23 believe that:
24 (a) a person is a liable entity for an eligible financial year (the
25 ***current eligible financial year***); and
26 (b) as at the end of 15 December in the next eligible financial
27 year, the person had a unit shortfall for the current eligible
28 financial year.

29 *Assessment*

- 30 (2) If the Authority has reasonable grounds to believe that:
-

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 3 Unit shortfalls

Section ^131

- 1 (a) the person has made a false or misleading statement to the
2 Authority that is relevant to ascertaining the person's unit
3 shortfall for the current eligible financial year; or
4 (b) the person has otherwise engaged in fraudulent conduct that
5 is relevant to ascertaining the person's unit shortfall for the
6 current eligible financial year;
7 the Authority may, at any time:
8 (c) make an assessment of the person's unit shortfall for the
9 current eligible financial year; and
10 (d) give written notice of the assessment to the person.

11 Note: For evidentiary effect of the notice, see section ^140.

- 12 (3) If subsection (2) does not apply, the Authority may, at any time
13 within 4 years after the end of the current eligible financial year:
14 (a) make an assessment of the person's unit shortfall for the
15 current eligible financial year; and
16 (b) give written notice of the assessment to the person.

17 Note: For evidentiary effect of the notice, see section ^140.

- 18 (4) In making an assessment under this section, the Authority may rely
19 on a report given under section 22A of the *National Greenhouse
20 and Energy Reporting Act 2007* by the person concerned.

21 *Amendment of assessments*

- 22 (5) The Authority may amend an assessment under subsection (2) at
23 any time.
24 (6) The Authority may amend an assessment under subsection (3) at
25 any time within 4 years after the end of the current eligible
26 financial year.
27 (7) If the Authority amends an assessment, the Authority must give
28 written notice of the amendment to the person to whom the
29 assessment relates.
30 (8) For the purposes of this Act, an amended assessment is taken to be
31 an assessment under this section.

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
Obligation to surrender eligible emissions units **Division 4**

Section ^132

1

2 **Division 4—Obligation to surrender eligible emissions**
3 **units**

4 **^132 Obligation to surrender eligible emissions units**

5 If:

- 6 (a) a person is a liable entity for an eligible financial year (the
7 *current eligible financial year*); and
8 (b) the person's emissions number for the current eligible
9 financial year is 1 or more; and
10 (c) there is a national scheme cap number for the current eligible
11 financial year;

12 the person must take such action, by way of the surrender of
13 eligible emissions units, as is necessary to ensure that at the end of
14 15 December in the next eligible financial year, the person does not
15 have a unit shortfall for the current eligible financial year.

16 Note: For penalty, see section ^133.

17 **^133 Penalty for unit shortfall**

18 *Penalty*

19 (1) If:

- 20 (a) a person is a liable entity for an eligible financial year (the
21 *current eligible financial year*); and
22 (b) at the end of 15 December in the next eligible financial year,
23 the person has a unit shortfall for the current eligible
24 financial year;

25 the person is liable to pay to the Commonwealth, by way of
26 penalty, an amount worked out using the formula:

27
$$\text{Number of units in the unit shortfall} \times \frac{\text{Prescribed amount for}}{\text{the current eligible financial year}}$$

28 where:

29 *prescribed amount for the current eligible financial year* means:

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 4 Obligation to surrender eligible emissions units

Section ^134

- 1 (a) if an amount is specified in the regulations for the current
2 eligible financial year—that amount; or
3 (b) otherwise—an amount equal to 110% of the benchmark
4 average auction price for the previous financial year.

5 *Maximum prescribed amount*

- 6 (2) An amount specified in regulations made for the purposes of
7 paragraph (a) of the definition of *prescribed amount for the*
8 *current eligible financial year* in subsection (1) in relation to an
9 eligible financial year must not exceed 110% of the benchmark
10 average auction price for the previous financial year.
- 11 (3) As soon as practicable after the end of each financial year, the
12 Authority must:
- 13 (a) calculate the benchmark average auction price for the
14 financial year; and
15 (b) publish on its website a notice setting out the results of that
16 calculation.

17 **^134 When penalty becomes due and payable**

18 An amount payable under section ^133 by a person in relation to a
19 unit shortfall for an eligible financial year is due and payable at the
20 end of 31 January in the next eligible financial year.

21 **^135 Late payment penalty**

- 22 (1) If an amount payable by a person under section ^133 remains
23 unpaid after the time when it became due for payment, the person
24 is liable to pay, by way of penalty, an amount calculated at the rate
25 of:
- 26 (a) 20% per annum; or
27 (b) if a lower rate per annum is specified in the regulations—that
28 lower rate per annum;
29 on the amount unpaid, computed from that time.
- 30 (2) The Authority may remit the whole or a part of an amount payable
31 under subsection (1).

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
Obligation to surrender eligible emissions units **Division 4**

Section ^136

1 **^136 Recovery of penalties**

2 An amount payable under section ^133 or ^135:

- 3 (a) is a debt due to the Commonwealth; and
4 (b) may be recovered by the Authority, on behalf of the
5 Commonwealth, by action in a court of competent
6 jurisdiction.

7 **^137 Set-off**

8 If:

- 9 (a) an amount (the *first amount*) is payable under section ^133
10 or ^135 by a person; and
11 (b) the following conditions are satisfied in relation to another
12 amount (the *second amount*):
13 (i) the amount is payable by the Commonwealth to the
14 person;
15 (ii) the amount is of a kind specified in the regulations;
16 the Authority may, on behalf of the Commonwealth, set off the
17 whole or a part of the first amount against the whole or a part of
18 the second amount.

19 **^138 Liability transfer certificate—statutory guarantee**

20 *Scope*

- 21 (1) This section applies if:
22 (a) a company was the holder of a liability transfer certificate
23 throughout the whole or a part of an eligible financial year;
24 and
25 (b) the certificate was issued under section ^72.

26 *Guarantee*

- 27 (2) The controlling corporation that consented under subsection ^70(2)
28 to the making of the application for the certificate is taken to have
29 guaranteed the payment by the company of:
30 (a) an amount payable by the company under section ^133 in
31 relation to a unit shortfall for the eligible financial year; and

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 4 Obligation to surrender eligible emissions units

Section ^139

- 1 (b) an amount payable by the company under section ^135
2 because of the late payment of an amount covered by
3 paragraph (a).

4 **^139 Refund of overpayments**

5 *Refund*

- 6 (1) If any of the following amounts has been overpaid by a person, the
7 amount overpaid must be refunded by the Commonwealth:
8 (a) an amount payable under section ^133;
9 (b) an amount payable under section ^135.

10 Note: For appropriation, see section 28 of the *Financial Management and*
11 *Accountability Act 1997*.

12 *Interest on overpayment*

- 13 (2) If:
14 (a) an amount overpaid by a person is refunded by the
15 Commonwealth under subsection (1); and
16 (b) the overpayment is attributable, in whole or in part, to an
17 error made by the Authority;
18 interest calculated in accordance with subsection (3) is payable by
19 the Commonwealth to the person in respect of the amount
20 refunded.
- 21 (3) Interest payable to a person under subsection (2) in respect of an
22 amount refunded to the person is to be calculated:
23 (a) in respect of the period that:
24 (i) began when the overpaid amount was paid to the
25 Commonwealth; and
26 (ii) ended when the amount was refunded; and
27 (b) at the base interest rate (within the meaning of section 8AAD
28 of the *Taxation Administration Act 1953*).
- 29 (4) The Consolidated Revenue Fund is appropriated for the purposes
30 of making payments of interest under subsection (2).

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
Obligation to surrender eligible emissions units **Division 4**

Section ^140

1 **^140 Evidentiary effect of notice of assessment of unit shortfall**

- 2 (1) In proceedings for the recovery of a penalty under section ^133 or
3 ^135, a notice of assessment under section ^131 is prima facie
4 evidence of the matters in the notice.
- 5 (2) A document purporting to be a notice of assessment is taken:
6 (a) to be such a notice; and
7 (b) to have been duly given;
8 unless the contrary is established.

9 **^141 Benchmark average auction price**

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

17 *Average auction price—all auctions*

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

20
$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

21 where:

22 *number of units issued as the result of auctions* means the total
23 number of Australian emissions units that were issued as the result
24 of auctions conducted by the Authority during the financial year.

25 *total auction proceeds* means the total amount paid or payable as
26 consideration for the issue of Australian emissions units that were
27 issued as the result of auctions conducted by the Authority during
28 the financial year.

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 4 Obligation to surrender eligible emissions units

Section ^142

1 *Average auction price—last auction*

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

4
$$\frac{\text{Proceeds of the last auction}}{\text{Number of units issued as a result of the last auction}}$$

5 where:

6 *number of units issued as a result of the last auction* means the
7 number of Australian emissions units that were issued as a result of
8 the last auction conducted by the Authority during the financial
9 year.

10 *proceeds of the last auction* means the total amount paid or
11 payable as consideration for the issue of Australian emissions units
12 that were issued as a result of the last auction conducted by the
13 Authority during the financial year.

14 ^142 Make-good number

15 (1) If:

- 16 (a) a person is a liable entity for an eligible financial year (the
17 *current eligible financial year*); and
18 (b) at the end of 15 December in the next eligible financial year,
19 the person has a unit shortfall for the current eligible
20 financial year;

21 then:

- 22 (c) the number of units in the unit shortfall is the person's
23 *make-good number* for the current eligible financial year;
24 and
25 (d) the person is a *liable entity* for the next eligible financial
26 year.

27 Note: The *make-good number* increases the emissions number for the next
28 eligible financial year—see section ^125.

EXPOSURE DRAFT

Surrender of eligible emissions units **Part 6**
Obligation to surrender eligible emissions units **Division 4**

Section ^143

1 *Liability transfer certificate*

2 (2) If:

- 3 (a) a company was the holder of a liability transfer certificate
4 throughout the whole or a part of an eligible financial year;
5 and
6 (b) the company becomes liable to pay an amount under section
7 ^133 in relation to a unit shortfall for the eligible financial
8 year;

9 then:

- 10 (c) if the controlling corporation that consented under subsection
11 ^70(2) to the making of the application for the certificate has
12 a make-good number for the eligible financial year—that
13 make-good number is increased by the number of units in the
14 unit shortfall; and
15 (d) if paragraph (c) does not apply—the controlling corporation
16 that consented under subsection ^70(2) to the making of the
17 application for the certificate:
18 (i) has a ***make-good number*** for the eligible financial year
19 equal to the number of units in the unit shortfall; and
20 (ii) is a ***liable entity*** for the next eligible financial year; and
21 (e) despite subsection (1), the company does not have a
22 make-good number for the eligible financial year.

23 Note: The ***make-good number*** increases the emissions number for the next
24 eligible financial year—see section ^125.

25 **^143 Excess surrender number**

26 (1) If:

- 27 (a) a person is a liable entity for an eligible financial year (the
28 ***current eligible financial year***); and
29 (b) the person's emissions number for the current eligible
30 financial year is 1 or more; and
31 (c) at the end of 15 December in the next eligible financial year,
32 the person does not have a unit shortfall for the current
33 eligible financial year; and
34 (d) during the period (the ***surrender period***):

EXPOSURE DRAFT

Part 6 Surrender of eligible emissions units

Division 4 Obligation to surrender eligible emissions units

Section ^143

- 1 (i) beginning at the start of the current eligible financial
2 year; and
3 (ii) ending at 15 December in the next eligible financial
4 year;
5 the person surrendered one or more eligible emissions units
6 in relation to the current eligible financial year; and
7 (e) the number of surrendered units exceeds the person's
8 emissions number for the current eligible financial year;
9 the number of surrendered units in the excess is the person's *excess*
10 *surrender number* for the current eligible financial year.

11 Note: The *excess surrender number* reduces the emissions number for the
12 next eligible financial year—see section ^125.

13 *Borrowing limit*

- 14 (2) If:
15 (a) during the surrender period mentioned in subsection (1), the
16 person surrendered, in relation to the current eligible
17 financial year, Australian emissions units (the *borrowed*
18 *units*) that have a vintage year that next follows the eligible
19 financial year; and
20 (b) the number of borrowed units exceeds 5% of the person's
21 emissions number for the current eligible financial year;
22 subsection (1) has effect as if, during the surrender period, the
23 person had not surrendered, in relation to the current eligible
24 financial year, the number of borrowed units that equals the excess.

EXPOSURE DRAFT

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2

Part 7—National Registry of Emissions Units

3

Division 1—Introduction

4

^144 Simplified outline

5

The following is a simplified outline of this Part:

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- The National Registry of Emissions Units is continued in existence.
- The Authority may open a Registry account in the name of a person.
- A person may request the Authority to close the person's Registry account.
- The Authority is empowered to make corrections to the Registry.
- A person may apply to the Federal Court for the rectification of the Registry.

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 2 National Registry of Emissions Units

Section ^145

1

2 **Division 2—National Registry of Emissions Units**

3 **^145 National Registry of Emissions Units**

4

(1) The register:

5

(a) known as the National Registry of Emissions Units; and

6

(b) that was in existence under the executive power of the

7

Commonwealth immediately before the commencement of

8

this section;

9

continues in existence as a register under this Act under the name

10

National Registry of Emissions Units.

11

(2) The Registry is to be kept by the Authority.

12

Note: In this Act, *Registry* means the National Registry of Emissions

13

Units—see section ^5.

14

(3) The Registry is to be maintained by electronic means.

15

(4) The purposes of the Registry are as follows:

16

(a) to be a registry for Australian emissions units;

17

(b) to be Australia's national registry for Kyoto units.

EXPOSURE DRAFT

1

2 **Division 3—Registry accounts**

3 **^146 Registry accounts**

- 4 (1) The Authority may open an account within the Registry in the
5 name of a particular person.
- 6 (2) An account kept in the name of a person is to be known as a
7 **Registry account** of the person.
- 8 (3) Each Registry account is to be identified by a unique number, to be
9 known as the **account number** of the Registry account.
- 10 (4) A person may have 2 or more Registry accounts.
- 11 (5) To avoid doubt, a Registry account cannot be kept in the names of
12 2 or more persons jointly.

13 **^147 Opening of Registry accounts—general**

- 14 (1) A person may request the Authority to open a Registry account in
15 the name of the person.
- 16 (2) A request under subsection (1) must:
17 (a) be in writing; and
18 (b) be in a form approved, in writing, by the Authority; and
19 (c) be accompanied by such information as is specified in the
20 regulations; and
21 (d) be accompanied by the fee (if any) specified in a legislative
22 instrument made by the Authority for the purposes of this
23 paragraph.
- 24 (3) The approved form of request may provide for verification by
25 statutory declaration of statements in requests.
- 26 (4) A fee specified under paragraph (2)(d) must not be such as to
27 amount to taxation.

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 3 Registry accounts

Section ^147

1

Further information

2

(5) The Authority may, by written notice given to the person who made the request, require the person to give the Authority, within the period specified in the notice, further information in connection with the request.

3

4

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(6) If the person breaches the requirement, the Authority may, by written notice given to the person:

7

8

(a) refuse to consider the request; or

9

(b) refuse to take any action, or any further action, in relation to the request.

10

11

Opening of account

12

(7) After considering the request, the Authority may open a Registry account in the name of the person.

13

14

Identification procedure

15

(8) The Authority must not open a Registry account in the name of the person unless the Authority has carried out the applicable identification procedure in respect of the person.

16

17

18

Timing

19

(9) The Authority must take all reasonable steps to ensure that a decision is made on the request:

20

21

(a) if the Authority requires the person who made the request to give further information under subsection (5) in relation to the request—within 28 days after the person gave the Authority the information; or

22

23

24

25

(b) otherwise—within 28 days after the application was made.

26

Refusal

27

(10) If the Authority decides to refuse to open a Registry account in the name of the person who made the request, the Authority must give written notice of the decision to the person.

28

29

EXPOSURE DRAFT

1 **^148 Designation of Commonwealth Registry accounts**

2 A Commonwealth Registry account must be designated by the
3 Authority as:

- 4 (a) a Commonwealth holding account; or
5 (b) the retirement account for a particular commitment period; or
6 (c) the net source cancellation account for a particular
7 commitment period; or
8 (d) the non-compliance cancellation account for a particular
9 commitment period; or
10 (e) the voluntary cancellation account for a particular
11 commitment period; or
12 (f) the mandatory cancellation account for a particular
13 commitment period; or
14 (g) the temporary certified emission reduction replacement
15 (expiry) account for a particular commitment period; or
16 (h) the long-term certified emission reduction replacement
17 (expiry) account for a particular commitment period; or
18 (i) the long-term certified emission reduction replacement
19 (storage reversal) account for a particular commitment
20 period; or
21 (j) the long-term certified emission reduction replacement
22 (non-certification) account for a particular commitment
23 period; or
24 (k) the Commonwealth relinquished units account; or
25 (l) an account with a name specified in the regulations.

26 **^149 Opening of new Commonwealth Registry accounts**

- 27 (1) The Minister may, by written notice given to the Authority, direct
28 the Authority to:
29 (a) open a Registry account in the name of the Commonwealth;
30 and
31 (b) give that Registry account the designation specified in the
32 direction.
33 (2) The Authority must comply with a direction under subsection (1).

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 3 Registry accounts

Section ^150

1 **^150 Units in a retirement, cancellation or replacement account**

2 *Scope*

- 3 (1) This section applies to a Kyoto unit for which there is an entry in
4 any of the following Commonwealth Registry accounts:
- 5 (a) the retirement account for a particular commitment period;
 - 6 (b) the net source cancellation account for a particular
7 commitment period;
 - 8 (c) the non-compliance cancellation account for a particular
9 commitment period;
 - 10 (d) the voluntary cancellation account for a particular
11 commitment period;
 - 12 (e) the mandatory cancellation account for a particular
13 commitment period;
 - 14 (f) the temporary certified emission reduction replacement
15 (expiry) account for a particular commitment period;
 - 16 (g) the long-term certified emission reduction replacement
17 (expiry) account for a particular commitment period;
 - 18 (h) the long-term certified emission reduction replacement
19 (storage reversal) account for a particular commitment
20 period;
 - 21 (i) the long-term certified emission reduction replacement
22 (non-certification) account for a particular commitment
23 period.

24 *Restriction*

- 25 (2) The unit cannot be transferred or surrendered.
- 26 (3) Subsection (2) has effect despite any other provision of this Act.

27 **^151 Totals of Australian emissions units in a Registry account**

28 The Registry must set out, for each Registry account, the total of
29 all of the Australian emissions units in the account that have the
30 same vintage year.

EXPOSURE DRAFT

1 **[^]152 Voluntary closure of Registry accounts**

2 *Scope*

3 (1) This section applies if:

4 (a) a person has a Registry account; and

5 (b) there are no entries for any Australian emissions units in the
6 account; and

7 (c) there are no entries for any Kyoto units in the account; and

8 (d) there are no entries for any non-Kyoto international
9 emissions units in the account; and

10 (e) the person, by written notice given to the Authority, requests
11 the Authority to close the account.

12 *Compliance with request*

13 (2) The Authority must comply with the request as soon as practicable
14 after receiving it.

15 (3) The Registry must set out a record of each closure under
16 subsection (2).

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 4 Change in name of account holder

Section ^153

1

2 **Division 4—Change in name of account holder**

3 **^153 Application to have new name entered on the Registry**

4 (1) If:

5 (a) a Registry account is kept in the name of a person; and

6 (b) the name of the person has changed;

7 the person may apply to the Authority to have the new name
8 substituted for the previous name in the Registry in relation to the
9 account.

10 (2) The application must be in writing.

11 **^154 Alteration in the Registry**

12 *Scope*

13 (1) This section applies if a person applies under section ^153 to have
14 the person's new name substituted for the person's previous name
15 in the Registry in relation to a Registry account.

16 *Alteration*

17 (2) If the Authority is satisfied that the person's name has changed, the
18 Authority must make the necessary alterations in the Registry.

EXPOSURE DRAFT

National Registry of Emissions Units **Part 7**
Correction and rectification of Registry **Division 5**

Section ^155

1

2 **Division 5—Correction and rectification of Registry**

3 **^155 Corrections of clerical errors or obvious defects**

4 The Authority may alter the Registry for the purposes of correcting
5 a clerical error or an obvious defect in the Registry.

6 **^156 General power of correction of Registry**

7 *Power of correction*

- 8 (1) The Authority may make such alterations to the Registry as the
9 Authority considers appropriate for the purposes of ensuring that
10 the Registry accurately records the legal ownership of:
11 (a) an Australian emissions unit; or
12 (b) a Kyoto unit; or
13 (c) a non-Kyoto international emissions unit.
- 14 (2) The Authority may exercise the power conferred by subsection (1):
15 (a) on written application being made to the Authority by a
16 person; or
17 (b) on the Authority's own initiative.

18 *Consultation*

- 19 (3) Before the Authority makes an alteration to the Registry under
20 subsection (1), the Authority must give each person whose interests
21 are affected by the alteration a written notice:
22 (a) setting out the details of the alteration that the Authority
23 proposes to make to the Registry; and
24 (b) inviting the person to give the Authority a written submission
25 about the making of the alteration; and
26 (c) specifying a time limit for the making of such a submission.
- 27 (4) The time limit must not be shorter than 45 days after the notice was
28 given.

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 5 Correction and rectification of Registry

Section ^157

- 1 (5) In deciding whether to make the alteration to the Registry, the
2 Authority must take into account any submission made in
3 accordance with such a notice.

4 *Publication of alteration*

- 5 (6) If the Authority makes an alteration to the Registry under
6 subsection (1), the Authority must cause to be published on the
7 Authority's website a notice setting out the details of the alteration.

8 **^157 General power of correction of Registry—Kyoto units**

9 *Power of correction*

- 10 (1) The Authority may make such alterations to the Registry as the
11 Authority considers appropriate for the purposes of ensuring that
12 the relevant provisions of the Kyoto rules are complied with.
- 13 (2) The Authority may exercise the power conferred by subsection (1):
14 (a) on written application being made to the Authority by a
15 person; or
16 (b) on the Authority's own initiative.

17 *Publication of alteration*

- 18 (3) If the Authority makes an alteration to the Registry under
19 subsection (1), the Authority must cause to be published on the
20 Authority's website a notice setting out the details of the alteration.

21 **^158 General power of correction of Registry—non-Kyoto
22 international emissions units**

23 *Power of correction*

- 24 (1) The Authority may make such alterations to the Registry as the
25 Authority considers appropriate for the purposes of ensuring that
26 the relevant provisions of an international agreement, to the extent
27 to which it relates to a non-Kyoto international emissions unit, are
28 complied with.
- 29 (2) The Authority may exercise the power conferred by subsection (1):

EXPOSURE DRAFT

- 1 (a) on written application being made to the Authority by a
2 person; or
3 (b) on the Authority's own initiative.

4 *Publication of alteration*

- 5 (3) If the Authority makes an alteration to the Registry under
6 subsection (1), the Authority must cause to be published on the
7 Authority's website a notice setting out the details of the alteration.

8 **[^]159 Rectification of Registry**

9 *Application for rectification*

- 10 (1) If a person is aggrieved by any of the following:
11 (a) the omission of an entry from the Registry;
12 (b) an entry made in the Registry without sufficient cause;
13 (c) an entry wrongly existing in the Registry;
14 (d) an error or defect in an entry in the Registry;
15 (e) an entry wrongly removed from the Registry;
16 the person may apply to the Federal Court for the rectification of
17 the Registry.

18 *Court orders*

- 19 (2) If an application is made under subsection (1) to the Federal Court
20 for the rectification of the Registry, the court may make such order
21 as it thinks fit directing the rectification of the Registry.
- 22 (3) In proceedings under this section, the court may decide any
23 question that it is necessary or expedient to decide in connection
24 with the rectification of the Registry.

25 *Appearance of Authority*

- 26 (4) Notice of an application under this section must be given to the
27 Authority, whose representative:
28 (a) may appear and be heard; and
29 (b) must appear if so directed by the court.

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 5 Correction and rectification of Registry

Section ^159

1 *Copy of order to be given to Authority*

2 (5) An office copy of an order made by the court may be given to the
3 Authority.

4 *Compliance with order*

5 (6) The Authority must, on receipt of the order, rectify the Registry
6 accordingly.

EXPOSURE DRAFT

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2 **Division 6—Miscellaneous**

3 **^160 Making a false entry in the Registry**

4 A person commits an offence if:

5 (a) the person:

6 (i) makes an entry in the Registry; or

7 (ii) causes an entry to be made in the Registry; or

8 (iii) concurs in the making of an entry in the Registry; and

9 (b) the person does so knowing that the entry is false.

10 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

11 Note: The same conduct may be an offence against both this section and
12 section 145.4 of the *Criminal Code*.

13 **^161 Falsified documents**

14 A person commits an offence if:

15 (a) the person produces or tenders in evidence a document; and

16 (b) the document falsely purports to be a copy of or extract from
17 an entry in the Registry.

18 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

19 Note: The same conduct may be an offence against both this section and
20 section 137.2 of the *Criminal Code*.

21 **^162 Evidentiary provisions**

22 (1) The Authority may supply a copy of or extract from the Registry.

23 (2) The certified copy or extract is admissible in evidence in all courts
24 and proceedings without further proof or production of the original.

25 (3) The Authority may charge a fee specified in the regulations for
26 supplying a copy or extract under subsection (1).

27 (4) A fee specified under subsection (3) must not be such as to amount
28 to taxation.

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 6 Miscellaneous

Section ^163

1 **^163 Use and disclosure of information obtained from the Registry**

2 *Use*

- 3 (1) A person must not use information to contact or send material to
4 another person if that information:
5 (a) is about the other person; and
6 (b) was obtained from the Registry.

7 *Disclosure*

- 8 (2) A person (the *first person*) must not disclose information that:
9 (a) is about another person; and
10 (b) was obtained from the Registry; and
11 (c) the first person knows is likely to be used to contact or send
12 material to the other person.

13 *Exception*

- 14 (3) Subsections (1) and (2) do not apply if the use or disclosure of the
15 information is relevant to:
16 (a) the holding of:
17 (i) Australian emissions units; or
18 (ii) Kyoto units; or
19 (iii) non-Kyoto international emissions units;
20 recorded in the Registry; or
21 (b) the exercise of the rights attaching to those units.
- 22 (4) A person who wishes to rely on subsection (3) bears an evidential
23 burden in relation to that matter.

24 Note: For *evidential burden*, see section ^5.

25 *Ancillary contraventions*

- 26 (5) A person must not:
27 (a) aid, abet, counsel or procure a contravention of subsection (1)
28 or (2); or
29 (b) induce, whether by threats or promises or otherwise, a
30 contravention of subsection (1) or (2); or

EXPOSURE DRAFT

- 1 (c) be in any way, directly or indirectly, knowingly concerned in,
2 or party to, a contravention of subsection (1) or (2); or
3 (d) conspire with others to effect a contravention of
4 subsection (1) or (2).

5 *Civil penalty provisions*

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

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

9 **^164 Regulations about the Registry**

- 10 (1) The regulations may make further provision in relation to the
11 Registry.
12 (2) Regulations made for the purposes of subsection (1) may make
13 provision requiring the holder of a Registry account to notify a
14 matter to the Authority.
15 (3) Subsection (2) does not limit subsection (1).

16 *Requirement*

- 17 (4) If the holder of a Registry account is subject to a requirement under
18 regulations made for the purposes of subsection (1) or (2), the
19 holder must comply with that requirement.

20 *Ancillary contraventions*

- 21 (5) A person must not:
22 (a) aid, abet, counsel or procure a contravention of
23 subsection (4); or
24 (b) induce, whether by threats or promises or otherwise, a
25 contravention of subsection (4); or
26 (c) be in any way, directly or indirectly, knowingly concerned in,
27 or party to, a contravention of subsection (4); or
28 (d) conspire with others to effect a contravention of
29 subsection (4).

EXPOSURE DRAFT

Part 7 National Registry of Emissions Units

Division 6 Miscellaneous

Section ^164

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Civil penalty provisions

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(6) Subsections (4) and (5) are *civil penalty provisions*.

3

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

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EXPOSURE DRAFT

Emissions-intensive trade-exposed assistance program **Part 8**

Introduction **Division 1**

Section **^165**

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Part 8—Emissions-intensive trade-exposed assistance program

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Division 1—Introduction

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^165 Objects

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The objects of this Part are:

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(a) to enable the identification of activities as emissions-intensive trade-exposed activities; and

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(b) to reduce the incentives for such an activity to be located in, or re-located to, foreign countries; and

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(c) to provide transitional assistance in respect of such an activity if carried on in Australia;

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until such assistance is no longer warranted, having regard to:

14

(d) whether sufficient measures to reduce emissions of carbon dioxide and other greenhouse gases have been implemented in respect of markets:

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(i) that are outside Australia; and

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(ii) that are for goods produced as a result of such an activity (whether carried on in or outside Australia); and

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(iii) in which persons who carry on such an activity in Australia compete; or

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(e) whether foreign countries that are responsible for the substantial majority of the world's emissions of carbon dioxide and other greenhouse gases have implemented sufficient measures to reduce those emissions; or

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26

(f) any other relevant matters.

27

^166 Simplified outline

28

The following is a simplified outline of this Part:

29

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- The regulations may formulate a program, to be known as the emissions-intensive trade-exposed assistance program, for the

EXPOSURE DRAFT

Part 8 Emissions-intensive trade-exposed assistance program

Division 1 Introduction

Section ^166

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issue of free Australian emissions 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 emissions-intensive trade-exposed assistance program may:

- (a) require a recipient of free Australian emissions units to relinquish units; and
- (b) impose reporting or record-keeping requirements on a recipient of free Australian emissions units.

EXPOSURE DRAFT

Emissions-intensive trade-exposed assistance program **Part 8**
Formulation of the emissions-intensive trade-exposed assistance program **Division 2**

Section ^{^167}

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Division 2—Formulation of the emissions-intensive trade-exposed assistance program

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^{^167} Emissions-intensive trade-exposed assistance program

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(1) The regulations may formulate a program (to be known as the *emissions-intensive trade-exposed assistance program*) for the issue of free Australian emissions units in respect of activities that:

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(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.

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(2) The emissions-intensive trade-exposed assistance program must provide that free Australian emissions 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.

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(3) The Minister must take all reasonable steps to ensure that regulations are made for the purposes of subsection (1) before 1 July 2010.

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^{^168} Relinquishment requirement

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(1) The emissions-intensive trade-exposed assistance program may provide that, if:

(a) a number of free Australian emissions 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 Authority is satisfied about a specified matter;

the person is required to relinquish a number of Australian emissions units ascertained in accordance with the program.

EXPOSURE DRAFT

Part 8 Emissions-intensive trade-exposed assistance program

Division 2 Formulation of the emissions-intensive trade-exposed assistance program

Section ^169

1 Note: An administrative penalty is payable under section ^287 for
2 non-compliance with a relinquishment requirement under the
3 emissions-intensive trade-exposed assistance program.

4 (2) The number of Australian emissions units required to be
5 relinquished by the person must not exceed the number of units
6 mentioned in paragraph (1)(a).

7 **^169 Reporting requirement**

8 *Scope*

9 (1) This section applies to a person if free Australian emissions units
10 have been issued to the person in accordance with the
11 emissions-intensive trade-exposed assistance program.

12 *Requirement*

13 (2) The emissions-intensive trade-exposed assistance program may
14 make provision for and in relation to requiring the person to give
15 one or more written reports to the Authority.

16 **^170 Record-keeping requirement**

17 *Scope*

18 (1) This section applies to a person if free Australian emissions units
19 have been issued to the person in accordance with the
20 emissions-intensive trade-exposed assistance program.

21 *Requirement*

22 (2) The emissions-intensive trade-exposed assistance program may
23 make provision for and in relation to requiring the person to:
24 (a) make records of information specified in the program; and
25 (b) retain such a record, or a copy, for 5 years after the record
26 was made.

27 **^171 Other matters**

28 (1) The emissions-intensive trade-exposed assistance program may
29 make provision for and in relation to the following matters:

EXPOSURE DRAFT

Emissions-intensive trade-exposed assistance program **Part 8**
Formulation of the emissions-intensive trade-exposed assistance program **Division 2**

Section ^{^172}

- 1 (a) applications for free Australian emissions units;
2 (b) the approval by the Authority of a form for such an
3 application;
4 (c) information that must accompany such an application;
5 (d) documents that must accompany such an application;
6 (e) the method of calculating the number of free Australian
7 emissions units to be issued to a person in accordance with
8 the program.
- 9 (2) The emissions-intensive trade-exposed assistance program may
10 provide for verification by statutory declaration of statements in
11 applications for free Australian emissions units.

12 **^{^172} Ancillary or incidental provisions**

13 The emissions-intensive trade-exposed assistance program may
14 contain ancillary or incidental provisions.

EXPOSURE DRAFT

Part 8 Emissions-intensive trade-exposed assistance program

Division 3 Compliance with reporting and record-keeping requirements under the emissions-intensive trade-exposed assistance program

Section ^173

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Division 3—Compliance with reporting and record-keeping requirements under the emissions-intensive trade-exposed assistance program

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^173 Compliance with reporting and record-keeping requirements

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Reporting requirements

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- (1) If a person is subject to a requirement under the emissions-intensive trade-exposed assistance program to give a report to the Authority, the person must comply with that requirement.

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Record-keeping requirements

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- (2) If a person is subject to a requirement under the emissions-intensive trade-exposed assistance program to:
- (a) make a record of information; or
 - (b) retain such a record or a copy;
- the person must comply with that requirement.

18

Ancillary contraventions

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- (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).

28

Civil penalty provisions

29

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

EXPOSURE DRAFT

Emissions-intensive trade-exposed assistance program **Part 8**
Compliance with reporting and record-keeping requirements under the emissions-
intensive trade-exposed assistance program **Division 3**

Section ^173

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2

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

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 1 Introduction

Section ^174

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Part 9—Coal-fired electricity generation

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Division 1—Introduction

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^174 Object

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The object of this Part is to contribute to the maintenance of investor confidence in electricity generation. It does so by providing limited transitional assistance in respect of generation assets, where:

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- (a) money was invested in those assets before the Commonwealth Government announced its support for a scheme to reduce pollution caused by emissions of carbon dioxide and other greenhouse gases; and
- (b) those assets are likely to suffer a significant decline in value as a result of the introduction of such a scheme.

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^175 Simplified outline

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- Free Australian emissions units may be issued in respect of generation assets that meet certain eligibility requirements.
- Free units will be issued during:
 - (a) the financial year beginning on 1 July 2010; and
 - (b) each of the next 4 financial years.
- The number of free units is capped.
- If a windfall gain declaration is in force in relation to a generation asset, the Minister may determine that free units are not to be issued in respect of the generation asset for the financial years beginning on 1 July 2013 or 1 July 2014.
- Free units will not be issued if a generation asset does not pass the power system reliability test for a financial year.

EXPOSURE DRAFT

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Division 2—Issue of free Australian emissions units in respect of generation assets

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^176 Issue of free Australian emissions units in respect of generation assets

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Scope

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- (1) This section applies to a generation asset if a certificate of eligibility for coal-fired generation assistance is in force in respect of the generation asset.

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Issue of free units

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- (2) On 1 September in each of the following eligible financial years:

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(a) the eligible financial year beginning on 1 July 2010;

13

(b) the eligible financial year beginning on 1 July 2011;

14

(c) the eligible financial year beginning on 1 July 2012;

15

(d) the eligible financial year beginning on 1 July 2013;

16

(e) the eligible financial year beginning on 1 July 2014;

17

the Authority must issue a number of free Australian emissions units equal to the number worked out using the following formula:

18

$$\frac{\text{Annual assistance factor specified in the certificate}}{\text{Total annual assistance factors for that eligible financial year}} \times \text{Generation assistance limit for that eligible financial year}$$

19

20

where:

21

annual assistance factor specified in the certificate means the number specified in the certificate as the annual assistance factor in respect of the generation asset.

22

23

24

Note: The annual assistance factor is worked out under section ^182.

25

generation assistance limit for that eligible financial year means:

26

- (a) if that eligible financial year begins on 1 July 2012—the number worked out using the formula in subsection (4); or

27

28

- (b) otherwise—26,140,000.
-

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 2 Issue of free Australian emissions units in respect of generation assets

Section ^176

1 ***total annual assistance factors for that eligible financial year***
2 means the total of the numbers specified as annual assistance
3 factors in certificates of eligibility for coal-fired generation
4 assistance issued, or purportedly issued, by the Authority before
5 1 September in that eligible financial year. For this purpose,
6 disregard a certificate if a decision to issue the certificate was set
7 aside by a court or tribunal before 1 September in that eligible
8 financial year.

- 9 (3) If the number worked out using the formula in subsection (2) is not
10 a multiple of 100:
11 (a) the number is to be rounded to the nearest multiple of 100;
12 and
13 (b) if the number is a multiple of 50—the number is to be
14 rounded up to the nearest multiple of 100.
- 15 (4) The formula mentioned in paragraph (a) of the definition of
16 ***generation assistance limit for that eligible financial year*** in
17 subsection (2) is as follows:

$$18 \quad 78,420,000 - \begin{array}{l} \text{Total number of Australian} \\ \text{emissions units issued in} \\ \text{accordance with this Part} \\ \text{before 1 September 2012} \end{array} - \begin{array}{l} \text{Total number of} \\ \text{withheld units} \end{array}$$

19 where:

20 ***total number of withheld units*** means the Authority's reasonable
21 estimate of the number of free Australian emissions units with a
22 vintage year beginning on 1 July 2012 that were not issued in
23 accordance with this Part because of section ^188 (power system
24 reliability).

25 *When units are to be issued*

- 26 (5) If 1 September in an eligible financial year is not a business day,
27 the units are to be issued on the next business day after that
28 1 September.

29 *Recipient of units*

- 30 (6) Free Australian emissions units issued in accordance with
31 subsection (2) during an eligible financial year (the ***current eligible***

EXPOSURE DRAFT

- 1 ***financial year***) are to be issued to whichever one of the following
2 persons is applicable:
3 (a) if, assuming that:
4 (i) immediately before the end of the previous eligible
5 financial year, the generation asset had been a facility;
6 and
7 (ii) immediately before the end of the previous eligible
8 financial year, the generation asset had been in
9 operation; and
10 (iii) immediately before the end of the previous eligible
11 financial year, greenhouse gases with a carbon dioxide
12 equivalence of 25,000 tonnes had been emitted from the
13 operation of the generation asset; and
14 (iv) the financial year beginning on 1 July 2009 had been an
15 eligible financial year;
16 a controlling corporation of a group would, under section
17 ^17, be a liable entity for the previous eligible financial year
18 wholly or partly as a result of those emissions of greenhouse
19 gases—the controlling corporation;
20 (b) if, assuming that:
21 (i) immediately before the end of the previous eligible
22 financial year, the generation asset had been a facility;
23 and
24 (ii) immediately before the end of the previous eligible
25 financial year, the generation asset had been in
26 operation; and
27 (iii) immediately before the end of the previous eligible
28 financial year, greenhouse gases with a carbon dioxide
29 equivalence of 25,000 tonnes had been emitted from the
30 operation of the generation asset; and
31 (iv) the financial year beginning on 1 July 2009 had been an
32 eligible financial year;
33 a non-group entity would, under section ^18, be a liable
34 entity for the previous eligible financial year wholly or partly
35 as a result of those emissions of greenhouse gases—the
36 non-group entity;
37 (c) if, assuming that:

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 2 Issue of free Australian emissions units in respect of generation assets

Section ^176

- 1 (i) immediately before the end of the previous eligible
2 financial year, the generation asset had been a facility;
3 and
4 (ii) immediately before the end of the previous eligible
5 financial year, the generation asset had been in
6 operation; and
7 (iii) immediately before the end of the previous eligible
8 financial year, greenhouse gases with a carbon dioxide
9 equivalence of 25,000 tonnes had been emitted from the
10 operation of the generation asset; and
11 (iv) the financial year beginning on 1 July 2009 had been an
12 eligible financial year;
13 a person would, under section ^19, be a liable entity for the
14 previous eligible financial year wholly or partly as a result of
15 those emissions of greenhouse gases—the person.

16 *Vintage year*

- 17 (7) Free Australian emissions units issued in accordance with
18 subsection (2) during an eligible financial year are to have a
19 vintage year of the eligible financial year.

20 *Registry account*

- 21 (8) The Authority must not issue a free Australian emissions unit to a
22 person in accordance with subsection (2) unless the person has a
23 Registry account.

24 *Other provisions*

- 25 (9) This section has effect subject to sections ^183, ^185 and ^188.

26 Note 1: Sections ^183 and ^185 deal with windfall gains.

27 Note 2: Section ^188 deals with power system reliability.

EXPOSURE DRAFT

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Division 3—Certificate of eligibility for coal-fired generation assistance

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^{^177} Application for certificate of eligibility for coal-fired generation assistance

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(1) A person may, within 90 days after the commencement of this section, apply for the Authority to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation asset.

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(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.

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(3) A person is not entitled to make an application in respect of a generation complex project unless the person proposes to own, control or operate the proposed generation complex.

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(4) Applications must be mutually exclusive so far as their coverage of generation units or proposed generation units is concerned.

16

17

(5) If the Authority receives 2 or more applications that, when taken together, breach subsection (4):

18

19

(a) the Authority must not consider any of those applications; and

20

21

(b) the Authority must, by written notice given to the applicants, reject those applications and inform the applicants that:

22

23

(i) the applications breach subsection (4); and

24

25

(ii) if one or more fresh applications are made within 20 days after the notice was given and those fresh

26

27

applications do not breach subsection (4), the Authority will be prepared to consider those fresh applications.

28

(6) The 90 day time limit in subsection (1) does not apply to a fresh application made in response to a notice under subsection (5).

29

30

(7) This Act (other than subsection (5)) has effect as if an application rejected under subsection (5) had never been made.

31

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 3 Certificate of eligibility for coal-fired generation assistance

Section ^178

1 **^178 Form of application**

- 2 (1) An application must:
- 3 (a) be in writing; and
- 4 (b) be in a form approved, in writing, by the Authority; and
- 5 (c) be accompanied by such information as is specified in the
- 6 regulations; and
- 7 (d) be accompanied by such documents (if any) as are specified
- 8 in the regulations; and
- 9 (e) if the application does not relate to a generation complex that
- 10 entered service on or before 1 July 2004—be accompanied
- 11 by a report that complies with subsection (3).
- 12 (2) The approved form of application may provide for verification by
- 13 statutory declaration of statements in applications.
- 14 (3) A report complies with this subsection if:
- 15 (a) the report is by a person who has appropriate engineering
- 16 qualifications; and
- 17 (b) the report sets out the person's estimate of the emissions
- 18 intensity of the generation asset; and
- 19 (c) the person does not have an interest, pecuniary or otherwise,
- 20 in the outcome of the application.

21 **^179 Further information**

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

EXPOSURE DRAFT

1 **^180 Issue of certificate of eligibility for coal-fired generation**
2 **assistance**

3 *Scope*

- 4 (1) This section applies to a generation asset if an application under
5 section ^177 has been made in respect of the generation asset.

6 *Issue of certificate*

- 7 (2) After considering the application, the Authority may issue a
8 certificate of eligibility for coal-fired generation assistance in
9 respect of the generation asset.

10 Note: See section ^181 (criteria for issuing certificate).

- 11 (3) A certificate of eligibility for coal-fired generation assistance must
12 state that a specified number is the *annual assistance factor* in
13 respect of the generation asset.

14 Note: The annual assistance factor is worked out under section ^182.

15 *Timing*

- 16 (4) The Authority must take all reasonable steps to ensure that a
17 decision is made on the application:
18 (a) if the Authority requires the applicant to give further
19 information under subsection ^179(1) in relation to the
20 application—within 90 days after the applicant gave the
21 Authority the information; or
22 (b) otherwise—within 90 days after the application was made.

23 *Refusal*

- 24 (5) If the Authority decides to refuse to issue a certificate of eligibility
25 for coal-fired generation assistance in respect of the generation
26 asset, the Authority must give written notice of the decision to the
27 applicant.

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 3 Certificate of eligibility for coal-fired generation assistance

Section ^181

1 *Publication of copy of certificate*

- 2 (6) As soon as practicable after issuing a certificate of eligibility for
3 coal-fired generation assistance in respect of the generation asset,
4 the Authority must publish a copy of the certificate on its website.

5 **^181 Criteria for issuing certificate of eligibility for coal-fired** 6 **generation assistance**

- 7 (1) The Authority must not issue a certificate of eligibility for
8 coal-fired generation assistance in respect of a generation asset
9 unless the Authority is satisfied that the generation asset passes the
10 generation asset assistance eligibility test.

11 *Generation complexes*

- 12 (2) For the purposes of subsection (1), a generation complex passes the
13 ***generation asset assistance eligibility test*** if:
14 (a) each generation unit in the generation complex satisfies at
15 least one of the following conditions:
16 (i) it was in operation at any time during June 2007;
17 (ii) it was not in operation at any time during June 2007, but
18 as at the end of June 2007 there was a plan to return the
19 generation unit to operation before the end of 2007;
20 (iii) it was not in operation at any time during June 2007, but
21 was intended to be returned to operation following a
22 period of being out of service due to restricted access to
23 cooling water; and
24 (b) at least 95% of the electricity generated by the generation
25 complex during the financial year beginning on 1 July 2006
26 was attributable to the combustion of coal; and
27 (c) at any time during the financial year beginning on 1 July
28 2006, the generation complex was connected to a grid with a
29 grid capacity of at least 100 megawatts.

30 *Generation complex projects*

- 31 (3) For the purposes of subsection (1), a generation complex project
32 passes the ***generation asset assistance eligibility test*** if:

EXPOSURE DRAFT

- 1 (a) as at the start of 3 June 2007, the project was in existence but
2 had not been completed; and
3 (b) as at the start of 3 June 2007, the project was fully committed
4 by the project proponent, having regard to the following
5 matters:
6 (i) the project proponent's rights to land for the
7 construction of the project;
8 (ii) whether contracts for the supply and construction of the
9 project's major plant or equipment (including contract
10 provisions for project cancellations) were executed;
11 (iii) the status of all planning and construction approvals and
12 licences necessary for the commencement of
13 construction of the project (including completed and
14 approved environmental impact statements);
15 (iv) the level of commitment to financing arrangements for
16 the project;
17 (v) whether project construction had commenced before
18 3 June 2007;
19 (vi) whether, as at the start of 3 June 2007, a firm date had
20 been set for project construction to commence; and
21 (c) as at the start of 3 June 2007, it was proposed that at least
22 95% of the electricity generated by the project during each
23 financial year of operation would be attributable to the
24 combustion of coal; and
25 (d) as at the start of 3 June 2007, it was proposed that the project
26 would, on completion, be connected to a grid with a grid
27 capacity of at least 100 megawatts.

28 *Capacity of grid*

- 29 (4) For the purposes of this section, the *capacity* of a grid is to be
30 determined in accordance with regulations made for the purposes
31 of subsection 31(3) of the *Renewable Energy (Electricity) Act*
32 *2000*.

33 **^182 Annual assistance factor**

- 34 (1) The annual assistance factor to be specified in a certificate of
35 eligibility for coal-fired generation assistance in respect of a
-

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 3 Certificate of eligibility for coal-fired generation assistance

Section ^182

1 generation asset is the Authority's reasonable estimate of the
2 number worked out to 3 decimal places using the following
3 formula:

4
$$\text{Historical energy} \times (\text{Emissions intensity} - 0.86)$$

5 where:

6 ***emissions intensity*** has the meaning given by whichever of
7 subsection (2), (3), (4) or (6) is applicable.

8 ***historical energy*** means:

- 9 (a) if the generation asset is a generation complex that entered
10 service on or before 1 July 2004—the total number of
11 gigawatt hours of electricity generated by the generation
12 complex during the period beginning on 1 July 2004 and
13 ending on 30 June 2007, as measured at all generator
14 terminals of the generation complex; or
15 (b) if the generation asset is a generation complex that entered
16 service after 1 July 2004—21.024 multiplied by the number
17 of megawatts in the nameplate rating of the generation
18 complex as at the day the generation complex entered
19 service; or
20 (c) if the generation asset is a generation complex project—
21 21.024 multiplied by the number of megawatts in the
22 proposed nameplate rating of the proposed generation
23 complex, worked out as at the start of 3 June 2007.

24 ***Emissions intensity***

- 25 (2) For the purposes of subsection (1), the ***emissions intensity*** of a
26 generation complex that entered service on or before 1 July 2004 is
27 the number worked out to 3 decimal places using the formula:

28
$$\frac{\text{Carbon dioxide equivalence of emissions}}{\text{Gigawatt hours of electricity generated}}$$

29 where:

30 ***carbon dioxide equivalence of emissions*** means the total number
31 of kilotonnes of the carbon dioxide equivalence of the greenhouse
32 gases emitted from the combustion of fuel in the generation

EXPOSURE DRAFT

1 complex for the purposes of the generation of electricity during the
2 period beginning on 1 July 2004 and ending on 30 June 2007.

3 ***gigawatt hours of electricity generated*** means the total number of
4 gigawatt hours of electricity generated by the generation complex
5 during the period beginning on 1 July 2004 and ending on 30 June
6 2007, as measured at all generator terminals of the generation
7 complex.

8 (3) However, the ***emissions intensity*** of a generation complex that
9 entered service on or before 1 July 2004 is taken to be 0.86 if the
10 number worked out to three decimal places using the formula in
11 subsection (2) is less than 0.86.

12 (4) For the purposes of subsection (1), the ***emissions intensity*** of a
13 generation asset not covered by subsection (2) is the number that,
14 in the opinion of the Authority, should be treated as the emissions
15 intensity of the generation asset, having regard to the following
16 matters:

- 17 (a) any documents relating to the design of the generation asset;
18 (b) any contracts for the supply of fuel for combustion in the
19 generation asset for the purposes of the generation of
20 electricity;
21 (c) if the generation asset is a generation complex that has
22 entered service—the number worked out to 3 decimal places
23 using the formula set out in subsection (5);
24 (d) the report mentioned in paragraph ^178(1)(e);
25 (e) such other matters (if any) as the Authority considers
26 relevant.

27 (5) The formula mentioned in paragraph (4)(c) is:

28
$$\frac{\text{Carbon dioxide equivalence of emissions}}{\text{Gigawatt hours of electricity generated}}$$

29 where:

30 ***carbon dioxide equivalence of emissions*** means the total number
31 of kilotonnes of the carbon dioxide equivalence of the greenhouse
32 gases emitted from the combustion of fuel in the generation

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 3 Certificate of eligibility for coal-fired generation assistance

Section ^182

- 1 complex for the purposes of the generation of electricity during the
2 period when the generation complex was in service.
- 3 ***gigawatt hours of electricity generated*** means the number of
4 gigawatt hours of electricity generated by the generation complex
5 during the period when the generation complex was in service.
- 6 (6) However, the ***emissions intensity*** of a generation asset not covered
7 by subsection (2) is taken to be 0.86 if the number worked out
8 under subsection (4) is less than 0.86.

EXPOSURE DRAFT

Coal-fired electricity generation **Part 9**

Windfall gain **Division 4**

Section **^183**

1

2 **Division 4—Windfall gain**

3 **^183 No assistance for 2013-2014 or 2014-2015 if a windfall gain** 4 **declaration is in force etc.**

- 5 (1) The Minister may, before 1 August 2013, by writing, determine
6 that no free Australian emissions units that have a vintage year of:
7 (a) the eligible financial year beginning on 1 July 2013; or
8 (b) the eligible financial year beginning on 1 July 2014;
9 are to be issued in accordance with this Part in respect of a
10 specified generation asset.
- 11 (2) The Minister must not make a determination under subsection (1)
12 in relation to a generation asset unless a windfall gain declaration
13 is in force in respect of the generation asset.
- 14 (3) A copy of a determination under subsection (1) is to be given to:
15 (a) the Authority; and
16 (b) the person who made a submission under section ^185 in
17 relation to the generation asset.
- 18 (4) The Authority must publish the copy on its website.
- 19 (5) A determination under subsection (1) is not a legislative
20 instrument.

21 **^184 Revocation of Ministerial determination**

- 22 (1) This section applies if the Minister has made a determination under
23 subsection ^183(1) in relation to a generation asset, and:
24 (a) all of the following conditions are satisfied:
25 (i) the decision to make a windfall gain declaration in
26 relation to the generation asset is set aside by the
27 Administrative Appeals Tribunal;
28 (ii) the Administrative Appeals Tribunal makes a decision
29 in substitution for the decision so set aside;

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 4 Windfall gain

Section ^184

- 1 (iii) the substituted decision is a decision not to make a
2 windfall gain declaration in relation to the generation
3 asset; or
4 (b) all of the following conditions are satisfied:
5 (i) the decision to make a windfall gain declaration in
6 relation to the generation asset is set aside by the
7 Administrative Appeals Tribunal;
8 (ii) the Administrative Appeals Tribunal remits the decision
9 for reconsideration by the Authority;
10 (iii) the Authority reconsiders the decision and decides not
11 to make a windfall gain declaration in relation to the
12 generation asset; or
13 (c) all of the following conditions are satisfied:
14 (i) the decision to make a windfall gain declaration in
15 relation to the generation asset is remitted by the
16 Administrative Appeals Tribunal to the Authority for
17 reconsideration of the decision;
18 (ii) the Authority sets the decision aside and makes a
19 decision in substitution for the decision set aside;
20 (iii) the substituted decision is a decision not to make the
21 windfall gain declaration in relation to the generation
22 asset; or
23 (d) both of the following conditions are satisfied:
24 (i) the decision to make a windfall gain declaration in
25 relation to the generation asset is quashed or set aside by
26 a court;
27 (ii) 60 days pass, and neither the Authority nor the
28 Administrative Appeals Tribunal has made, in
29 substitution for the decision quashed or set aside, a
30 decision to make a windfall gain declaration in relation
31 to the generation asset.

32 *Revocation of determination*

- 33 (2) The Minister must revoke the subsection ^183(1) determination.

EXPOSURE DRAFT

Coal-fired electricity generation **Part 9**

Windfall gain **Division 4**

Section **^185**

1 *Issue of free Australian emissions units*

2 (3) If the tenth business day after the day on which the subsection
3 ^183(1) determination was revoked is later than 1 September 2013,
4 subsection ^176(2) has effect, in relation to free Australian
5 emissions units required to be issued in respect of the generation
6 asset for the eligible financial year beginning on 1 July 2013, as if
7 the reference in that subsection to 1 September in the eligible
8 financial year were instead a reference to that tenth business day.

9 (4) If the tenth business day after the day on which the subsection
10 ^183(1) determination was revoked is later than 1 September 2014,
11 subsection ^176(2) has effect, in relation to free Australian
12 emissions units required to be issued in respect of the generation
13 asset for the eligible financial year beginning on 1 July 2014, as if
14 the reference in that subsection to 1 September in the eligible
15 financial year were instead a reference to that tenth business day.

16 **^185 Submission about windfall gain**

17 *Scope*

18 (1) This section applies to a generation asset if free Australian
19 emissions units with a vintage year of the eligible financial year
20 beginning on 1 July 2012 were issued to a person in accordance
21 with this Part in respect of the generation asset.

22 *Submission*

23 (2) The person must, before 30 September 2012, make a written
24 submission to the Authority:
25 (a) stating whether or not the person is of the opinion that the
26 generation asset passes the windfall gain test; and
27 (b) setting out the person's reasons for that opinion.

28 (3) A submission under subsection (2) must:
29 (a) be in a form approved, in writing, by the Authority; and
30 (b) contain such information as is specified in a legislative
31 instrument made by the Authority; and

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 4 Windfall gain

Section ^186

- 1 (c) contain such documents (if any) as are specified in a
2 legislative instrument made by the Authority.

3 *Compliance*

- 4 (4) If the person breaches subsection (2) in relation to the generation
5 asset, no free Australian emissions units that have a vintage year
6 of:
7 (a) the eligible financial year beginning on 1 July 2013; or
8 (b) the eligible financial year beginning on 1 July 2014;
9 are to be issued in accordance with this Part in respect of the
10 generation asset.

11 **^186 Windfall gain declaration**

12 *Scope*

- 13 (1) This section applies to a generation asset if:
14 (a) a certificate of eligibility for coal-fired generation assistance
15 is in force in respect of the generation asset; and
16 (b) a submission about the generation asset is made under section
17 ^185.

18 *Windfall gain declaration*

- 19 (2) Before 1 April 2013, the Authority must consider whether the
20 generation asset passes the windfall gain test, and:
21 (a) if the Authority is satisfied that the generation asset passes
22 the windfall gain test—make a written declaration (a **windfall**
23 **gain declaration**) that the generation asset passes the
24 windfall gain test; or
25 (b) if the Authority is not satisfied that the generation asset
26 passes the windfall gain test—refuse to make a windfall gain
27 declaration in relation to the generation asset.

28 Note: For **windfall gain test**, see section ^187.

- 29 (3) Before making a declaration under subsection (2), the Authority
30 must:

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Coal-fired electricity generation **Part 9**

Windfall gain **Division 4**

Section ¹⁸⁷

- 1 (a) publish a draft of the declaration on its website and invite
2 people to make submissions to the Authority on the question
3 of whether the declaration should be made; and
4 (b) consider any submissions that were received within the time
5 limit specified by the Authority when it published the draft
6 declaration; and
7 (c) consult the Australian Energy Regulator; and
8 (d) consult such other bodies (if any) as are specified in the
9 regulations.
- 10 (4) In making a decision under this section, the Authority:
11 (a) may make such assumptions and estimates as the Authority
12 considers reasonable; and
13 (b) may have regard to such other matters as the Authority
14 considers relevant.
- 15 (5) A copy of a windfall gain declaration is to be given to the Minister.
- 16 (6) The copy must be accompanied by a report setting out the
17 Authority's reasons for making the declaration.
- 18 (7) A copy of the report is to be published on the Authority's website.
- 19 (8) The Authority may remove from the version of the report
20 published on its website any material that the Authority considers
21 to be commercial-in-confidence.
- 22 (9) A windfall gain declaration is not a legislative instrument.

¹⁸⁷ Windfall gain test

Scope

- 24
25 (1) This section applies to a generation asset if a certificate of
26 eligibility for coal-fired generation assistance is in force in respect
27 of the generation asset.

Windfall gain test

- 28
29 (2) For the purposes of this Act, the generation asset passes the
30 **windfall gain test** if:

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Part 9 Coal-fired electricity generation

Division 4 Windfall gain

Section ^187

- 1 (a) it is likely that:
- 2 (i) there will be a projected long-term net revenue loss in
- 3 respect of the generation asset; and
- 4 (ii) the total value of assistance in respect of the generation
- 5 asset will exceed that projected long-term net revenue
- 6 loss; or
- 7 (b) it is likely that there will be a projected long-term net revenue
- 8 gain in respect of the generation asset.

9 Note 1: For *projected long-term net revenue loss*, see subsection (4) or (5).

10 Note 2: For *total value of assistance*, see subsection (3).

11 Note 3: For *projected long-term net revenue gain*, see subsection (6) or (7).

12 *Total value of assistance*

- 13 (3) For the purposes of this section, the *total value of assistance* in
- 14 respect of the generation asset is the sum of the net present values
- 15 of:
- 16 (a) the market value of free Australian emissions units with the
- 17 following vintage years:
- 18 (i) the eligible financial year beginning on 1 July 2010;
- 19 (ii) the eligible financial year beginning on 1 July 2011;
- 20 (iii) the eligible financial year beginning on 1 July 2012;
- 21 issued in accordance with this Part in respect of the
- 22 generation asset; and
- 23 (b) the projected market value of free Australian emissions units
- 24 with a vintage year of:
- 25 (i) the eligible financial year beginning on 1 July 2013;
- 26 (ii) the eligible financial year beginning on 1 July 2014;
- 27 to be issued in accordance with this Part in respect of the
- 28 generation asset.

29 *Projected long-term net revenue loss—generation complexes*

- 30 (4) For the purposes of the application of this section to a generation
- 31 asset that is a generation complex, if the net present value of the
- 32 projected net revenue derived from the operation of the generation
- 33 asset during the 15-year period beginning on 1 July 2010 falls short
- 34 of the amount that would have been the net present value of the

EXPOSURE DRAFT

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Windfall gain **Division 4**

Section ^187

1 projected net revenue derived from the operation of the generation
2 asset if:

- 3 (a) this Act had not been enacted; and
4 (b) the *Renewable Energy (Electricity) Act 2000*, as in force at
5 the start of 3 June 2007, had never been amended;

6 then:

- 7 (c) there is a ***projected long-term net revenue loss*** in respect of
8 the generation asset; and
9 (d) the amount of the projected long-term net revenue loss is
10 equal to the shortfall.

11 *Projected long-term net revenue loss—generation complex projects*

12 (5) For the purposes of the application of this section to a generation
13 asset that is a generation complex project, if the net present value
14 of the projected net revenue derived from the operation of the
15 proposed generation complex during the 15-year period beginning
16 on 1 July 2010 falls short of the amount that would have been the
17 net present value of the projected net revenue derived from the
18 operation of the proposed generation complex if:

- 19 (a) this Act had not been enacted; and
20 (b) the *Renewable Energy (Electricity) Act 2000*, as in force at
21 the start of 3 June 2007, had never been amended;

22 then:

- 23 (c) there is a ***projected long-term net revenue loss*** in respect of
24 the generation asset; and
25 (d) the amount of the projected long-term net revenue loss is
26 equal to the shortfall.

27 *Projected long-term net revenue gain—generation complexes*

28 (6) For the purposes of the application of this section to a generation
29 asset that is a generation complex, if the net present value of the
30 projected net revenue derived from the operation of the generation
31 asset during the 15-year period beginning on 1 July 2010 equals or
32 exceeds the amount that would have been the net present value of
33 the projected net revenue derived from the operation of the
34 generation asset if:

- 35 (a) this Act had not been enacted; and
-

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 4 Windfall gain

Section ^187

1 (b) the *Renewable Energy (Electricity) Act 2000*, as it stood at
2 the start of 3 June 2007, had never been amended;
3 there is a **projected long-term net revenue gain** in respect of the
4 generation asset.

5 *Projected long-term net revenue gain—generation complex*
6 *projects*

7 (7) For the purposes of the application of this section to a generation
8 asset that is a generation complex project, if the net present value
9 of the projected net revenue derived from the operation of the
10 proposed generation complex during the 15-year period beginning
11 on 1 July 2010 equals or exceeds the amount that would have been
12 the net present value of the projected net revenue derived from the
13 operation of the proposed generation complex if:

14 (a) this Act had not been enacted; and
15 (b) the *Renewable Energy (Electricity) Act 2000*, as it stood at
16 the start of 3 June 2007, had never been amended;
17 there is a **projected long-term net revenue gain** in respect of the
18 generation asset.

19 *Calculation of values and amounts*

20 (8) For the purposes of this section, each of the following:

21 (a) net present value;
22 (b) market value;
23 (c) projected market value;
24 (d) net revenue;
25 (e) projected net revenue;

26 is to be calculated in a manner ascertained in accordance with a
27 legislative instrument made by the Authority.

28 Note: For consultation requirements, see Part 3 of the *Legislative*
29 *Instruments Act 2003*.

30 (9) In making an instrument under subsection (8) that relates to the
31 calculation of:

32 (a) net revenue; or
33 (b) projected net revenue;
34 the Authority must have regard to:

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Coal-fired electricity generation **Part 9**

Windfall gain **Division 4**

Section ^187

- 1 (c) the effect of any contract for the supply of electricity that was
2 entered into before 3 June 2007; and
3 (d) such other matters (if any) as the Authority considers
4 relevant.

- 5 (10) The Authority must take all reasonable steps to ensure that an
6 instrument is made under subsection (8) before 1 July 2012.

7 *Assumptions*

- 8 (11) For the purposes of the application of this section to a generation
9 asset that is generation complex, it is to be assumed that no
10 modifications to the generation complex were undertaken, or
11 proposed to be undertaken, at any time during the period:

- 12 (a) beginning on 3 June 2007; and
13 (b) ending at the end of 30 June 2025.

- 14 (12) For the purposes of the application of this section to a generation
15 asset that is a generation complex project, it is to be assumed that
16 no modifications were made to the project after the start of 3 June
17 2007.

- 18 (13) For the purposes of this section, assume that sections ^183, ^185
19 and ^188 had never been enacted.

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 5 Power system reliability

Section ^188

1

2 **Division 5—Power system reliability**

3 **^188 No assistance if generation asset does not pass the power**
4 **system reliability test**

5 *Scope*

- 6 (1) This section applies to a generation asset if:
7 (a) a certificate of eligibility for coal-fired generation assistance
8 is in force in respect of the generation asset; and
9 (b) the generation asset is a generation complex.

10 *No assistance if generation complex does not pass the power*
11 *system reliability test*

- 12 (2) No free Australian emissions units with a vintage year of a
13 particular eligible financial year are to be issued in accordance with
14 this Part in respect of the generation complex if the generation
15 complex does not pass the power system reliability test in relation
16 to the eligible financial year.

17 **^189 Power system reliability test**

18 *Scope*

- 19 (1) This section applies to a generation complex if a certificate of
20 eligibility for coal-fired generation assistance is in force in respect
21 of the generation complex.

22 *Power system reliability test*

- 23 (2) For the purposes of this Act, the generation complex passes the
24 **power system reliability test** in relation to an eligible financial year
25 if:
26 (a) the following conditions are satisfied:
27 (i) as at the start of 1 September in the eligible financial
28 year, a person who owns, controls or operates the
29 generation complex is registered as a generator under a

EXPOSURE DRAFT

Coal-fired electricity generation **Part 9**

Power system reliability **Division 5**

Section ^189

- 1 law of the Commonwealth, a State or Territory relating
2 to the regulation of energy markets;
- 3 (ii) as at the start of 3 June 2007, the nameplate rating in
4 megawatts of the generation complex was registered
5 under such a law;
- 6 (iii) as at the start of 1 September in the eligible financial
7 year, the nameplate rating in megawatts of the
8 generation complex was not less than the nameplate
9 rating in megawatts of the generation complex that was
10 registered under that law as at the start of 3 June 2007;
11 or
- 12 (b) the following conditions are satisfied:
- 13 (i) as at the start of 1 September in the eligible financial
14 year, a person who owns, controls or operates the
15 generation complex is registered as a generator under a
16 law of the Commonwealth, a State or Territory relating
17 to the regulation of energy markets;
- 18 (ii) the nameplate rating in megawatts of the generation
19 complex was first registered under the law at a time
20 after the start of 3 June 2007 but before 1 September in
21 the eligible financial year;
- 22 (iii) as at the start of 1 September in the eligible financial
23 year, the nameplate rating in megawatts of the
24 generation complex was not less than the nameplate
25 rating in megawatts that was registered as mentioned in
26 subparagraph (ii); or
- 27 (c) the following conditions are satisfied:
- 28 (i) neither paragraph (a) nor (b) applies;
- 29 (ii) as at the start of 1 September in the eligible financial
30 year, a person who owns, controls or operates the
31 generation complex is registered as a generator under a
32 law of the Commonwealth, a State or Territory relating
33 to the regulation of energy markets;
- 34 (iii) at a time before 1 September in the eligible financial
35 year, there was a reduction in the nameplate rating in
36 megawatts of the generation complex;
- 37 (iv) the appropriate energy market operator certifies in
38 writing that there is unlikely to be a breach of power

EXPOSURE DRAFT

Part 9 Coal-fired electricity generation

Division 5 Power system reliability

Section ^189

- 1 system reliability standards applicable to the energy
2 market concerned at any time within 2 years after the
3 reduction; or
- 4 (d) the following conditions are satisfied:
- 5 (i) neither paragraph (a) nor (b) applies;
- 6 (ii) at a time before 1 September in the eligible financial
7 year, a person who owns, controls or operates the
8 generation complex was registered as a generator under
9 a law of the Commonwealth, a State or Territory
10 relating to the regulation of energy markets;
- 11 (iii) before 1 September in the eligible financial year, the
12 registration ceased to be in force;
- 13 (iv) the appropriate energy market operator certifies in
14 writing that there is unlikely to be a breach of power
15 system reliability standards applicable to the energy
16 market concerned at any time within 2 years after the
17 reduction.

EXPOSURE DRAFT

1

2 **Part 10—Reforestation**

3 **Division 1—Introduction**

4 **^190 Simplified outline**

5

The following is a simplified outline of this Part:

6

- Free Australian emissions units may be issued in relation to eligible reforestation projects.

7

8

- The number of free units will be worked out by reference to:

9

- (a) the net total number of tonnes of greenhouse gases that, under the regulations, is taken to be removed by the forest stand or stands to which the project relates; and

10

11

12

13

- (b) the reforestation unit limit determined by the Authority for the project.

14

15

- Free units will be issued to the holder of the carbon sequestration right in relation to the project, so long as the holder is recognised as a reforestation entity by the Authority.

16

17

18

- The Authority may declare a reforestation project to be an eligible reforestation project.

19

20

- A reforestation report relating to an eligible reforestation project must be given to the Authority for a reforestation reporting period. A reforestation reporting period is a period of not more than 5 years and not less than 12 months.

21

22

23

24

- Australian emissions units may be required to be relinquished in certain circumstances.

25

26

- A forest maintenance obligation may be imposed on the holder of the forestry right in relation to an area or areas of

27

EXPOSURE DRAFT

Part 10 Reforestation

Division 1 Introduction

Section ^190

1
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land if a relinquishment requirement has not been complied with.

- A Registrar of Titles may make entries on land titles for the purposes of drawing the attention of persons to the existence of eligible reforestation projects and forest maintenance obligations.
- There is to be a Register of Reforestation Projects, which is to be made available for inspection on the Authority's website.

EXPOSURE DRAFT

1

2 **Division 2—Issue of free Australian emissions units in**
3 **respect of reforestation**

4 **^191 Issue of free Australian emissions units in respect of**
5 **reforestation**

6 *Scope*

7 (1) This section applies if a certificate of reforestation is in force.

8 Note: For certificate of reforestation, see section ^195.

9 *Issue of free units*

10 (2) As soon as practicable after the day on which the certificate was
11 issued, the Authority must issue to the holder of the certificate a
12 number of free Australian emissions units equal to the number
13 specified in the certificate as the unit entitlement for that
14 certificate.

15 (3) Free Australian emissions units issued in accordance with
16 subsection (2) during an eligible financial year are to have a
17 vintage year of the eligible financial year.

18 (4) The Authority must not issue a free Australian emissions unit to a
19 person in accordance with subsection (2) unless the person has a
20 Registry account.

EXPOSURE DRAFT

Part 10 Reforestation

Division 3 Certificate of reforestation

Section ^192

1

2

Division 3—Certificate of reforestation

3

^192 Application for certificate of reforestation

4

(1) If:

5

(a) a person gives a reforestation report to the Authority; and

6

(b) the reforestation report is in respect of an eligible

7

reforestation project for a reforestation reporting period;

8

the person may apply to the Authority for the issue to the person of

9

a certificate of reforestation in respect of the project for the period.

10

Note 1: For reforestation report, see section ^225.

11

Note 2: For eligible reforestation project, see section ^209.

12

Note 3: For reforestation reporting period, see section ^223 or ^224.

13

(2) An application may be set out in the same document as the

14

reforestation report.

15

(3) For the purposes of section 136.1 of the *Criminal Code*, a

16

statement in the reforestation report is taken to be a statement made

17

in connection with the application.

18

^193 Form of application

19

An application must:

20

(a) be in writing; and

21

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

22

^194 Further information

23

(1) The Authority may, by written notice given to an applicant, require

24

the applicant to give the Authority, within the period specified in

25

the notice, further information in connection with the application.

26

(2) If the applicant breaches the requirement, the Authority may, by

27

written notice given to the applicant:

28

(a) refuse to consider the application; or

EXPOSURE DRAFT

- 1 (b) refuse to take any action, or any further action, in relation to
2 the application.

3 **^195 Issue of certificate of reforestation**

4 *Scope*

- 5 (1) This section applies if an application under section ^192 has been
6 made for the issue of a certificate of reforestation in respect of an
7 eligible reforestation project for a reforestation reporting period.

8 *Issue of certificate*

- 9 (2) If:
- 10 (a) the Authority is satisfied that the applicant is a recognised
11 reforestation entity; and
- 12 (b) the Authority is satisfied that the applicant holds the carbon
13 sequestration right in relation to the project; and
- 14 (c) the applicant is not subject to a requirement under this Part to
15 relinquish a number of Australian emissions units; and
- 16 (d) no amount is payable by the applicant under:
- 17 (i) section ^287; or
- 18 (ii) section ^288;
- 19 in relation to a requirement under this Part to relinquish a
20 number of Australian emissions units; and
- 21 (e) if any Australian emissions units have previously been issued
22 in accordance with this Part—the number worked out using
23 the formula set out in subsection (3) exceeds 0; and
- 24 (f) the number worked out using the formula set out in
25 subsection (4) exceeds 0; and
- 26 (g) if the regulations specify one or more other eligibility
27 requirements—the Authority is satisfied that those
28 requirements are met;

29 the Authority must issue a certificate of reforestation in respect of
30 the eligible reforestation project for the reforestation reporting
31 period.

32 Note 1: For *recognised reforestation entity*, see section ^201.

33 Note 2: For *carbon sequestration right*, see section ^240.

EXPOSURE DRAFT

Part 10 Reforestation

Division 3 Certificate of reforestation

Section ^195

1 (3) The formula mentioned in paragraph (2)(e) is:

2
$$\frac{\text{Net total number of tonnes of greenhouse gases removed}}{\text{Net total number of Australian emissions units issued in relation to the project in accordance with this Part}}$$

3 where:

4 ***net total number of tonnes of greenhouse gases removed*** is the
5 net total number of tonnes of greenhouse gases that, under the
6 regulations, is taken to be removed by the forest stand or stands to
7 which the project relates during the period:

- 8 (a) beginning on the day the section ^209 declaration in relation
9 to the project took effect; and
10 (b) ending at the end of the reforestation reporting period.

11 (4) The formula mentioned in paragraph (2)(f) is:

12
$$\frac{\text{Reforestation unit limit for the project}}{\text{Net total number of Australian emissions units issued in relation to the project in accordance with this Part}}$$

13 Note: For reforestation unit limit, see section ^220.

14 (5) A certificate of reforestation must state that a specified number is
15 the unit entitlement in respect of the certificate.

16 Note: See section ^196 (unit entitlement).

17 *Timing*

18 (6) The Authority must take all reasonable steps to ensure that a
19 decision is made on the application:

- 20 (a) if the Authority requires the applicant to give further
21 information under subsection ^194(1) in relation to the
22 application—within 90 days after the applicant gave the
23 Authority the information; or
24 (b) otherwise—within 90 days after the application was made.

EXPOSURE DRAFT

Part 10 Reforestation

Division 3 Certificate of reforestation

Section ^197

- 1 (a) beginning on the day the section ^209 declaration in relation
2 to the project took effect; and
3 (b) ending at the end of the reforestation reporting period.
- 4 (3) If the number worked out using the formula set out in
5 subsection (2) is not a whole number, the number is to be rounded
6 to the nearest whole number (with a number ending in .5 being
7 rounded up).
- 8 (4) Regulations made for the purposes of subsection (2) may provide
9 for a number to be worked out wholly or partly using a computer
10 program specified in a legislative instrument made by the
11 Authority under this subsection.

12 **^197 Certificate of reforestation is not transferable**

13 A certificate of reforestation is not transferable.

EXPOSURE DRAFT

1

2 **Division 4—Recognised reforestation entities**

3 **^198 Application for recognition as a reforestation entity**

4 A person may apply to the Authority for recognition as a
5 reforestation entity.

6 **^199 Form of application**

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

20 **^200 Further information**

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

EXPOSURE DRAFT

Part 10 Reforestation

Division 4 Recognised reforestation entities

Section ^201

1 **^201 Recognition as a reforestation entity**

2 *Scope*

- 3 (1) This section applies if an application under section ^198 has been
4 made for recognition as a reforestation entity.

5 *Recognition*

- 6 (2) After considering the application, the Authority may, by written
7 notice given to the applicant, recognise the applicant as a
8 reforestation entity.

9 *Criteria for recognition*

- 10 (3) The Authority must not recognise the applicant as a reforestation
11 entity unless:
- 12 (a) the Authority is satisfied that the applicant is a fit and proper
13 person, having regard to the following:
- 14 (i) whether the applicant has been convicted of an offence
15 against a law of the Commonwealth, a State or
16 Territory, where the offence relates to dishonest
17 conduct;
- 18 (ii) whether the applicant has been convicted of an offence
19 against a law of the Commonwealth, a State or
20 Territory, where the offence relates to the conduct of a
21 business;
- 22 (iii) whether the applicant has been convicted of an offence
23 against section 136.1, 137.1 or 137.2 of the *Criminal*
24 *Code*;
- 25 (iv) whether an order has been made against the applicant
26 under section 76 of the *Trade Practices Act 1974*;
- 27 (v) whether the applicant has breached this Act or the
28 associated provisions;
- 29 (vi) if the applicant is a body corporate—whether an
30 executive officer of the body corporate has been
31 convicted of an offence against a law of the
32 Commonwealth, a State or Territory, where the offence
33 relates to dishonest conduct;

EXPOSURE DRAFT

- 1 (vii) if the applicant is a body corporate—whether an
2 executive officer of the body corporate has been
3 convicted of an offence against a law of the
4 Commonwealth, a State or Territory, where the offence
5 relates to the conduct of a business;
- 6 (viii) if the applicant is a body corporate—whether an
7 executive officer of the body corporate has been
8 convicted of an offence against section 136.1, 137.1 or
9 137.2 of the *Criminal Code*;
- 10 (ix) if the applicant is a body corporate—whether an order
11 has been made against an executive officer of the body
12 corporate under section 76 of the *Trade Practices Act*
13 *1974*;
- 14 (x) if the applicant is a body corporate—whether an
15 executive officer of the body corporate has breached
16 this Act or the associated provisions;
- 17 (xi) such other matters (if any) as the Authority considers
18 relevant; and
- 19 (b) if the applicant is an individual—the Authority is satisfied
20 that the applicant is not an insolvent under administration;
21 and
- 22 (c) if the applicant is a body corporate—the Authority is satisfied
23 that the applicant is not an externally-administered body
24 corporate; and
- 25 (d) if the regulations specify one or more other eligibility
26 requirements—the Authority is satisfied that those
27 requirements are met.

28 (4) Subparagraphs (3)(a)(i) to (x) do not limit subparagraph (3)(a)(xi).

29 *Timing*

- 30 (5) The Authority must take all reasonable steps to ensure that a
31 decision is made on the application:
- 32 (a) if the Authority requires the applicant to give further
33 information under subsection ^200(1) in relation to the
34 application—within 90 days after the applicant gave the
35 Authority the information; or
- 36 (b) otherwise—within 90 days after the application was made.

EXPOSURE DRAFT

Part 10 Reforestation

Division 4 Recognised reforestation entities

Section ^202

1

Refusal

2

- (6) If the Authority decides to refuse to recognise the applicant as a reforestation entity, the Authority must give written notice of the decision to the applicant.

3

4

5

^202 Cancellation of recognition

6

- (1) The Authority may cancel the recognition of a person as a reforestation entity if:

7

8

- (a) the Authority is satisfied that the person is not a fit and proper person, having regard to the following:

9

10

- (i) whether the person has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;

11

12

13

14

- (ii) whether the person has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;

15

16

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- (iii) whether the person has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;

19

20

21

- (iv) whether an order has been made against the person under section 76 of the *Trade Practices Act 1974*;

22

23

24

- (v) whether the person has breached this Act or the associated provisions;

25

26

27

28

- (vi) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;

29

30

31

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34

- (vii) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;

35

36

- (viii) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an

EXPOSURE DRAFT

- 1 offence against section 136.1, 137.1 or 137.2 of the
2 *Criminal Code*;
- 3 (ix) if the person is a body corporate—whether an order has
4 been made against an executive officer of the body
5 corporate under section 76 of the *Trade Practices Act*
6 *1974*;
- 7 (x) if the person is a body corporate—whether an executive
8 officer of the body corporate has breached this Act or
9 the associated provisions;
- 10 (xi) such other matters (if any) as the Authority considers
11 relevant; or
- 12 (b) if the person is an individual—the Authority is satisfied that
13 the person is an insolvent under administration; or
- 14 (c) if the person is a body corporate—the Authority is satisfied
15 that the person is an externally-administered body corporate;
16 or
- 17 (d) if the regulations specify one or more other grounds for
18 cancellation—the Authority is satisfied that at least one of
19 those grounds is applicable to the person.
- 20 (2) Subparagraphs (1)(a)(i) to (x) do not limit subparagraph (1)(a)(xi).

21 **^203 Surrender of recognition**

22 *Scope*

- 23 (1) This section applies if a person is recognised as a reforestation
24 entity.

25 *Surrender*

- 26 (2) The person may, by written notice given to the Authority,
27 surrender the person's recognition.
- 28 (3) The surrender takes effect on the day the notice is received by the
29 Authority or, if a later day is specified in the notice, on that later
30 day.

EXPOSURE DRAFT

Part 10 Reforestation

Division 4 Recognised reforestation entities

Section ^204

1 **^204 Recognition is not transferable**

2 If a person is recognised as a reforestation entity, the person's
3 recognition is not transferable.

EXPOSURE DRAFT

1

2 **Division 5—Eligible reforestation projects**

3 **Subdivision A—Declaration of eligible reforestation project**

4 **^205 Application for declaration of eligible reforestation project**

5 A person may apply to the Authority for the declaration of a
6 reforestation project as an eligible reforestation project.

7 **^206 Form of application**

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

21 **^207 Further information**

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

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^208

1 **^208 Withdrawal of application**

- 2 (1) An applicant may withdraw the application at any time before the
3 Authority makes a decision on the application.
- 4 (2) This Act does not prevent the applicant from making a fresh
5 application.
- 6 (3) If:
- 7 (a) the applicant withdraws the application; and
8 (b) the applicant has paid a fee in relation to the application;
9 the Authority must, on behalf of the Commonwealth, refund the
10 application fee.

11 **^209 Declaration of eligible reforestation project**

12 *Scope*

- 13 (1) This section applies if an application under section ^205 has been
14 made for a declaration of a reforestation project as an eligible
15 reforestation project.

16 *Declaration*

- 17 (2) After considering the application, the Authority may, by writing,
18 declare that the reforestation project is an ***eligible reforestation***
19 ***project*** for the purposes of this Act.
- 20 (3) A declaration under subsection (2) must:
- 21 (a) identify, in accordance with the regulations, the project area
22 or project areas; and
23 (b) identify such other attributes of the project as are specified in
24 the regulations.

25 *Criteria for declaration*

- 26 (4) The Authority must not declare that the reforestation project is an
27 eligible reforestation project unless the Authority is satisfied that:
- 28 (a) the project area, or each project area, meets the requirements
29 set out in subsection (5); and

EXPOSURE DRAFT

- 1 (b) if the project area is, or the project areas are, Torrens system
2 land—the project area is, or the project areas are, held under
3 a single title; and
4 (c) the applicant is a recognised reforestation entity; and
5 (d) the applicant holds the carbon sequestration right in relation
6 to the project; and
7 (e) each of the following has consented in writing to the making
8 of the application:
9 (i) if the applicant does not hold an estate in fee simple in
10 the project area or project areas—the person who holds
11 an estate in fee simple in the project area or project
12 areas;
13 (ii) if the applicant does not hold the forestry right in
14 relation to the project—the person who holds the
15 forestry right in relation to the project;
16 (iii) any mortgagee of the project area or project areas
17 registered in accordance with a law of a State or
18 Territory; and
19 (f) if:
20 (i) the project area is, or the project areas are, Crown land
21 in a State or Territory; and
22 (ii) the applicant is not the State or Territory;
23 the principal State Minister of the State, or the principal
24 Territory Minister of the Territory, as the case requires, has
25 certified in writing that:
26 (iii) the applicant holds the carbon sequestration right in
27 relation to the project; and
28 (iv) the State or Territory will not deal with the project area
29 or project areas, and will not consent to any other
30 person dealing with the project area or project areas, in a
31 way that is inconsistent with the carbon sequestration
32 right; and
33 (g) the project meets the eligibility requirements (if any)
34 specified in the regulations.
- 35 (5) The requirements mentioned in paragraph (4)(a) are:
36 (a) the project area is, or the project areas are, Torrens system
37 land; or

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^209

- 1 (b) the following conditions are satisfied in relation to the project
2 area or project areas:
3 (i) the project area is not, or the project areas are not,
4 general law land;
5 (ii) the project area is not, or the project areas are not,
6 specified in the regulations.

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

9 *Timing*

- 10 (6) The Authority must take all reasonable steps to ensure that a
11 decision is made on the application:
12 (a) if the Authority requires the applicant to give further
13 information under subsection ^207(1) in relation to the
14 application—within 90 days after the applicant gave the
15 Authority the information; or
16 (b) otherwise—within 90 days after the application was made.

17 *When a declaration takes effect*

- 18 (7) A declaration under subsection (2) takes effect:
19 (a) immediately after it is made; or
20 (b) if:
21 (i) an earlier day is specified in the declaration; and
22 (ii) the applicant has consented to the specification of the
23 earlier day;
24 on the day specified.
- 25 (8) The specified day must not be a day that is earlier than the later of:
26 (a) 1 July 2010; or
27 (b) the first day of the 5-year period ending when the application
28 for the declaration was made.

29 *Notification of declaration*

- 30 (9) As soon as practicable after making a declaration under
31 subsection (2), the Authority must give a copy of the declaration to
32 the applicant.

EXPOSURE DRAFT

1

Refusal

2

- (10) If the Authority decides to refuse to declare the reforestation project as an eligible reforestation project, the Authority must give written notice of the decision to the applicant.

3

4

5

Declaration is not legislative instrument

6

- (11) A declaration made under subsection (2) is not a legislative instrument.

7

8

Subdivision B—Voluntary variation of declaration of eligible reforestation project

9

10

^210 Application for variation of declaration of eligible reforestation project

11

12

Scope

13

- (1) This section applies if:

14

(a) a reforestation report is given to the Authority; and

15

(b) the reforestation report is in respect of an eligible reforestation project to which a declaration under section ^209 relates.

16

17

18

Note: For reforestation report, see section ^225.

19

Application for variation of declaration

20

- (2) A person may apply to the Authority for the variation of the declaration so far as the declaration identifies the project area or project areas.

21

22

23

Form of application

24

- (3) An application must:

25

(a) be in writing; and

26

(b) be in a form approved, in writing, by the Authority; and

27

(c) be accompanied by such information as is specified in the regulations; and

28

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^211

- 1 (d) be accompanied by such other documents (if any) as are
2 specified in the regulations; and
3 (e) be accompanied by the fee (if any) specified in the
4 regulations.
- 5 (4) The approved form of application may provide for verification by
6 statutory declaration of statements in applications.
- 7 (5) A fee specified under paragraph (3)(e) must not be such as to
8 amount to taxation.
- 9 *Further information*
- 10 (6) The Authority may, by written notice given to an applicant, require
11 the applicant to give the Authority, within the period specified in
12 the notice, further information in connection with the application.
- 13 (7) If the applicant breaches the requirement, the Authority may, by
14 written notice given to the applicant:
15 (a) refuse to consider the application; or
16 (b) refuse to take any action, or any further action, in relation to
17 the application.

18 **^211 Withdrawal of application**

- 19 (1) An applicant may withdraw the application at any time before the
20 Authority makes a decision on the application.
- 21 (2) This Act does not prevent the applicant from making a fresh
22 application.
- 23 (3) If:
24 (a) the applicant withdraws the application; and
25 (b) the applicant has paid a fee in relation to the application;
26 the Authority must, on behalf of the Commonwealth, refund the
27 application fee.

EXPOSURE DRAFT

1 **^212 Variation of declaration of eligible reforestation project**

2 *Scope*

- 3 (1) This section applies if an application under section ^210 has been
4 made for the variation of a declaration of a reforestation project as
5 an eligible reforestation project.

6 *Declaration*

- 7 (2) After considering the application, the Authority may, by writing,
8 vary the declaration in accordance with the application.

9 *Criteria for declaration*

- 10 (3) The Authority must not vary the declaration of the reforestation
11 project unless the Authority is satisfied that:
- 12 (a) the varied project area, or each varied project area, meets the
13 requirements set out in subsection (4); and
 - 14 (b) if the varied project area is, or the varied project areas are,
15 Torrens system land—the varied project area is, or the varied
16 project areas are, held under a single title; and
 - 17 (c) the applicant is a recognised reforestation entity; and
 - 18 (d) the applicant holds the carbon sequestration right in relation
19 to the varied project; and
 - 20 (e) each of the following has consented in writing to the making
21 of the application:
 - 22 (i) if the applicant does not hold an estate in fee simple in
23 the varied project area or varied project areas—the
24 person who holds an estate in fee simple in the varied
25 project area or varied project areas;
 - 26 (ii) if the applicant does not hold the forestry right in
27 relation to the varied project—the person who holds the
28 forestry right in relation to the varied project;
 - 29 (iii) any mortgagee of the varied project area or varied
30 project areas registered in accordance with a law of a
31 State or Territory; and
 - 32 (f) if:

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^212

- 1 (i) the varied project area is, or the varied project areas are,
2 Crown land in a State or Territory; and
3 (ii) the applicant is not the State or Territory;
4 the principal State Minister of the State, or the principal
5 Territory Minister of the Territory, as the case requires, has
6 certified in writing that:
7 (iii) the applicant holds the carbon sequestration right in
8 relation to the varied project; and
9 (iv) the State or Territory will not deal with the varied
10 project area or varied project areas, and will not consent
11 to any other person dealing with the varied project area
12 or varied project areas, in a way that is inconsistent with
13 the carbon sequestration right; and
14 (g) the varied project meets the eligibility requirements (if any)
15 specified in the regulations.

- 16 (4) The requirements mentioned in paragraph (3)(a) are:
17 (a) the varied project area is, or the varied project areas are,
18 Torrens system land; or
19 (b) the following conditions are satisfied in relation to the varied
20 project area or varied project areas:
21 (i) the varied project area is not, or the varied project areas
22 are not, general law land;
23 (ii) the varied project area is not, or the varied project areas
24 are not, specified in the regulations.

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

27 *Timing*

- 28 (5) The Authority must take all reasonable steps to ensure that a
29 decision is made on the application:
30 (a) if the Authority requires the applicant to give further
31 information under subsection ^210(6) in relation to the
32 application—within 90 days after the applicant gave the
33 Authority the information; or
34 (b) otherwise—within 90 days after the application was made.

EXPOSURE DRAFT

1 *When a variation takes effect*

2 (6) A variation under subsection (2) takes effect immediately after it is
3 made.

4 *Notification of variation*

5 (7) As soon as practicable after varying a declaration under
6 subsection (2), the Authority must give a copy of the variation to
7 the applicant.

8 *Refusal*

9 (8) If the Authority decides to refuse to make the variation, the
10 Authority must give written notice of the decision to the applicant.

11 *References to eligible reforestation project*

12 (9) If a declaration of an eligible reforestation project is varied under
13 this section, a reference in this Act to the eligible reforestation
14 project is a reference to the eligible reforestation project as varied.

15 *Variation is not legislative instrument*

16 (10) A variation under subsection (2) is not a legislative instrument.

17 **Subdivision C—Unilateral variation of declaration of eligible**
18 **reforestation project**

19 **^213 Variation of declaration of eligible reforestation project—**
20 **partial cessation of reforestation activity**

21 *Scope*

22 (1) This section applies if:
23 (a) a declaration is in force under section ^209 in relation to a
24 reforestation project; and
25 (b) a part of an area of land identified in the declaration as the
26 project area or a project area has remained clear of a forest
27 stand for a continuous period of at least 5 years that began at
28 a time when the declaration was in force.

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^214

1 *Variation of declaration*

2 (2) The Authority must, by writing, vary the declaration by excluding
3 that part from the area of land identified in the declaration as the
4 relevant project area.

5 *Notification of variation*

6 (3) As soon as practicable after varying the declaration, the Authority
7 must give a copy of the variation to the person who holds the
8 carbon sequestration right in relation to the project.

9 *References to eligible reforestation project*

10 (4) If a declaration of an eligible reforestation project is varied under
11 this section, a reference in this Act to the eligible reforestation
12 project is a reference to the eligible reforestation project as varied.

13 *Variation is not legislative instrument*

14 (5) A variation under subsection (2) is not a legislative instrument.

15 **^214 Variation of declaration of eligible reforestation project—**
16 **eligibility requirements not met**

17 *Scope*

18 (1) This section applies if:
19 (a) a declaration is in force under section ^209 in relation to a
20 reforestation project; and
21 (b) the Authority is satisfied that a project that is being, or is to
22 be, carried out in a part of an area of land identified in the
23 declaration as the project area or a project area:
24 (i) is not a reforestation project; or
25 (ii) does not meet any or all of the eligibility requirements
26 specified in regulations made for the purposes of
27 paragraph ^209(4)(g).

EXPOSURE DRAFT

1 *Variation of declaration*

- 2 (2) The Authority may, by writing, vary the declaration by excluding
3 that part from the area of land identified in the declaration as the
4 relevant project area.

5 *Consultation*

- 6 (3) Before varying the declaration, the Authority must give the person
7 who holds the carbon sequestration right in relation to the project a
8 written notice:
9 (a) informing the person of the proposed variation; and
10 (b) inviting the person to make a submission to the Authority
11 within 90 days after the notice was given, about the proposed
12 variation.
- 13 (4) In deciding whether to vary the declaration, the Authority must
14 have regard to:
15 (a) a submission made in response to an invitation under
16 subsection (3); and
17 (b) such other matters (if any) as the Authority considers
18 relevant.

19 *Notification of variation*

- 20 (5) As soon as practicable after varying the declaration, the Authority
21 must give a copy of the variation to the person who holds the
22 carbon sequestration right in relation to the project.

23 *References to eligible reforestation project*

- 24 (6) If a declaration of an eligible reforestation project is varied under
25 this section, a reference in this Act to the eligible reforestation
26 project is a reference to the eligible reforestation project as varied.

27 *Variation is not legislative instrument*

- 28 (7) A variation under subsection (2) is not a legislative instrument.

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^215

1 **Subdivision D—Voluntary revocation of declaration of eligible**
2 **reforestation project**

3 **^215 Voluntary revocation of declaration of eligible reforestation**
4 **project—units issued**

5 *Scope*

- 6 (1) This section applies if:
- 7 (a) a declaration is in force under section ^209 in relation to a
8 reforestation project; and
 - 9 (b) one or more Australian emissions units have been issued in
10 relation to the project in accordance with this Part; and
 - 11 (c) the person who holds the carbon sequestration right in
12 relation to the project applies to the Authority for the
13 revocation of the declaration; and
 - 14 (d) before the application was made, the applicant voluntarily
15 relinquished a number of Australian emissions units in order
16 to satisfy a condition for revocation of the declaration; and
 - 17 (e) the number of relinquished units equals the net total number
18 of Australian emissions units issued in relation to the project
19 in accordance with this Part.

20 *Revocation*

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

22 *Application*

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

26 *Notification of revocation*

- 27 (4) As soon as practicable after revoking the declaration, the Authority
28 must give a copy of the revocation to the person who holds the
29 carbon sequestration right in relation to the project.

EXPOSURE DRAFT

Reforestation **Part 10**
Eligible reforestation projects **Division 5**

Section **^216**

1 *Revocation is not legislative instrument*

2 (5) A revocation under subsection (2) is not a legislative instrument.

3 **^216 Voluntary revocation of declaration of eligible reforestation**
4 **project—no units issued**

5 *Scope*

6 (1) This section applies if:

7 (a) a declaration is in force under section ^209 in relation to a
8 reforestation project; and

9 (b) no Australian emissions units have been issued in relation to
10 the project in accordance with this Part; and

11 (c) the person who holds the carbon sequestration right in
12 relation to the project applies to the Authority for the
13 revocation of the declaration.

14 *Revocation*

15 (2) The Authority must, by writing, revoke the declaration.

16 *Application*

17 (3) An application under paragraph (1)(c) must:

18 (a) be in writing; and

19 (b) be in a form approved, in writing, by the Authority.

20 *Notification of revocation*

21 (4) As soon as practicable after revoking the declaration, the Authority
22 must give a copy of the revocation to the person who holds the
23 carbon sequestration right in relation to the project.

24 *Revocation is not legislative instrument*

25 (5) A revocation under subsection (2) is not a legislative instrument.

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^217

1 **Subdivision E—Unilateral revocation of declaration of eligible**
2 **reforestation project**

3 **^217 Unilateral revocation of declaration of eligible reforestation**
4 **project—cessation of reforestation activity**

5 *Scope*

- 6 (1) This section applies if:
- 7 (a) a declaration is in force under section ^209 in relation to a
8 reforestation project; and
- 9 (b) if there is a single area of land identified in the declaration as
10 the project area—the whole of the area of land has remained
11 clear of a forest stand for a continuous period of at least 5
12 years that began at a time when the declaration was in force;
13 and
- 14 (c) if there are 2 or more areas of land identified in the
15 declaration as the project areas—the whole of each of those
16 areas has remained clear of a forest stand for a continuous
17 period of at least 5 years that began at a time when the
18 declaration was in force.

19 *Revocation of declaration*

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

21 *Notification of revocation*

- 22 (3) As soon as practicable after revoking the declaration, the Authority
23 must give a copy of the revocation to the person who holds the
24 carbon sequestration right in relation to the project.

25 *Revocation is not legislative instrument*

- 26 (4) A revocation under subsection (2) is not a legislative instrument.

EXPOSURE DRAFT

1 **^218 Unilateral revocation of declaration of eligible reforestation**
2 **project—eligibility requirements not met**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a declaration is in force under section ^209 in relation to a
6 reforestation project; and
 - 7 (b) the Authority is satisfied that a project that is being, or is to
8 be, carried out in an area identified in the declaration as the
9 project area or a project area:
 - 10 (i) is not a reforestation project; or
 - 11 (ii) does not meet any or all of the eligibility requirements
12 specified in regulations made for the purposes of
13 paragraph ^209(4)(g).

14 *Revocation of declaration*

- 15 (2) The Authority may, by writing, revoke the declaration.

16 *Consultation*

- 17 (3) Before revoking the declaration, the Authority must give the
18 person who holds the carbon sequestration right in relation to the
19 project a written notice:
- 20 (a) informing the person of the proposed revocation; and
 - 21 (b) inviting the person to make a submission to the Authority,
22 within 90 days after the notice was given, about the proposed
23 revocation.
- 24 (4) In deciding whether to revoke the declaration, the Authority must
25 have regard to:
- 26 (a) a submission made in response to an invitation under
27 subsection (3); and
 - 28 (b) such other matters (if any) as the Authority considers
29 relevant.

EXPOSURE DRAFT

Part 10 Reforestation

Division 5 Eligible reforestation projects

Section ^219

1 *Notification of revocation*

2 (5) As soon as practicable after revoking the declaration, the Authority
3 must give a copy of the revocation to the person who holds the
4 carbon sequestration right in relation to the project.

5 *Revocation is not legislative instrument*

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

7 **^219 Unilateral revocation of declaration of eligible reforestation**
8 **project—ceasing to hold carbon sequestration right etc.**

9 *Scope*

- 10 (1) This section applies if:
- 11 (a) a declaration is in force under section ^209 in relation to a
12 reforestation project; and
- 13 (b) a person ceases to hold the carbon sequestration right in
14 relation to the project; and
- 15 (c) a relinquishment obligation transfer agreement was not in
16 force in relation to the cessation within 90 days after the
17 cessation occurred.

18 *Revocation of declaration*

19 (2) The Authority must, by writing, revoke the declaration.

20 *Notification of revocation*

- 21 (3) As soon as practicable after revoking the declaration, the Authority
22 must give a copy of the revocation to:
- 23 (a) the person who holds the carbon sequestration right in
24 relation to the project; and
- 25 (b) the person mentioned in paragraph (1)(b).

26 *Revocation is not legislative instrument*

27 (4) A revocation under subsection (2) is not a legislative instrument.

EXPOSURE DRAFT

1

2 **Division 6—Reforestation unit limit**

3 **^220 Reforestation unit limit**

4 *Scope*

5 (1) This section applies if, under section ^209, the Authority has
6 declared a reforestation project to be an eligible reforestation
7 project.

8 *Declaration of reforestation unit limit*

9 (2) As soon as practicable after making the declaration, the Authority
10 must, by written notice given to the applicant for the declaration,
11 declare that a specified number is the *reforestation unit limit* for
12 the project.

13 (3) The number to be specified is the number that, under the
14 regulations, is taken to be the projected net greenhouse gases
15 removal number for the project, reduced (but not below zero) by
16 the sum of the following numbers:

- 17 (a) the number that, under the regulations, is taken to be the
18 non-CPRS greenhouse gases removal sales number for the
19 project;
- 20 (b) the number that, under the regulations, is taken to be 2008
21 carbon stock baseline number for the project.

22 (4) A notice under subsection (2) must be accompanied by a statement
23 explaining how the reforestation unit limit for the project is
24 calculated.

25 *Declaration is not legislative instrument*

26 (5) A declaration made under subsection (2) is not a legislative
27 instrument.

28 *Computer program*

29 (6) Regulations made for the purposes of subsection (3) may provide
30 for a number to be worked out wholly or partly using a computer

EXPOSURE DRAFT

Part 10 Reforestation

Division 6 Reforestation unit limit

Section ^221

1 program specified in a legislative instrument made by the
2 Authority under this subsection.

3 **^221 Increase of reforestation unit limit**

4 *Scope*

- 5 (1) This section applies if, at a particular time:
6 (a) there is a reforestation unit limit for an eligible reforestation
7 project; and
8 (b) the number that would have been worked out at that time
9 under section ^220 would exceed the reforestation unit limit.

10 *Increase of reforestation unit limit*

- 11 (2) The Authority may, by written notice given to the person who
12 holds the carbon sequestration right in relation to the project,
13 increase the reforestation unit limit by an amount equal to the
14 excess.
15 (3) A notice under subsection (2) must be accompanied by a statement
16 explaining how the increase is calculated.

17 *References to reforestation unit limit*

- 18 (4) If a reforestation unit limit is increased under this section, a
19 reference in this Act to the reforestation unit limit is a reference to
20 the reforestation unit limit as increased.

21 *Notice is not legislative instrument*

- 22 (5) A notice given under subsection (2) is not a legislative instrument.

23 **^222 Decrease of reforestation unit limit**

24 *Scope*

- 25 (1) This section applies if, at a particular time:
26 (a) there is a reforestation unit limit for an eligible reforestation
27 project; and

EXPOSURE DRAFT

1 (b) the number that would have been worked out at that time
2 under section ^220 would fall short of the reforestation unit
3 limit.

4 *Decrease of reforestation unit limit*

5 (2) The Authority may, by written notice given to the person who
6 holds the carbon sequestration right in relation to the project,
7 decrease the reforestation unit limit by an amount equal to the
8 shortfall.

9 (3) A notice under subsection (2) must be accompanied by a statement
10 explaining how the decrease is calculated.

11 *References to reforestation unit limit*

12 (4) If a reforestation unit limit is decreased under this section, a
13 reference in this Act to the reforestation unit limit is a reference to
14 the reforestation unit limit as decreased.

15 *Notice is not legislative instrument*

16 (5) A notice given under subsection (2) is not a legislative instrument.

EXPOSURE DRAFT

Part 10 Reforestation

Division 7 Reforestation reporting periods

Section ^223

1

2 **Division 7—Reforestation reporting periods**

3 **^223 First reforestation reporting period**

- 4 (1) For the purposes of this Act, the first *reforestation reporting*
5 *period* for an eligible reforestation project is:
6 (a) the 5-year period that begins on the day the section ^209
7 declaration in relation to the project takes effect; or
8 (b) if another period is nominated under subsection (2)—the
9 nominated period.

10 *Nominated period*

11 (2) A person may, by written notice given to the Authority, nominate a
12 specified period as the first reforestation reporting period for an
13 eligible reforestation project.

- 14 (3) The person is not entitled to nominate a period under
15 subsection (2) unless:
16 (a) the person holds the carbon sequestration right in relation to
17 the project immediately before the end of the period; and
18 (b) the period is:
19 (i) at least 12 months; and
20 (ii) less than 5 years; and
21 (c) the period begins on the day that the section ^209 declaration
22 in relation to the project takes effect; and
23 (d) if that declaration takes effect on a day that is earlier than the
24 day the declaration is made—the period ends on or after the
25 day the declaration is made; and
26 (e) the notice under subsection (2) is given to the Authority
27 within 40 days after the end of the period; and
28 (f) a period has not previously been nominated under
29 subsection (2) in relation to the project.

30 (4) A notice under subsection (2) may be set out in the same document
31 as the reforestation report for the first reforestation reporting
32 period.

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1 **^224 Subsequent reforestation reporting periods**

- 2 (1) For the purposes of this Act, a *reforestation reporting period* for
3 an eligible reforestation project (other than the first reforestation
4 reporting period for the project) is:
5 (a) the 5-year period that begins immediately after the end of the
6 previous reforestation reporting period for the project; or
7 (b) if:
8 (i) another period is nominated under subsection (2); and
9 (ii) the nominated period begins immediately after the end
10 of the preceding reforestation reporting period;
11 the nominated period.

12 *Nominated period*

- 13 (2) A person may, by written notice given to the Authority, nominate a
14 period as a reforestation reporting period for an eligible
15 reforestation project.
- 16 (3) The person is not entitled to nominate a period under
17 subsection (2) unless:
18 (a) the person holds the carbon sequestration right in relation to
19 the project immediately before the end of the period; and
20 (b) the period is:
21 (i) at least 12 months; and
22 (ii) less than 5 years; and
23 (c) the notice under subsection (2) is given to the Authority
24 within 40 days after the end of the period; and
25 (d) a period beginning immediately after the end of the preceding
26 reforestation reporting period has not previously been
27 nominated under subsection (2) in relation to the project.
- 28 (4) A notice under subsection (2) may be set out in the same document
29 as the reforestation report for the reforestation reporting period.

EXPOSURE DRAFT

Part 10 Reforestation

Division 8 Reforestation reporting requirements

Section ^225

1

2 **Division 8—Reforestation reporting requirements**

3 **^225 Reforestation reports**

4 *Scope*

- 5 (1) This section applies if a person holds the carbon sequestration right
6 in relation to an eligible reforestation project immediately before
7 the end of a reforestation reporting period for the project.

8 *Report*

- 9 (2) The person must, in accordance with this section, give the
10 Authority a written report (the *reforestation report*) about the
11 project for the period.
- 12 (3) The reforestation report must:
- 13 (a) be given in the manner and form prescribed by the
14 regulations; and
- 15 (b) set out the information specified in the regulations; and
- 16 (c) be given to the Authority within 40 days after the end of the
17 reforestation reporting period.
- 18 (4) Information specified in regulations made for the purposes of
19 paragraph (3)(b) may relate to a matter arising before, during or
20 after the reforestation reporting period.

21 *Ancillary contraventions*

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

EXPOSURE DRAFT

Reforestation **Part 10**
Reforestation reporting requirements **Division 8**

Section ^225

1 *Civil penalty provisions*

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

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

EXPOSURE DRAFT

Part 10 Reforestation

Division 9 Forest maintenance obligation

Section ^226

1

2 **Division 9—Forest maintenance obligation**

3 **Subdivision A—Forest maintenance obligation**

4 **^226 Forest maintenance obligation**

5 *Scope*

- 6 (1) This section applies to one or more areas of land if:
- 7 (a) a notice was given under section ^232 or ^233 in relation to a
- 8 project that is or was an eligible reforestation project; and
- 9 (b) the area was, or the areas were, identified in the relevant
- 10 section ^209 declaration as the project area or project areas
- 11 for the eligible reforestation project; and
- 12 (c) the notice required a person to relinquish a particular number
- 13 of Australian emissions units; and
- 14 (d) the person did not comply with the requirement within 90
- 15 days after the notice was given.

16 *Obligation*

- 17 (2) At all times after the end of that 90-day period, the person who
- 18 holds the forestry right in relation to the area or areas of land must:
- 19 (a) if one or more forest stands are already in existence on the
- 20 area or areas of land—ensure that one or more of those forest
- 21 stands are maintained such that it is reasonable to expect that,
- 22 when the maintained forest stands reach maturity, the number
- 23 that, under the regulations, is taken to be the net total number
- 24 of tonnes of greenhouse gases removed by the maintained
- 25 forest stands will equal or exceed the net total number of
- 26 Australian emissions units issued in relation to the project in
- 27 accordance with this Part; or
- 28 (b) if no forest stands are already in existence on the area or
- 29 areas of land:
- 30 (i) establish one or more forest stands on the area or areas
- 31 of land; and

EXPOSURE DRAFT

- 1 (ii) ensure that those forest stands are maintained such that
2 it is reasonable to expect that, when the forest stands
3 reach maturity, the number that, under the regulations,
4 is taken to be the net total number of tonnes of
5 greenhouse gases removed by the forest stands will
6 equal or exceed the net total number of Australian
7 emissions units issued in relation to the project in
8 accordance with this Part.

9 *Direction about manner in which obligation is to be performed*

- 10 (3) If a person is subject to an obligation under subsection (2), the
11 Authority may give the person a written direction relating to the
12 manner in which the obligation is to be performed.
- 13 (4) A person must comply with a direction under subsection (3).

14 *Ancillary contraventions*

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

24 *Civil penalty provisions*

- 25 (6) Subsections (2), (4) and (5) are *civil penalty provisions*.

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

28 *Cessation of obligation*

- 29 (7) The obligation imposed by subsection (2) ceases at whichever of
30 the following times happens first:
- 31 (a) when the penalty payable under section ^287 in respect of the
32 non-compliance with the requirement referred to in

EXPOSURE DRAFT

Part 10 Reforestation

Division 9 Forest maintenance obligation

Section ^227

1 paragraph (1)(c) (including any late payment penalty payable
2 under section ^288 in relation to the section ^287 penalty) is
3 paid in full;

4 (b) at the end of 130 years after the first occasion on which an
5 Australian emissions unit was issued in relation to the project
6 in accordance with this Part.

7 *Forestry right*

8 (8) For the purposes of the application of this section to one or more
9 areas of land, if there is an eligible reforestation project in relation
10 to the area or areas of land, the person who holds the forestry right
11 in relation to the project is taken to hold the forestry right in
12 relation to the area or areas of land.

13 (9) For the purposes of the application of this section to one or more
14 areas of land, if:

15 (a) there is no eligible reforestation project in relation to the area
16 or areas of land; and

17 (b) if it were assumed that an eligible reforestation project were
18 in existence in relation to the area or areas of land, a person
19 would hold the forestry right in relation to the project;

20 the person is taken to hold the forestry right in relation to the area
21 or areas of land.

22 *Computer program*

23 (10) Regulations made for the purposes of subsection (2) may provide
24 for a number to be worked out wholly or partly using a computer
25 program specified in a legislative instrument made by the
26 Authority under this subsection.

27 **Subdivision B—Injunctions**

28 **^227 Injunctions**

29 *Performance injunctions*

30 (1) If:

EXPOSURE DRAFT

- 1 (a) a person has refused or failed, or is refusing or failing, or is
2 proposing to refuse or fail, to do an act or thing; and
3 (b) the refusal or failure was, is or would be a contravention of
4 subsection ^226(2) or (4);
5 the Federal Court may, on the application of the Authority, grant
6 an injunction requiring the person to do that act or thing.

7 *Restraining injunctions*

- 8 (2) If a person has engaged, is engaging or is proposing to engage, in
9 any conduct in contravention of subsection ^226(2) or (4), the
10 Federal Court may, on the application of the Authority, grant an
11 injunction:
12 (a) restraining the person from engaging in the conduct; and
13 (b) if, in the Court's opinion, it is desirable to do so—requiring
14 the person to do something.

15 **^228 Interim injunctions**

16 *Grant of interim injunction*

- 17 (1) If an application is made to the Federal Court for an injunction
18 under section ^227, the Court may, before considering the
19 application, grant an interim injunction restraining a person from
20 engaging in conduct of a kind referred to in that section.

21 *No undertakings as to damages*

- 22 (2) The Federal Court is not to require the Authority, as a condition of
23 granting an interim injunction, to give any undertakings as to
24 damages.

25 **^229 Discharge etc. of injunctions**

26 The Federal Court may discharge or vary an injunction granted
27 under this Subdivision.

EXPOSURE DRAFT

Part 10 Reforestation

Division 9 Forest maintenance obligation

Section ^230

1 **^230 Certain limits on granting injunctions not to apply**

2 *Restraining injunctions*

3 (1) The power of the Federal Court under this Subdivision to grant an
4 injunction restraining a person from engaging in conduct of a
5 particular kind may be exercised:

6 (a) if the Court is satisfied that the person has engaged in
7 conduct of that kind—whether or not it appears to the Court
8 that the person intends to engage again, or to continue to
9 engage, in conduct of that kind; or

10 (b) if it appears to the Court that, if an injunction is not granted,
11 it is likely that the person will engage in conduct of that
12 kind—whether or not the person has previously engaged in
13 conduct of that kind.

14 *Performance injunctions*

15 (2) The power of the Federal Court to grant an injunction requiring a
16 person to do an act or thing may be exercised:

17 (a) if the Court is satisfied that the person has refused or failed to
18 do that act or thing—whether or not it appears to the Court
19 that the person intends to refuse or fail again, or to continue
20 to refuse or fail, to do that act or thing; or

21 (b) if it appears to the Court that, if an injunction is not granted,
22 it is likely that the person will refuse or fail to do that act or
23 thing—whether or not the person has previously refused or
24 failed to do that act or thing.

25 **^231 Other powers of the Federal Court unaffected**

26 The powers conferred on the Federal Court under this Subdivision
27 are in addition to, and not instead of, any other powers of the
28 Court, whether conferred by this Act or otherwise.

EXPOSURE DRAFT

1

2 **Division 10—Relinquishment of Australian emissions units**

3 **^232 Requirement to relinquish—unilateral revocation of**
4 **declaration of eligible reforestation project**

5 *Scope*

- 6 (1) This section applies to a person if:
- 7 (a) the person holds the carbon sequestration right in relation to
 - 8 an eligible reforestation project; and
 - 9 (b) one or more Australian emissions units have been issued in
 - 10 relation to the project in accordance with this Part; and
 - 11 (c) the declaration of the eligible reforestation project is revoked
 - 12 under section ^217, ^218 or ^219.

13 *Requirement*

- 14 (2) The Authority must, by written notice given to the person, require
- 15 the person to relinquish a specified number of Australian emissions
- 16 units.
- 17 (3) The specified number must equal the net total number of
- 18 Australian emissions units issued in relation to the project in
- 19 accordance with this Part.
- 20 (4) The person must comply with the requirement within 90 days after
- 21 the notice was given.

22 Note: An administrative penalty is payable under section ^287 for

23 non-compliance with a relinquishment requirement.

24 *Sunset*

- 25 (5) Despite subsection (2), the Authority must not give a notice under
- 26 that subsection later than 130 years after the first occasion on
- 27 which an Australian emissions unit was issued in relation to the
- 28 project in accordance with this Part.

EXPOSURE DRAFT

Part 10 Reforestation

Division 10 Relinquishment of Australian emissions units

Section ^233

1 **^233 Relinquishment requirement—decrease in reforestation unit**
2 **limit for eligible reforestation project**

3 *Scope*

- 4 (1) This section applies to a person if:
- 5 (a) the person holds the carbon sequestration right in relation to
6 an eligible reforestation project; and
- 7 (b) one or more Australian emissions units have been issued in
8 relation to the project in accordance with this Part; and
- 9 (c) after the issue of the units, the reforestation unit limit for the
10 project is decreased under section ^222; and
- 11 (d) the net total number of Australian emissions units issued in
12 relation to the project in accordance with this Part exceeds
13 the decreased limit.

14 *Requirement*

- 15 (2) The Authority must, by written notice given to the person, require
16 the person to relinquish a specified number of Australian emissions
17 units.
- 18 (3) The specified number of units must equal the excess mentioned in
19 paragraph (1)(d).
- 20 (4) The person must comply with the requirement within 90 days after
21 the notice was given.

22 Note: An administrative penalty is payable under section ^287 for
23 non-compliance with a relinquishment requirement.

24 *Sunset*

- 25 (5) Despite subsection (2), the Authority must not give a notice under
26 that subsection later than 130 years after the first occasion on
27 which an Australian emissions unit was issued in relation to the
28 project in accordance with this Part.

EXPOSURE DRAFT

1 **^234 Relinquishment obligation transfer agreement**

2 *Scope*

- 3 (1) This section applies if a person (the *transferor*) ceases to hold the
4 carbon sequestration right in relation to an eligible reforestation
5 project.

6 *Agreement*

- 7 (2) For the purposes of this Act, a *relinquishment obligation transfer*
8 *agreement* in relation to the cessation is an agreement, where:
9 (a) the agreement is between:
10 (i) the transferor (or, if the transferor has died, the
11 transferor's legal personal representative); and
12 (ii) another person (the *transferee*); and
13 (b) the transferee will, as a result of the cessation, hold the
14 carbon sequestration right in relation to the project; and
15 (c) the transferee is a recognised reforestation entity; and
16 (d) the agreement states that the transferee accepts responsibility
17 for complying with any requirements to relinquish Australian
18 emissions units that may be imposed on the transferee under
19 this Part in relation to the project; and
20 (e) the Authority has given written approval to the agreement;
21 and
22 (f) if the Authority, in accordance with the regulations, requires
23 the transferee to give security to the Commonwealth in
24 relation to the fulfilment by the transferee of any
25 requirements to relinquish Australian emissions units that
26 may be imposed on the transferee under this Part in relation
27 to the project—the transferee has given that security; and
28 (g) such other conditions (if any) as are specified in the
29 regulations are satisfied.

30 *Duration of agreement*

- 31 (3) A relinquishment obligation transfer agreement remains in force
32 until the transferee ceases to hold the carbon sequestration right in
33 relation to the project.

EXPOSURE DRAFT

Part 10 Reforestation

Division 10 Relinquishment of Australian emissions units

Section ^234

- 1 (4) For the purposes of this Act, if a relinquishment obligation transfer
2 agreement is in force in relation to the cessation, the agreement is
3 taken to relate to the project.

EXPOSURE DRAFT

1

2 **Division 11—Miscellaneous notification requirements**

3 **^235 Notification requirement—ceasing to hold carbon**
4 **sequestration right**

5 *Scope*

- 6 (1) This section applies to a person if both of the following conditions
7 are satisfied:
- 8 (a) the person ceases to hold the carbon sequestration right in
9 relation to an eligible reforestation project;
 - 10 (b) one or more Australian emissions units have been issued in
11 relation to the project in accordance with this Part.

12 *Notification*

- 13 (2) The person (or, if the person has died, the person's legal personal
14 representative) must, within 90 days after the cessation occurs,
15 notify the Authority, in writing, of the cessation.

16 *Ancillary contraventions*

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

26 *Civil penalty provisions*

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

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

EXPOSURE DRAFT

Part 10 Reforestation

Division 12 Entries in title registers

Section ^236

1

2 **Division 12—Entries in title registers**

3 **^236 Entries in title registers—general**

4 *Scope*

5 (1) This section applies if there is an eligible reforestation project.

6 *Entries*

- 7 (2) The relevant land registration official may make such entries or
8 notations in or on registers or other documents kept by the official
9 (in electronic form or otherwise) as the official thinks appropriate
10 for the purposes of drawing the attention of persons to:
11 (a) the existence of the eligible reforestation project; and
12 (b) the fact that requirements may arise under this Act in relation
13 to the project; and
14 (c) such other matters (if any) relating to this Act as the official
15 considers appropriate.
- 16 (3) For the purposes of this section, the *relevant land registration*
17 *official* is the Registrar of Titles or other proper officer of the State
18 or Territory in which the project area, or any of the project areas, is
19 situated.

20 **^237 Entries in title registers—land subject to forest maintenance**
21 **obligation**

22 *Scope*

23 (1) This section applies to one or more areas of land if an obligation is
24 imposed by subsection ^226(2) in relation to those areas of land.

25 *Entries*

26 (2) The relevant land registration official may make such entries or
27 notations in or on registers or other documents kept by the official
28 (in electronic form or otherwise) as the official thinks appropriate

EXPOSURE DRAFT

Reforestation **Part 10**
Entries in title registers **Division 12**

Section ^237

- 1 for the purposes of drawing the attention of persons to the
2 obligation.
- 3 (3) For the purposes of this section, the *relevant land registration*
4 *official* is the Registrar of Titles or other proper officer of the State
5 or Territory in which those areas of land are situated.

EXPOSURE DRAFT

Part 10 Reforestation

Division 13 Register of Reforestation Projects

Section ^238

1

2 **Division 13—Register of Reforestation Projects**

3 **^238 Register of Reforestation Projects**

- 4 (1) The Authority must keep a register, to be known as the Register of
5 Reforestation Projects.
- 6 (2) The Register of Reforestation Projects is to be maintained by
7 electronic means.
- 8 (3) The Register of Reforestation Projects is to be made available for
9 inspection on the Authority’s website.

10 **^239 Entries in the Register**

- 11 (1) The Register of Reforestation Projects must set out, for each
12 eligible reforestation project:
- 13 (a) the relevant declaration under section ^209; and
14 (b) the reforestation unit limit for the project; and
15 (c) the project area or project areas; and
16 (d) the name of the person who is the holder of the carbon
17 sequestration right in relation to the project; and
18 (e) if any Australian emissions units have been issued in relation
19 to the project in accordance with this Part:
20 (i) the total number of units so issued; and
21 (ii) the name of the person, or each of the persons, to whom
22 those units have been issued; and
23 (f) if any Australian emissions units have been relinquished in
24 order to comply with a requirement under this Part in relation
25 to the project—the total number of units so relinquished; and
26 (g) if an obligation is imposed by subsection ^226(2) in relation
27 to the project area or project areas:
28 (i) a statement to that effect; and
29 (ii) the net total number of Australian emissions units issued
30 in relation to the project in accordance with this Part;
31 and

EXPOSURE DRAFT

Reforestation **Part 10**
Register of Reforestation Projects **Division 13**

Section ^239

- 1 (h) such other information (if any) relating to the project as the
2 Authority considers appropriate.
- 3 (2) If an obligation is imposed by subsection ^226(2) in relation to one
4 or more areas of land that were formerly a project area or project
5 areas of an eligible reforestation project, the Register of
6 Reforestation Projects must:
- 7 (a) set out a statement to that effect; and
8 (b) identify the area or areas of land; and
9 (c) set out the net total number of Australian emissions units
10 issued in relation to the project in accordance with this Part.

EXPOSURE DRAFT

Part 10 Reforestation

Division 14 Carbon sequestration right and forestry right

Section ^240

1

2

Division 14—Carbon sequestration right and forestry right

3

^240 Carbon sequestration right

4

Torrens system land

5

(1) For the purposes of this Act, if:

6

(a) there is a reforestation project; and

7

(b) the project area is, or the project areas are, Torrens system land; and

8

9

(c) a person holds a legal estate or interest in the project area or project areas; and

10

11

(d) the estate or interest is registered under a Torrens system of registration; and

12

13

(e) as a result of holding the estate or interest, the person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide by trees to which the project relates;

14

15

16

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

17

18

19

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

20

(a) there is a reforestation project; and

21

(b) the project area is, or the project areas are, Torrens system land; and

22

23

(c) a person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide by trees to which the project relates; and

24

25

26

(d) the right is registered under a Torrens system of registration; and

27

28

(e) under a law of a State or Territory, the right is, or is taken to be, an estate or interest in land;

29

30

the exclusive right is the *carbon sequestration right* held by the person in relation to the project.

31

32

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

33

(a) there is a reforestation project; and

EXPOSURE DRAFT

- 1 (b) the project area is, or the project areas are, Torrens system
2 land; and
3 (c) a person has the exclusive legal right to obtain the benefit
4 (whether present or future) of sequestration of carbon dioxide
5 by trees to which the project relates; and
6 (d) either:
7 (i) the right is registered under a Torrens system of
8 registration; or
9 (ii) the project area is, or the project areas are, Torrens
10 system land, and the right is noted on the relevant
11 certificate of title; and
12 (e) under a law of a State or Territory, the right runs with the
13 relevant land;
14 the exclusive right is the **carbon sequestration right** held by the
15 person in relation to the project.

16 *Crown land that is not Torrens system land*

- 17 (4) For the purposes of this Act, if:
18 (a) there is a reforestation project; and
19 (b) the project area is, or the project areas are, Crown land in a
20 State or Territory; and
21 (c) the project area is not, or the project areas are not, Torrens
22 system land; and
23 (d) a person (other than the State or Territory) holds a legal
24 estate or interest in the project area or project areas; and
25 (e) as a result of holding the estate or interest, the person has the
26 exclusive legal right to obtain the benefit (whether present or
27 future) of sequestration of carbon dioxide by trees to which
28 the project relates;
29 the estate or interest is the **carbon sequestration right** held by the
30 person in relation to the project.
- 31 (5) For the purposes of this Act, if:
32 (a) there is a reforestation project; and
33 (b) the project area is, or the project areas are, Crown land in a
34 State or Territory; and

EXPOSURE DRAFT

Part 10 Reforestation

Division 14 Carbon sequestration right and forestry right

Section ^240

- 1 (c) the project area is not, or the project areas are not, Torrens
2 system land; and
- 3 (d) a person (other than the State or Territory) has the exclusive
4 legal right to obtain the benefit (whether present or future) of
5 sequestration of carbon dioxide by trees to which the project
6 relates; and
- 7 (e) under a law of the State or Territory, the right is, or is taken
8 to be, an estate or interest in land;
- 9 the exclusive right is the *carbon sequestration right* held by the
10 person in relation to the project.
- 11 (6) For the purposes of this Act, if:
- 12 (a) there is a reforestation project; and
- 13 (b) the project area is, or the project areas are, Crown land in a
14 State or Territory; and
- 15 (c) the project area is not, or the project areas are not, Torrens
16 system land; and
- 17 (d) a person (other than the State or Territory) has the exclusive
18 legal right to obtain the benefit (whether present or future) of
19 sequestration of carbon dioxide by trees to which the project
20 relates; and
- 21 (e) under a law of the State or Territory, the right runs with the
22 relevant land; and
- 23 (f) it is not the case that under a law of the State or Territory, the
24 right is, or is taken to be, an estate or interest in land;
- 25 the exclusive right is the *carbon sequestration right* held by the
26 person in relation to the project.
- 27 (7) For the purposes of this Act, if:
- 28 (a) there is a reforestation project; and
- 29 (b) the project area is, or the project areas are, Crown land in a
30 State or Territory; and
- 31 (c) the project area is not, or the project areas are not, Torrens
32 system land; and
- 33 (d) as a result of the project area or project areas being Crown
34 land:
- 35 (i) the State or Territory; or
- 36 (ii) a statutory authority of the State or Territory;

EXPOSURE DRAFT

1 has the exclusive legal right to obtain the benefit (whether
2 present or future) of sequestration of carbon dioxide by trees
3 to which the project relates;

4 the exclusive right is the *carbon sequestration right* held by the
5 State, Territory or statutory authority, as the case may be, in
6 relation to the project.

7 *Right to obtain the benefit of sequestration*

8 (8) For the purposes of this section, in determining whether a person
9 has the exclusive legal right to obtain the benefit (whether present
10 or future) of sequestration of carbon dioxide by trees to which a
11 reforestation project relates, it is immaterial whether that right
12 extends to sequestration of carbon dioxide by the soil in which the
13 trees are growing.

14 **^241 Forestry right**

15 *Torrens system land*

16 (1) For the purposes of this Act, if:
17 (a) there is a reforestation project; and
18 (b) the project area is, or the project areas are, Torrens system
19 land; and
20 (c) a person holds a legal estate or interest in the project area or
21 project areas; and
22 (d) the estate or interest is registered under a Torrens system of
23 registration; and
24 (e) as a result of holding the estate or interest, the person has the
25 exclusive legal right to establish, manage and maintain a
26 forest on the project area or project areas;
27 the estate or interest is the *forestry right* held by the person in
28 relation to the project.

29 (2) For the purposes of this Act, if:
30 (a) there is a reforestation project; and
31 (b) the project area is, or the project areas are, Torrens system
32 land; and

EXPOSURE DRAFT

Part 10 Reforestation

Division 14 Carbon sequestration right and forestry right

Section 241

- 1 (c) a person has the exclusive legal right to establish, manage
2 and maintain a forest on the project area or project areas; and
3 (d) the right is registered under a Torrens system of registration;
4 and
5 (e) under a law of a State or Territory, the right is, or is taken to
6 be, an estate or interest in land;
7 the exclusive right is the *forestry right* held by the person in
8 relation to the project.

9 *Crown land that is not Torrens system land*

- 10 (3) For the purposes of this Act, if:
11 (a) there is a reforestation project; and
12 (b) the project area is, or the project areas are, Crown land in a
13 State or Territory; and
14 (c) the project area is not, or the project areas are not, Torrens
15 system land; and
16 (d) a person (other than the State or Territory) holds a legal
17 estate or interest in the project area or project areas; and
18 (e) as a result of holding the estate or interest, the person has the
19 exclusive legal right to establish, manage and maintain a
20 forest on the project area or project areas;
21 the estate or interest is the *forestry right* held by the person in
22 relation to the project.

- 23 (4) For the purposes of this Act, if:
24 (a) there is a reforestation project; and
25 (b) the project area is, or the project areas are, Crown land in a
26 State or Territory; and
27 (c) the project area is not, or the project areas are not, Torrens
28 system land; and
29 (d) a person (other than the State or Territory) has the exclusive
30 legal right to establish, manage and maintain a forest on the
31 project area or project areas; and
32 (e) under a law of the State or Territory, the right is, or is taken
33 to be, an estate or interest in land;
34 the exclusive right is the *forestry right* held by the person in
35 relation to the project.

EXPOSURE DRAFT

Reforestation **Part 10**
Carbon sequestration right and forestry right **Division 14**

Section ^241

- 1 (5) For the purposes of this Act, if:
2 (a) there is a reforestation project; and
3 (b) the project area is, or the project areas are, Crown land in a
4 State or Territory; and
5 (c) the project area is not, or the project areas are not, Torrens
6 system land; and
7 (d) as a result of the project area or project areas being Crown
8 land:
9 (i) the State or Territory; or
10 (ii) a statutory authority of the State or Territory;
11 has the exclusive legal right to establish, manage and
12 maintain a forest on the project area or project areas;
13 the exclusive right is the *forestry right* held by the State, Territory
14 or statutory authority, as the case may be, in relation to the project.

EXPOSURE DRAFT

Part 10 Reforestation

Division 15 Net total number of Australian emissions units issued in relation to an eligible reforestation project

Section ^242

1

2

Division 15—Net total number of Australian emissions units issued in relation to an eligible reforestation project

3

4

5

^242 Net total number of Australian emissions units issued in relation to an eligible reforestation project

6

7

For the purposes of this Act, the *net total number* of Australian emissions units issued in relation to an eligible reforestation project in accordance with this Part is the number worked out using the following formula:

8

9

10

11

Total number of Australian emissions units issued in relation to the project in accordance with this Part	–	Total number of Australian emissions units relinquished in order to comply with a requirement under this Part in relation to the project
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EXPOSURE DRAFT

Destruction of synthetic greenhouse gases **Part 11**

Introduction **Division 1**

Section ^244

1

2

Part 11—Destruction of synthetic greenhouse gases

3

Division 1—Introduction

4

^244 Simplified outline

5

The following is a simplified outline of this Part:

6

7

- Free Australian emissions units may be issued in respect of the destruction of synthetic greenhouse gases.

8

9

- The synthetic greenhouse gas must be destroyed at an approved synthetic greenhouse gas destruction facility.

10

- Free units may be issued to:

11

12

- (a) a recognised synthetic greenhouse gas destruction customer; or

13

14

- (b) the operator of an approved synthetic greenhouse gas destruction facility.

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 2 Issue of free Australian emissions units in respect of the destruction of synthetic greenhouse gases

Section ^245

1

2

Division 2—Issue of free Australian emissions units in respect of the destruction of synthetic greenhouse gases

3

4

5

^245 Issue of free Australian emissions units in respect of the destruction of synthetic greenhouse gases

6

7

Scope

8

- (1) This section applies if a certificate of eligible synthetic greenhouse gas destruction is in force in respect of an eligible financial year.

9

10

Issue of free units

11

- (2) As soon as practicable after the day on which the certificate was issued, the Authority must issue to the holder of the certificate a number of free Australian emissions units equal to the number specified in the certificate as the unit entitlement for that certificate.

12

13

14

15

16

- (3) Free Australian emissions units issued in accordance with subsection (2) during an eligible financial year are to have a vintage year of the eligible financial year.

17

18

19

- (4) The Authority must not issue a free Australian emissions unit to a person in accordance with subsection (2) unless the person has a Registry account.

20

21

EXPOSURE DRAFT

Destruction of synthetic greenhouse gases **Part 11**
Certificate of eligible synthetic greenhouse gas destruction **Division 3**

Section [^]246

1

2 **Division 3—Certificate of eligible synthetic greenhouse gas**
3 **destruction**

4 [^]246 **Application for certificate of eligible synthetic greenhouse gas**
5 **destruction**

- 6 (1) A person may, within 4 months after the end of an eligible
7 financial year, apply to the Authority for the issue to the person of
8 a certificate of eligible synthetic greenhouse gas destruction in
9 respect of the eligible financial year.
- 10 (2) A person is not entitled to make an application unless the person is:
11 (a) a recognised synthetic greenhouse gas destruction customer;
12 or
13 (b) the operator of an approved synthetic greenhouse gas
14 destruction facility.
- 15 (3) An application must state:
16 (a) that the application is made in the applicant's capacity as a
17 recognised synthetic greenhouse gas destruction customer; or
18 (b) that the application is made in the applicant's capacity as the
19 operator of an approved synthetic greenhouse gas destruction
20 facility.
- 21 (4) An application must specify one or more synthetic greenhouse gas
22 destruction events that occurred during the eligible financial year.

23 [^]247 **Form of application**

- 24 (1) An application must:
25 (a) be in writing; and
26 (b) be in a form approved, in writing, by the Authority; and
27 (c) be accompanied by such information as is specified in the
28 regulations; and
29 (d) be accompanied by such documents (if any) as are specified
30 in the regulations.

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 3 Certificate of eligible synthetic greenhouse gas destruction

Section ^248

- 1 (2) The approved form of application may provide for verification by
2 statutory declaration of statements in applications.

3 **^248 Further information**

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

7 (2) If the applicant breaches the requirement, the Authority may, by
8 written notice given to the applicant:

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

12 **^249 Issue of certificate of eligible synthetic greenhouse gas** 13 **destruction**

14 *Scope*

15 (1) This section applies if an application under section ^246 has been
16 made for the issue of a certificate of eligible synthetic greenhouse
17 gas destruction in respect of an eligible financial year.

18 *Issue of certificate*

19 (2) After considering the application, the Authority may issue a
20 certificate of eligible synthetic greenhouse gas destruction in
21 respect of the eligible financial year.

22 Note: See section ^250 (criteria for issuing certificate).

23 (3) A certificate of eligible synthetic greenhouse gas destruction must
24 state that a specified number is the *unit entitlement* in respect of
25 the certificate.

26 Note: See section ^251 (unit entitlement).

27 *Timing*

28 (4) The Authority must take all reasonable steps to ensure that a
29 decision is made on the application:

EXPOSURE DRAFT

Destruction of synthetic greenhouse gases **Part 11**
Certificate of eligible synthetic greenhouse gas destruction **Division 3**

Section [^]250

- 1 (a) if the Authority requires the applicant to give further
2 information under subsection [^]248(1) in relation to the
3 application—within 90 days after the applicant gave the
4 Authority the information; or
5 (b) otherwise—within 90 days after the application was made.

6 *Refusal*

- 7 (5) If the Authority decides to refuse to issue a certificate of eligible
8 synthetic greenhouse gas destruction, the Authority must give
9 written notice of the decision to the applicant.

10 **[^]250 Criteria for issuing certificate of eligible synthetic greenhouse**
11 **gas destruction**

12 *Scope*

- 13 (1) This section applies if an application under section [^]246 has been
14 made for the issue of a certificate of eligible synthetic greenhouse
15 gas destruction in respect of an eligible financial year.

16 *Recognised synthetic greenhouse gas destruction customer*

- 17 (2) If the application is made in the applicant's capacity as a
18 recognised synthetic greenhouse gas destruction customer, the
19 Authority must not issue the certificate unless:
20 (a) the Authority is satisfied that the following conditions are
21 satisfied in relation to each synthetic greenhouse gas
22 destruction event specified in the application:
23 (i) the event occurred during the eligible financial year;
24 (ii) the applicant was a recognised synthetic greenhouse gas
25 destruction customer at the time of the occurrence of the
26 event;
27 (iii) the synthetic greenhouse gas was destroyed at an
28 approved synthetic greenhouse gas destruction facility
29 under a contract between the applicant and the operator
30 of the facility;
31 (iv) the applicant incurred expenditure under the contract in
32 respect of the destruction of the synthetic greenhouse
33 gas;

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 3 Certificate of eligible synthetic greenhouse gas destruction

Section ^250

- 1 (v) the approved synthetic greenhouse gas destruction
2 facility was authorised under the *Ozone Protection and*
3 *Synthetic Greenhouse Gas Management Regulations*
4 *1995* to carry out the destruction of the synthetic
5 greenhouse gas;
6 (vi) the destruction of the synthetic greenhouse gas
7 complied with the *Ozone Protection and Synthetic*
8 *Greenhouse Gas Management Regulations 1995*;
9 (vii) the synthetic greenhouse gas was eligible waste; and
10 (b) the total quantity of synthetic greenhouse gas covered by the
11 synthetic greenhouse gas destruction events specified in the
12 application exceeds the quantity specified in the regulations.

13 *Operator of an approved synthetic greenhouse gas destruction*
14 *facility*

- 15 (3) If the application was made in the applicant's capacity as the
16 operator of an approved synthetic greenhouse gas destruction
17 facility, the Authority must not issue the certificate unless:
18 (a) the Authority is satisfied that the following conditions are
19 satisfied in relation to each synthetic greenhouse gas
20 destruction event specified in the application:
21 (i) the event occurred during the eligible financial year;
22 (ii) the synthetic greenhouse gas was destroyed at an
23 approved synthetic greenhouse gas destruction facility
24 operated by the applicant;
25 (iii) the destruction of the synthetic greenhouse gas was not
26 carried out under a contract between the applicant and
27 another person;
28 (iv) the applicant was not entitled to receive any
29 consideration for carrying out the destruction of the
30 synthetic greenhouse gas;
31 (v) the approved synthetic greenhouse gas destruction
32 facility was authorised under the *Ozone Protection and*
33 *Synthetic Greenhouse Gas Management Regulations*
34 *1995* to carry out the destruction of the synthetic
35 greenhouse gas;

EXPOSURE DRAFT

Destruction of synthetic greenhouse gases **Part 11**
Certificate of eligible synthetic greenhouse gas destruction **Division 3**

Section ^251

- 1 (vi) the destruction of the synthetic greenhouse gas
2 complied with the *Ozone Protection and Synthetic*
3 *Greenhouse Gas Management Regulations 1995*;
4 (vii) the synthetic greenhouse gas was eligible waste; and
5 (b) the total quantity of synthetic greenhouse gas covered by the
6 synthetic greenhouse gas destruction events specified in the
7 application exceeds the quantity specified in the regulations.

8 **^251 Unit entitlement**

- 9 (1) The number to be specified in a certificate of eligible synthetic
10 greenhouse gas destruction as the unit entitlement in respect of the
11 certificate is to be worked out as follows:
12 (a) calculate the provisional number for each synthetic
13 greenhouse gas destruction event specified in the application
14 for the certificate;
15 (b) the number to be specified as the unit entitlement is the sum
16 of those provisional numbers.

17 *Provisional number—synthetic greenhouse gas destruction event*

- 18 (2) For the purposes of this section, the *provisional number* of a
19 synthetic greenhouse gas destruction event is the number
20 (calculated to zero decimal places) worked out using the following
21 formula:

22
$$\frac{\text{Number of tonnes in the carbon dioxide equivalence of the synthetic greenhouse gas submitted for destruction}}{\text{Destruction/removal efficiency factor}}$$

23 where:

24 *destruction/removal efficiency factor* means the factor specified in
25 the regulations in relation to the approved synthetic greenhouse gas
26 destruction facility concerned.

27 **^252 Certificate of eligible synthetic greenhouse gas destruction is** 28 **not transferable**

29 A certificate of eligible synthetic greenhouse gas destruction is not
30 transferable.

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 4 Recognised synthetic greenhouse gas destruction customers

Section ^253

1

2 **Division 4—Recognised synthetic greenhouse gas**
3 **destruction customers**

4 **^253 Application for recognition as a synthetic greenhouse gas**
5 **destruction customer**

6 A company may apply to the Authority for recognition as a
7 synthetic greenhouse gas destruction customer.

8 **^254 Form of application**

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

22 **^255 Further information**

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

EXPOSURE DRAFT

1 **^256 Recognition as a synthetic greenhouse gas destruction**
2 **customer**

3 *Scope*

- 4 (1) This section applies if an application under section ^253 has been
5 made for recognition as a synthetic greenhouse gas destruction
6 customer.

7 *Recognition*

- 8 (2) After considering the application, the Authority may, by written
9 notice given to the applicant, recognise the applicant as a synthetic
10 greenhouse gas destruction customer.

11 *Criteria for recognition*

- 12 (3) The Authority must not recognise the applicant as a recognised
13 synthetic greenhouse gas destruction customer unless:
14 (a) the Authority is satisfied that the applicant is a fit and proper
15 person, having regard to the following:
16 (i) whether the applicant has been convicted of an offence
17 against a law of the Commonwealth, a State or
18 Territory, where the offence relates to dishonest
19 conduct;
20 (ii) whether the applicant has been convicted of an offence
21 against a law of the Commonwealth, a State or
22 Territory, where the offence relates to the conduct of a
23 business;
24 (iii) whether the applicant has been convicted of an offence
25 against section 136.1, 137.1 or 137.2 of the *Criminal*
26 *Code*;
27 (iv) whether an executive officer of the applicant has been
28 convicted of an offence against a law of the
29 Commonwealth, a State or Territory, where the offence
30 relates to dishonest conduct;
31 (v) whether an executive officer of the applicant has been
32 convicted of an offence against a law of the
33 Commonwealth, a State or Territory, where the offence
34 relates to the conduct of a business;
-

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 4 Recognised synthetic greenhouse gas destruction customers

Section ^257

- 1 (vi) whether an executive officer of the applicant has been
2 convicted of an offence against section 136.1, 137.1 or
3 137.2 of the *Criminal Code*;
- 4 (vii) whether the applicant has breached this Act or the
5 associated provisions;
- 6 (viii) whether an executive officer of the applicant has
7 breached this Act or the associated provisions;
- 8 (ix) such other matters (if any) as the Authority considers
9 relevant; and
- 10 (b) the Authority is satisfied that the applicant is not an
11 externally-administered body corporate; and
- 12 (c) if the regulations specify one or more other eligibility
13 requirements—the Authority is satisfied that those
14 requirements are met.
- 15 (4) Subparagraphs (3)(a)(i) to (viii) do not limit
16 subparagraph (3)(a)(ix).

Timing

- 17
- 18 (5) The Authority must take all reasonable steps to ensure that a
19 decision is made on the application:
- 20 (a) if the Authority requires the applicant to give further
21 information under subsection ^255(1) in relation to the
22 application—within 90 days after the applicant gave the
23 Authority the information; or
- 24 (b) otherwise—within 90 days after the application was made.

Refusal

- 25
- 26 (6) If the Authority decides to refuse to recognise the applicant as a
27 synthetic greenhouse gas destruction customer, the Authority must
28 give written notice of the decision to the applicant.

^257 Cancellation of recognition

- 29
- 30 (1) The Authority may cancel the recognition of a company as a
31 synthetic greenhouse gas destruction customer if:
- 32 (a) the Authority is satisfied that the company is not a fit and
33 proper person, having regard to the following:

EXPOSURE DRAFT

Destruction of synthetic greenhouse gases **Part 11**
Recognised synthetic greenhouse gas destruction customers **Division 4**

Section ^257

- 1 (i) whether the company has been convicted of an offence
2 against a law of the Commonwealth, a State or
3 Territory, where the offence relates to dishonest
4 conduct;
- 5 (ii) whether the company has been convicted of an offence
6 against a law of the Commonwealth, a State or
7 Territory, where the offence relates to the conduct of a
8 business;
- 9 (iii) whether the company has been convicted of an offence
10 against section 136.1, 137.1 or 137.2 of the *Criminal*
11 *Code*;
- 12 (iv) whether an executive officer of the company has been
13 convicted of an offence against a law of the
14 Commonwealth, a State or Territory, where the offence
15 relates to dishonest conduct;
- 16 (v) whether an executive officer of the company has been
17 convicted of an offence against a law of the
18 Commonwealth, a State or Territory, where the offence
19 relates to the conduct of a business;
- 20 (vi) whether an executive officer of the company has been
21 convicted of an offence against section 136.1, 137.1 or
22 137.2 of the *Criminal Code*;
- 23 (vii) whether the company has breached this Act or the
24 associated provisions;
- 25 (viii) whether an executive officer of the company has
26 breached this Act or the associated provisions;
- 27 (ix) such other matters (if any) as the Authority considers
28 relevant; or
- 29 (b) the Authority is satisfied that the company is an
30 externally-administered body corporate; or
- 31 (c) if the regulations specify one or more other grounds for
32 cancellation—the Authority is satisfied that at least one of
33 those grounds is applicable to the company.
- 34 (2) Subparagraphs (1)(a)(i) to (viii) do not limit
35 subparagraph (1)(a)(ix).

EXPOSURE DRAFT

Part 11 Destruction of synthetic greenhouse gases

Division 4 Recognised synthetic greenhouse gas destruction customers

Section ^258

1 **^258 Surrender of recognition**

2 *Scope*

3 (1) This section applies if a company is recognised as a synthetic
4 greenhouse gas destruction customer.

5 *Surrender*

6 (2) The company may, by written notice given to the Authority,
7 surrender the company's recognition.

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

11 **^259 Recognition is not transferable**

12 If a company is recognised as a synthetic greenhouse gas
13 destruction customer, the company's recognition is not
14 transferable.

EXPOSURE DRAFT

Publication of information **Part 12**

Introduction **Division 1**

Section ^260

1

2

Part 12—Publication of information

3

Division 1—Introduction

4

^260 Simplified outline

5

The following is a simplified outline of this Part:

6

7

8

9

10

11

- The Authority must keep a Liable Entities Public Information Database.
- Certain information about liable entities must be entered in the Information Database.
- The Authority must publish certain other information about the operation of this Act.

EXPOSURE DRAFT

Part 12 Publication of information

Division 2 Information about liable entities

Section ^261

1

2 **Division 2—Information about liable entities**

3 **^261 Liable Entities Public Information Database**

4 (1) The Authority must keep a database, to be known as the Liable
5 Entities Public Information Database.

6 Note: In this Act, *Information Database* means the Liable Entities Public
7 Information Database—see section ^5.

8 (2) The Information Database is to be maintained by electronic means.

9 (3) The Information Database is to be made available for inspection on
10 the Authority's website.

11 **^262 Liable entities to be entered in the Information Database**

12 (1) If the Authority has reasonable grounds to believe that a person is,
13 or is likely to be, a liable entity for an eligible financial year, the
14 Authority must make an entry for the person in the Information
15 Database in relation to the eligible financial year.

16 (2) If:

17 (a) there is an entry for a person in the Information Database in
18 relation to an eligible financial year; and

19 (b) the Authority has reasonable grounds to believe that the
20 person is not a liable entity for that eligible financial year;
21 the Authority must remove the entry from the Information
22 Database.

23 **^263 Emissions number to be entered in the Information Database**

24 *Scope*

25 (1) This section applies if there is an entry for a person in the
26 Information Database in relation to an eligible financial year.

EXPOSURE DRAFT

1 *Emissions number*

2 (2) As soon as practicable after receiving a report under section 22A of
3 the *National Greenhouse and Energy Reporting Act 2007* that
4 specifies a number as the person's emissions number for the
5 eligible financial year, the Authority must enter that number in the
6 Information Database.

7 (3) As soon as practicable after making an assessment under section
8 ^126 or ^127 of the person's emissions number for the eligible
9 financial year, the Authority must enter details of the assessment in
10 the Information Database.

11 (4) As soon as practicable after amending an assessment under section
12 ^126 or ^127 of the person's emissions number for the eligible
13 financial year, the Authority must enter details of the amended
14 assessment in the Information Database.

15 **^264 Unit shortfall to be entered in the Information Database**

16 *Scope*

17 (1) This section applies if there is an entry for a person in the
18 Information Database in relation to an eligible financial year.

19 *Unit shortfall*

20 (2) If:

21 (a) the Authority is of the opinion that the person has a unit
22 shortfall for the eligible financial year; and

23 (b) the Authority has not made an assessment under section ^131
24 of the person's unit shortfall for the eligible financial year;

25 the Authority must enter in the Information Database:

26 (c) the number that represents the Authority's reasonable
27 estimate of the number of units in the person's unit shortfall
28 for the eligible financial year; and

29 (d) the number obtained by dividing the number mentioned in
30 paragraph (c) by the number that represents the Authority's
31 reasonable estimate of the person's emissions number for the
32 eligible financial year; and

EXPOSURE DRAFT

Part 12 Publication of information

Division 2 Information about liable entities

Section ^264

- 1 (e) the amount that represents the Authority's reasonable
2 estimate of the penalty payable by the person under section
3 ^133 in relation to the unit shortfall.
- 4 (3) If the Authority makes an assessment under section ^131 of the
5 person's unit shortfall for the eligible financial year, the Authority
6 must enter in the Information Database:
- 7 (a) details of the assessment; and
8 (b) the number obtained by dividing the number of units in the
9 unit shortfall specified in the assessment by the number that
10 represents the Authority's reasonable estimate of the person's
11 emissions number for the current eligible financial year; and
12 (c) the amount that represents the Authority's reasonable
13 estimate of the penalty payable by the person under section
14 ^133 in relation to the unit shortfall.
- 15 (4) In making an estimate under this section, the Authority may rely on
16 a report given under section 22A of the *National Greenhouse and*
17 *Energy Reporting Act 2007* by the person.
- 18 (5) If:
- 19 (a) an assessment has been made under section ^131 of the
20 person's unit shortfall for the eligible financial year; and
21 (b) any of the following subparagraphs applies:
- 22 (i) a decision to make, to amend, or to refuse to amend, the
23 assessment is being reconsidered by the Authority under
24 section ^348;
- 25 (ii) a decision to make, to amend, or to refuse to amend, the
26 assessment has been affirmed or varied by the Authority
27 under section ^348, and the decision as so affirmed or
28 varied is the subject of an application for review by the
29 Administrative Appeals Tribunal;
- 30 (iii) a decision to make, to amend, or to refuse to amend, the
31 assessment is the subject of an application for review by
32 the Administrative Appeals Tribunal;
- 33 the Authority must:
- 34 (c) make an appropriate annotation in the Information Database;
35 and

EXPOSURE DRAFT

- 1 (d) if subparagraph (b)(i) applies—when the Authority notifies
2 the applicant for reconsideration of the Authority’s decision
3 on the reconsideration, the Authority must make an
4 appropriate annotation in the Information Database; and
5 (e) if subparagraph (b)(ii) or (iii) applies—when the review by
6 the Administrative Appeals Tribunal (including any court
7 proceedings arising out of the review) has been finalised, the
8 Authority must make an appropriate annotation in the
9 Information Database.

10 **^265 Unpaid administrative penalty to be entered in the**
11 **Information Database**

12 *Scope*

- 13 (1) This section applies if:
14 (a) there is an entry for a person in the Information Database in
15 relation to an eligible financial year; and
16 (b) the person has a unit shortfall for the eligible financial year;
17 and
18 (c) an amount (the *penalty amount*) payable by the person under
19 section ^133 in relation to the unit shortfall remains unpaid
20 after the time when the penalty amount became due for
21 payment.

22 *Penalty amount*

- 23 (2) The Authority must enter in the Information Database details of the
24 unpaid penalty amount.

25 **^266 Number of surrendered eligible emissions units to be entered**
26 **in the Information Database**

27 *Scope*

- 28 (1) This section applies if there is an entry for a person in the
29 Information Database in relation to an eligible financial year.

EXPOSURE DRAFT

Part 12 Publication of information

Division 2 Information about liable entities

Section ^267

- 1 *Eligible emissions units surrendered*
- 2 (2) As soon as practicable after receiving a notice under section ^129
- 3 that surrenders, in relation to the eligible financial year, one or
- 4 more eligible emissions units held by the person, the Authority
- 5 must enter in the Information Database:
- 6 (a) the total number of eligible emissions units surrendered; and
- 7 (b) the total number of each of the following types of eligible
- 8 emissions units surrendered:
- 9 (i) Australian emissions units;
- 10 (ii) certified emission reductions;
- 11 (iii) emission reduction units;
- 12 (iv) removal units;
- 13 (v) prescribed units issued in accordance with the Kyoto
- 14 rules;
- 15 (vi) non-Kyoto international emissions units.

16 **^267 Number of voluntarily cancelled units to be entered in the**

17 **Information Database**

18 *Scope*

- 19 (1) This section applies if there is an entry for a person in the
- 20 Information Database in relation to an eligible financial year.

21 *Australian emissions units*

- 22 (2) As soon as practicable after one or more Australian emissions units
- 23 held by the person are cancelled under section ^282, the Authority
- 24 must enter in the Information Database the total number of
- 25 Australian emissions units cancelled.

26 *Kyoto units*

- 27 (3) As soon as practicable after one or more Kyoto units held by the
- 28 person are transferred under section ^283 to a voluntary
- 29 cancellation account, the Authority must enter in the Information
- 30 Database the total number of Kyoto units transferred.

EXPOSURE DRAFT

1 *Non-Kyoto international emissions units*

- 2 (4) As soon as practicable after one or more non-Kyoto international
3 emissions units held by the person are cancelled under section
4 ^284, the Authority must enter in the Information Database the
5 total number of non-Kyoto international emissions units cancelled.

6 **^268 Correction and rectification of the Information Database**

7 *Corrections of clerical errors or obvious defects*

- 8 (1) The Authority may alter the Information Database for the purposes
9 of correcting a clerical error or an obvious defect in the
10 Information Database.

11 *General power of correction*

- 12 (2) The Authority may make such entries in the Information Database
13 as the Authority considers appropriate for the purposes of ensuring
14 that the Information Database is accurate.
- 15 (3) The Authority may exercise the power conferred by subsection (2):
16 (a) on written application being made to the Authority by a
17 person; or
18 (b) on the Authority's own initiative.

EXPOSURE DRAFT

Part 12 Publication of information

Division 3 Information about holders of Registry accounts

Section ^269

1

2 **Division 3—Information about holders of Registry**
3 **accounts**

4 **^269 Information about holders of Registry accounts**

5 The Authority must:

6 (a) publish on its website:

7 (i) the name of each person who has a Registry account;
8 and

9 (ii) the person's address last known to the Authority; and

10 (b) keep that information up-to-date.

EXPOSURE DRAFT

1

2 **Division 4—Information about units**

3 **^270 Information about auction results—last auction**

4 Within 7 business days after conducting an auction of Australian
5 emissions units with a particular vintage year, the Authority must:

- 6 (a) prepare a statement setting out:
- 7 (i) each per unit charge that was payable for the issue of
8 those Australian emissions units; and
 - 9 (ii) for each such per unit charge—the total number of
10 Australian emissions units that were issued for the per
11 unit charge; and
- 12 (b) publish the statement on its website.

13 **^271 Information about auction results—last 6 months**

14 Before the end of each month, the Authority must publish on its
15 website the amount worked out using the formula:

16
$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

17 where:

18 *number of units issued as the result of auctions* means the total
19 number of Australian emissions units that were issued as the result
20 of auctions conducted by the Authority during the 6-month period
21 ending immediately before that month.

22 *total auction proceeds* means the total amount paid or payable as
23 consideration for the issue of Australian emissions units that were
24 issued as the result of auctions conducted by the Authority during
25 the 6-month period ending immediately before that month.

EXPOSURE DRAFT

Part 12 Publication of information

Division 4 Information about units

Section [^]272

1 [^]272 **Information about issue of Australian emissions units for a**
2 **fixed charge**

3 *2010-2011*

4 (1) As soon as practicable after 15 December 2011, the Authority must
5 publish on its website the total number of Australian emissions
6 units issued in accordance with section [^]89 with a vintage year of
7 the eligible financial year beginning on 1 July 2010.

8 *2011-2012*

9 (2) As soon as practicable after 15 December 2012, the Authority must
10 publish on its website the total number of Australian emissions
11 units issued in accordance with section [^]89 with a vintage year of
12 the eligible financial year beginning on 1 July 2011.

13 *2012-2013*

14 (3) As soon as practicable after 15 December 2013, the Authority must
15 publish on its website the total number of Australian emissions
16 units issued in accordance with section [^]89 with a vintage year of
17 the eligible financial year beginning on 1 July 2012.

18 *2013-2014*

19 (4) As soon as practicable after 15 December 2014, the Authority must
20 publish on its website the total number of Australian emissions
21 units issued in accordance with section [^]89 with a vintage year of
22 the eligible financial year beginning on 1 July 2013.

23 *2014-2015*

24 (5) As soon as practicable after 15 December 2015, the Authority must
25 publish on its website the total number of Australian emissions
26 units issued in accordance with section [^]89 with a vintage year of
27 the eligible financial year beginning on 1 July 2014.

EXPOSURE DRAFT

1 **^273 Information about issue of free Australian emissions units**

2 *Emissions-intensive trade-exposed assistance program*

- 3 (1) As soon as practicable after free Australian emissions units are
4 issued to a person in accordance with the emissions-intensive
5 trade-exposed assistance program, the Authority must publish on
6 its website:
- 7 (a) the name of the person; and
 - 8 (b) the total number of free Australian emissions units issued;
9 and
 - 10 (c) the vintage year of the free Australian emissions units issued;
11 and
 - 12 (d) each activity that:
 - 13 (i) under the emissions-intensive trade-exposed assistance
14 program, is taken to be an emissions-intensive
15 trade-exposed activity; and
 - 16 (ii) is an activity in respect of which the free Australian
17 emissions units were issued.

18 *Coal-fired electricity generation*

- 19 (2) As soon as practicable after free Australian emissions units are
20 issued to a person in accordance with Part 9 (coal-fired electricity
21 generation), the Authority must publish on its website:
- 22 (a) the name of the person; and
 - 23 (b) the total number of free Australian emissions units issued;
24 and
 - 25 (c) the vintage year of the free Australian emissions units issued.

26 *Reforestation*

- 27 (3) As soon as practicable after free Australian emissions units are
28 issued to a person in accordance with Part 10 (reforestation), the
29 Authority must publish on its website:
- 30 (a) the name of the person; and
 - 31 (b) the total number of free Australian emissions units issued;
32 and
 - 33 (c) the vintage year of the free Australian emissions units issued.

EXPOSURE DRAFT

Part 12 Publication of information

Division 4 Information about units

Section ^274

1

Destruction of synthetic greenhouse gases

2

(4) As soon as practicable after free Australian emissions units are issued to a person in accordance with Part 11 (destruction of synthetic greenhouse gases), the Authority must publish on its website:

3

4

5

6

(a) the name of the person; and

7

(b) the total number of free Australian emissions units issued; and

8

9

(c) the vintage year of the free Australian emissions units issued.

10

^274 Quarterly reports about issue of free Australian emissions units

11

12

As soon as practicable after the end of each quarter, the Authority must publish the following information on its website:

13

14

(a) the total number of free Australian emissions units with a particular vintage year issued during the quarter in accordance with the emissions-intensive trade-exposed assistance program;

15

16

17

18

(b) for each activity that, under the emissions-intensive trade-exposed assistance program, is taken to be an emissions-intensive trade-exposed activity—the total number of free Australian emissions units with a particular vintage year issued during the quarter in respect of that activity in accordance with that program;

19

20

21

22

23

24

(c) if, at the end of the quarter, there were one or more pending applications for free Australian emissions under the emissions-intensive trade-exposed assistance program—the total number of free Australian emissions units to which those pending applications relate;

25

26

27

28

29

(d) the total number of free Australian emissions units with a particular vintage year issued during the quarter in accordance with Part 9 (coal-fired electricity generation);

30

31

32

(e) the total number of free Australian emissions units with a particular vintage year issued during the quarter in accordance with Part 10 (reforestation);

33

34

35

(f) the total number of free Australian emissions units with a particular vintage year issued during the quarter in

36

EXPOSURE DRAFT

1 accordance with Part 11 (destruction of synthetic greenhouse
2 gases).

3 **^275 Information about surrender of borrowed and banked eligible**
4 **emissions units**

5 *Borrowed units*

- 6 (1) As soon as practicable after 15 December following an eligible
7 financial year, the Authority must publish on its website the total
8 number of Australian emissions units that:
9 (a) were surrendered in relation to the eligible financial year; and
10 (b) had a vintage year later than the eligible financial year.

11 *Banked units*

- 12 (2) As soon as practicable after 15 December following an eligible
13 financial year, the Authority must publish on its website the total
14 number of Australian emissions units that:
15 (a) were surrendered in relation to the eligible financial year; and
16 (b) had a vintage year earlier than the eligible financial year.

17 **^276 Kyoto information**

- 18 (1) The regulations may make provision for, or in relation to, requiring
19 the Authority to publish on its website information that a provision
20 of the Kyoto rules requires Australia's national registry to make
21 publicly available.
- 22 (2) The regulations may require the Authority to:
23 (a) publish on its website the total number of specified Kyoto
24 units for which there are entries in Registry accounts; and
25 (b) keep that information up-to-date.
- 26 (3) The Authority must:
27 (a) publish on its website:
28 (i) the total number of certified emission reductions for
29 which there are entries in Registry accounts; and

EXPOSURE DRAFT

Part 12 Publication of information

Division 4 Information about units

Section ^277

- 1 (ii) the total number of emissions reduction units (other than
2 emission reduction units converted from removal units)
3 for which there are entries in Registry accounts; and
4 (b) keep that information up-to-date.

5 **^277 Information about total emissions numbers and unit shortfalls**

6 As soon as practicable after 15 January following an eligible
7 financial year, the Authority must:

- 8 (a) calculate:
9 (i) the total of the numbers that, in the Authority's opinion,
10 are the emissions numbers of liable entities for the
11 eligible financial year; and
12 (ii) the total of the numbers that, in the Authority's opinion,
13 are the unit shortfalls of liable entities in relation to the
14 eligible financial year; and
15 (b) publish the results on its website.

16 **^278 Publication of concise description of the characteristics of** 17 **eligible emissions units**

18 *Scope*

- 19 (1) This section applies to the period beginning 24 hours before the
20 Authority starts to conduct the first auction of Australian emissions
21 units.

22 *Statement*

- 23 (2) At all times during that period, the Authority must make available
24 on its website a statement setting out a concise description of the
25 characteristics of:
26 (a) Australian emissions units; and
27 (b) each other type of eligible emissions unit.

1

2

Part 13—Fraudulent conduct

3

4

^279 Simplified outline

5

The following is a simplified outline of this Part:

6

7

8

9

10

- If a court convicts a person of an offence relating to fraudulent conduct, and the issue of Australian emissions units is attributable to the commission of the offence, the court may order the person to relinquish a specified number of Australian emissions units.

11

^280 Units issued as a result of fraudulent conduct—court may order relinquishment

12

13

Scope

14

(1) This section applies if:

15

(a) one or more Australian emissions units were issued to a person on a particular occasion; and

16

17

(b) the person has been convicted by a court of an offence against:

18

19

(i) section 134.1 of the *Criminal Code*; or

20

(ii) section 134.2 of the *Criminal Code*; or

21

(iii) section 135.1 of the *Criminal Code*; or

22

(iv) section 135.2 of the *Criminal Code*; or

23

(v) section 135.4 of the *Criminal Code*; or

24

(vi) section 136.1 of the *Criminal Code*; or

25

(vii) section 137.1 of the *Criminal Code*; or

26

(viii) section 137.2 of the *Criminal Code*; and

27

(c) the offence was committed after 15 December 2008; and

28

29

(d) the court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

30

EXPOSURE DRAFT

Part 13 Fraudulent conduct

Section ^280

1

Relinquishment

2

- (2) The court may, on application made by the Director of Public Prosecutions or the Authority, order the person:

3

4

- (a) to relinquish a specified number of Australian emissions units not exceeding the number of Australian emissions units issued as mentioned in paragraph (1)(a); and

5

6

7

- (b) to do so by a specified time.

8

Compliance

9

- (3) The person must comply with an order under subsection (2).

10

Note: An administrative penalty is payable under section ^287 for non-compliance with a relinquishment requirement.

11

12

- (4) The person does not comply with an order under subsection (2) unless the notice of relinquishment specifies the order.

13

14

- (5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:

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- (a) the person is not the registered holder of any Australian emissions units; or

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- (b) the person is not the registered holder of the number of Australian emissions units required to be relinquished.

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Conviction

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- (6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

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EXPOSURE DRAFT

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Part 14—Voluntary cancellation of emissions units

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^281 Simplified outline

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The following is a simplified outline of this Part:

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- If a person is the registered holder of one or more Australian emissions units, the person may request the Authority to cancel any or all of those units.

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- If a person is the registered holder of one or more Kyoto units, the person may request the Authority to transfer to a voluntary cancellation account any or all of those units.

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- If a person is the registered holder of one or more non-Kyoto international emissions units, the person may request the Authority to cancel any or all of those units.

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^282 Voluntary cancellation of Australian emissions units

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(1) If a person is the registered holder of one or more Australian emissions units, the person may, by electronic notice transmitted to the Authority, request the Authority to cancel any or all of those units.

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

- (a) specify the Australian emissions unit or units that are to be cancelled; and
- (b) 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 Australian emissions unit or units that are to be cancelled.

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(3) If the Authority receives a notice under subsection (1) in relation to an Australian emissions unit:

- (a) the unit is cancelled; and

EXPOSURE DRAFT

Part 14 Voluntary cancellation of emissions units

Section ^283

- 1 (b) the Authority must remove the entry for the unit from the
2 person's Registry account in which there is an entry for the
3 unit; and
4 (c) the Minister must, by written notice given to the Authority,
5 direct the Authority to transfer a Kyoto unit from the
6 Commonwealth holding account to a voluntary cancellation
7 account before the end of the true-up period for the relevant
8 commitment period; and
9 (d) the Authority must comply with a direction under
10 paragraph (c).
- 11 (4) The Registry must set out a record of each notice under
12 subsection (1).
- 13 Note: See section ^150 (units in a retirement, cancellation or replacement
14 account cannot be surrendered).

15 **^283 Voluntary cancellation of Kyoto units**

- 16 (1) If a person is the registered holder of one or more Kyoto units, the
17 person may, by electronic notice transmitted to the Authority,
18 request the Authority to transfer to a voluntary cancellation
19 account any or all of those units.
- 20 (2) A notice under subsection (1) must:
- 21 (a) specify the Kyoto unit or units that are to be transferred to the
22 voluntary cancellation account; and
23 (b) specify the account number or account numbers of the
24 person's Registry account, or the person's Registry accounts,
25 in which there is an entry or entries for the Kyoto unit or
26 units that are to be transferred to the voluntary cancellation
27 account.
- 28 (3) If:
- 29 (a) a person requests that a Kyoto unit be transferred to a
30 voluntary cancellation account; and
31 (b) the Authority is satisfied that the transfer of the unit from the
32 person's Registry account to the voluntary cancellation
33 account would not breach regulations made for the purposes
34 of section ^112 (Kyoto rules); and

EXPOSURE DRAFT

1 (c) the Authority is satisfied that the transfer of the unit from the
2 person's Registry account to the voluntary cancellation
3 account would not breach regulations made for the purposes
4 of section ^114 (commitment period reserve);
5 the Authority must comply with the request as soon as practicable
6 after receiving it.

7 (4) The Registry must set out a record of each notice under
8 subsection (1).

9 Note: See section ^150 (units in a retirement, cancellation or replacement
10 account cannot be surrendered).

11 **^284 Voluntary cancellation of non-Kyoto international emissions** 12 **units**

13 (1) If a person is the registered holder of one or more non-Kyoto
14 international emissions units, the person may, by electronic notice
15 transmitted to the Authority, request the Authority to cancel any or
16 all of those units.

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

- 18 (a) specify the non-Kyoto international emissions unit or units
19 that are to be cancelled; and
20 (b) specify the account number or account numbers of the
21 person's Registry account, or the person's Registry accounts,
22 in which there is an entry or entries for the Australian
23 emissions unit or units that are to be cancelled.

24 (3) If the Authority receives a notice under subsection (1) in relation to
25 a non-Kyoto international emissions unit:

- 26 (a) if the regulations require the Authority to cancel the unit—
27 the Authority must cancel the unit; and
28 (b) if the regulations require the Authority to take specified
29 action in relation to the unit—the Authority must take that
30 action; and
31 (c) the Authority must remove the entry for the unit from the
32 person's Registry account in which there is an entry for the
33 unit.

EXPOSURE DRAFT

Part 14 Voluntary cancellation of emissions units

Section ^284

- 1 (4) The Registry must set out a record of each notice under
2 subsection (1).

EXPOSURE DRAFT

Relinquishment of Australian emissions units **Part 15**

Introduction **Division 1**

Section **^285**

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Part 15—Relinquishment of Australian emissions units

3

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Division 1—Introduction

5

^285 Simplified outline

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The following is a simplified outline of this Part:

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- If a person is the registered holder of one or more Australian emissions units, the person may, by electronic notice transmitted to the Authority, relinquish any or all of those units.
- An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act or the emissions-intensive trade-exposed assistance program.

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Note 1: A person may voluntarily relinquish Australian emissions units in order to satisfy a condition for revocation of a section ^209 declaration in relation to a reforestation project.

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Note 2: A person may be required to relinquish Australian emissions units under Part 10 (reforestation), section ^280 (fraudulent conduct) or the emissions-intensive trade-exposed assistance program.

EXPOSURE DRAFT

Part 15 Relinquishment of Australian emissions units

Division 2 How Australian emissions units are relinquished

Section ^286

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Division 2—How Australian emissions units are relinquished

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^286 How Australian emissions units are relinquished

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(1) If a person is the registered holder of one or more Australian emissions units, the person may, by electronic notice transmitted to the Authority, relinquish any or all of those units.

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

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(a) specify the Australian emissions unit or units that are being relinquished; and

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(b) if the Australian emissions unit or units are being relinquished in order to comply with a requirement under the emissions-intensive trade-exposed assistance program—specify the requirement to which the relinquishment relates; and

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(c) if the Australian emissions unit or units are being relinquished in order to comply with a requirement under Part 10 (reforestation)—specify the requirement to which the relinquishment relates; and

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(d) if the Australian emissions unit or units are being voluntarily relinquished in order to satisfy a condition for revocation of a section ^209 declaration in relation to a reforestation project—set out a statement to that effect; and

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(e) if the Australian emissions unit or units are being relinquished in order to comply with an order under subsection ^280(2) (fraudulent conduct)—specify the order to which the relinquishment relates; and

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(f) 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 Australian emissions unit or units that are being relinquished.

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(3) If:

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(a) an Australian emissions unit is relinquished by a person in order to comply with an order under subsection ^280(2); and

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EXPOSURE DRAFT

Relinquishment of Australian emissions units **Part 15**
How Australian emissions units are relinquished **Division 2**

Section ^286

- 1 (b) the order was made because the person was convicted by a
2 court of an offence that relates to:
3 (i) Part 10 (reforestation); or
4 (ii) Part 11 (destruction of synthetic greenhouse gases);
5 then:
6 (c) the unit is cancelled; and
7 (d) the Authority must remove the entry for the unit from the
8 person's Registry account in which there is an entry for the
9 unit.
- 10 (4) If:
11 (a) an Australian emissions unit is relinquished by a person in
12 order to comply with an order under subsection ^280(2); and
13 (b) the order was made because the person has been convicted by
14 a court of an offence that does not relate to:
15 (i) Part 10 (reforestation); or
16 (ii) Part 11 (destruction of synthetic greenhouse gases);
17 then:
18 (c) the Authority must transfer the unit from the person's
19 Registry account in which there is an entry for the unit to the
20 Commonwealth relinquished units account; and
21 (d) when the unit is transferred to the Commonwealth
22 relinquished units account, property in the unit is transferred
23 to the Commonwealth.
- 24 (5) If an Australian emissions unit is relinquished by a person in order
25 to comply with a requirement under the emissions-intensive
26 trade-exposed assistance program:
27 (a) the Authority must transfer the unit from the person's
28 Registry account in which there is an entry for the unit to the
29 Commonwealth relinquished units account; and
30 (b) when the unit is transferred to the Commonwealth
31 relinquished units account, property in the unit is transferred
32 to the Commonwealth.
- 33 (6) If:

EXPOSURE DRAFT

Part 15 Relinquishment of Australian emissions units

Division 2 How Australian emissions units are relinquished

Section ^286

- 1 (a) an Australian emissions unit is relinquished by a person in
2 order to comply with a requirement under Part 10
3 (reforestation); or
4 (b) an Australian emissions unit is voluntarily relinquished in
5 order to satisfy a condition for revocation of a section ^209
6 declaration in relation to a reforestation project;
7 then:
8 (c) the unit is cancelled; and
9 (d) the Authority must remove the entry for the unit from the
10 person's Registry account in which there is an entry for the
11 unit.
- 12 (7) The Registry must set out a record of each notice under
13 subsection (1).

EXPOSURE DRAFT

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2 **Division 3—Compliance with relinquishment requirements**

3 **^287 Compliance with relinquishment requirements**

4 *Scope*

5 (1) This section applies if, under this Act or the emissions-intensive
6 trade-exposed assistance program:

7 (a) a person is required to relinquish a particular number of
8 Australian emissions units; and

9 (b) the person is required to do so by a particular time (the
10 ***compliance deadline***).

11 *No units relinquished*

12 (2) If, by the compliance deadline, the person has not relinquished any
13 Australian emissions units in order to comply with the requirement,
14 the person is liable to pay to the Commonwealth, by way of
15 penalty, an amount worked out using the formula:

$$16 \quad \begin{array}{c} \text{Number of units} \\ \text{required to be relinquished} \end{array} \times \begin{array}{c} \text{Prescribed amount} \\ \text{for the financial year} \\ \text{in which the compliance} \\ \text{deadline occurs} \end{array}$$

17 where:

18 ***prescribed amount for the financial year in which the compliance***
19 ***deadline occurs*** means:

20 (a) if an amount is specified in the regulations for the financial
21 year in which the compliance deadline occurs—that amount;
22 or

23 (b) otherwise—an amount equal to 200% of the benchmark
24 average auction price for the previous financial year.

25 *Relinquishment of insufficient units*

26 (3) If, by the compliance deadline:

27 (a) the person has relinquished one or more Australian emissions
28 units in order to comply with the requirement; and

EXPOSURE DRAFT

Part 15 Relinquishment of Australian emissions units

Division 3 Compliance with relinquishment requirements

Section 287

- 1 (b) the number of relinquished units is less than the number of
2 units required to be relinquished;
3 the person is liable to pay to the Commonwealth, by way of
4 penalty, an amount worked out using the formula:

5
$$\left(\begin{array}{l} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{l} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \begin{array}{l} \text{Prescribed amount for} \\ \text{the financial year in} \\ \text{which the compliance} \\ \text{deadline occurs} \end{array}$$

6 where:

7 ***prescribed amount for the financial year in which the compliance***
8 ***deadline occurs*** means:

- 9 (a) if an amount is specified in the regulations for the financial
10 year in which the compliance deadline occurs—that amount;
11 or
12 (b) otherwise—an amount equal to 200% of the benchmark
13 average auction price for the previous financial year.

14 *When penalty becomes due and payable*

- 15 (4) An amount payable under this section is due and payable at the end
16 of 30 days after the compliance deadline.

17 *Compliance*

- 18 (5) For the purposes of this section, a person relinquishes Australian
19 emissions units in order to comply with a particular requirement
20 under this Act or the emissions-intensive trade-exposed assistance
21 program if, and only if, the notice of relinquishment specifies the
22 requirement.
- 23 (6) To avoid doubt, a person may be liable to pay a penalty under this
24 section even if:
- 25 (a) the person is not the registered holder of any Australian
26 emissions units; or
27 (b) the person is not the registered holder of the number of
28 Australian emissions units required to be relinquished.

EXPOSURE DRAFT

1 **^288 Late payment penalty**

- 2 (1) If an amount payable by a person under section ^287 remains
3 unpaid after the time when it became due for payment, the person
4 is liable to pay, by way of penalty, an amount calculated at the rate of
5 of:
6 (a) 20% per annum; or
7 (b) if a lower rate per annum is specified in the regulations—that
8 lower rate per annum;
9 on the amount unpaid, computed from that time.
- 10 (2) The Authority may remit the whole or a part of an amount payable
11 under subsection (1).

12 **^289 Recovery of penalties**

13 An amount payable under section ^287 or ^288:

- 14 (a) is a debt due to the Commonwealth; and
15 (b) may be recovered by the Authority, on behalf of the
16 Commonwealth, by action in a court of competent
17 jurisdiction.

18 **^290 Set-off**

19 If:

- 20 (a) an amount (the *first amount*) is payable under section ^287
21 or ^288 by a person; and
22 (b) the following conditions are satisfied in relation to another
23 amount (the *second amount*):
24 (i) the amount is payable by the Commonwealth to the
25 person;
26 (ii) the amount is of a kind specified in the regulations;
27 the Authority may, on behalf of the Commonwealth, set off the
28 whole or a part of the first amount against the whole or a part of
29 the second amount.

EXPOSURE DRAFT

Part 15 Relinquishment of Australian emissions units

Division 3 Compliance with relinquishment requirements

Section ^291

1 **^291 Refund of overpayments**

2 *Refund*

3 (1) If any of the following amounts has been overpaid by a person, the
4 amount overpaid must be refunded by the Commonwealth:

5 (a) an amount payable under section ^287;

6 (b) an amount payable under section ^288.

7 Note: For appropriation, see section 28 of the *Financial Management and*
8 *Accountability Act 1997*.

9 *Interest on overpayment*

10 (2) If:

11 (a) an amount overpaid by a person is refunded by the
12 Commonwealth under subsection (1); and

13 (b) the overpayment is attributable, in whole or in part, to an
14 error made by the Authority;

15 interest calculated in accordance with subsection (3) is payable by
16 the Commonwealth to the person in respect of the amount
17 refunded.

18 (3) Interest payable to a person under subsection (2) in respect of an
19 amount refunded to the person is to be calculated:

20 (a) in respect of the period that:

21 (i) began when the overpaid amount was paid to the
22 Commonwealth; and

23 (ii) ended when the amount was refunded; and

24 (b) at the base interest rate (within the meaning of section 8AAD
25 of the *Taxation Administration Act 1953*).

26 (4) The Consolidated Revenue Fund is appropriated for the purposes
27 of making payments of interest under subsection (2).

EXPOSURE DRAFT

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Part 16—Notification of significant holding of Australian emissions units

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[^]292 Simplified outline

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The following is a simplified outline of this Part:

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- The controlling corporation of a group must notify the Authority if the group has a significant holding of Australian emissions units.
- A non-group entity must notify the Authority if the non-group entity has a significant holding of Australian emissions units.

12

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[^]293 Notification of significant holding of Australian emissions units—controlling corporation of a group

14

Scope

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- (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 Australian emissions units with a particular vintage year;
 - (b) the controlling corporation's group ceases to have a significant holding of Australian emissions units with a particular vintage year.

Note: For *significant holding*, see subsection (7).

24

Notice

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- (2) The controlling corporation must, within 5 business days after becoming aware of the event, give the Authority a written notice:
 - (a) informing the Authority of the event; and
 - (b) setting out the additional information mentioned in subsection (3).

EXPOSURE DRAFT

Part 16 Notification of significant holding of Australian emissions units

Section ^293

- 1 (3) The additional information to be set out in the notice is as follows:
2 (a) the name and address of the controlling corporation;
3 (b) for each member of the controlling corporation's group that,
4 immediately after the event, holds one or more Australian
5 emissions units with the vintage year:
6 (i) the name and address of the member; and
7 (ii) details of the member's holding of those Australian
8 emissions units;
9 (c) the total number of Australian emissions units with the
10 vintage year held by the members of the controlling
11 corporation's group immediately after the event;
12 (d) the percentage worked out using the following formula:

$$\frac{\begin{array}{c} \text{Total number of} \\ \text{Australian emissions units with the vintage year} \\ \text{held by the members of} \\ \text{the controlling corporation's group} \\ \text{immediately after the event} \end{array}}{\text{National scheme cap number for the vintage year}} \times 100$$

- 14 (e) such other information (if any) as is specified in the
15 regulations.

16 *Ancillary contraventions*

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

26 *Civil penalty provisions*

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

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

EXPOSURE DRAFT

1 *Authority to publish notice*

- 2 (6) If the Authority receives a notice under subsection (2), the
3 Authority must publish the notice on its website.

4 *Significant holding*

- 5 (7) For the purposes of this section, the controlling corporation's group
6 has a **significant holding** of Australian emissions units with a
7 particular vintage year if the percentage worked out using the
8 following formula is 5% or more:

$$9 \frac{\begin{array}{c} \text{Total number of} \\ \text{Australian emissions units with the vintage year} \\ \text{held by the members of} \\ \text{the controlling corporation's group} \end{array}}{\text{National scheme cap number for the vintage year}} \times 100$$

10 **^294 Notification of significant holding of Australian emissions**
11 **units—non-group entity**

12 *Scope*

- 13 (1) This section applies to a non-group entity if any of the following
14 events occurs:
15 (a) the non-group entity begins to have a significant holding of
16 Australian emissions units with a particular vintage year;
17 (b) the non-group entity ceases to have a significant holding of
18 Australian emissions units with a particular vintage year.

19 Note: For **significant holding**, see subsection (7).

20 *Notice*

- 21 (2) The non-group entity must, within 5 business days after becoming
22 aware of the event, give the Authority a written notice:
23 (a) informing the Authority of the event; and
24 (b) setting out the additional information mentioned in
25 subsection (3).
26 (3) The additional information to be set out in the notice is as follows:

EXPOSURE DRAFT

Part 16 Notification of significant holding of Australian emissions units

Section 294

- 1 (a) the name and address of the non-group entity;
2 (b) the total number of Australian emissions units with the
3 vintage year held by the non-group entity immediately after
4 the event;
5 (c) the percentage worked out using the following formula:

$$6 \frac{\text{Total number of Australian emissions units with the vintage year held by the non-group entity immediately after the event}}{\text{National scheme cap number for the vintage year}} \times 100$$

- 7 (d) such other information (if any) as is specified in the
8 regulations.

9 *Ancillary contraventions*

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

19 *Civil penalty provisions*

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

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

23 *Authority to publish notice*

- 24 (6) If the Authority receives a notice under subsection (2), the
25 Authority must publish the notice on its website.

EXPOSURE DRAFT

Notification of significant holding of Australian emissions units **Part 16**

Section ^294

1

Significant holding

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(7) For the purposes of this section, the non-group entity has a *significant holding* of Australian emissions units with a particular vintage year if the percentage worked out using the following formula is 5% or more:

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4

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$$\frac{\text{Total number of Australian emissions units with the vintage year held by the non-group entity}}{\text{National scheme cap number for the vintage year}} \times 100$$

EXPOSURE DRAFT

Part 17 Information-gathering powers

Section ^295

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Part 17—Information-gathering powers

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^295 Simplified outline

5

The following is a simplified outline of this Part:

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- The Authority may obtain information or documents.

7

^296 Authority may obtain information or documents

8

Scope

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- (1) This section applies to a person if the Authority 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.

13

Requirement

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

23

24

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

25

Compliance

26

- (4) A person must comply with a requirement under subsection (2).

EXPOSURE DRAFT

1 *Ancillary contraventions*

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

11 *Civil penalty provisions*

- 12 (6) Subsections (4) and (5) are ***civil penalty provisions***.

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

14 provisions.

15 *No limitation*

- 16 (7) This section is not limited by:
- 17 (a) any other provision of this Act; or
- 18 (b) any provision of the *National Greenhouse and Energy*
- 19 *Reporting Act 2007*;
- 20 that relates to the powers of the Authority to obtain information or
- 21 documents.

22 **^297 Copying documents—compensation**

23 A person is entitled to be paid by the Authority, on behalf of the

24 Commonwealth, reasonable compensation for complying with a

25 requirement covered by paragraph ^296(2)(c).

26 **^298 Copies of documents**

- 27 (1) The Authority may:
- 28 (a) inspect a document or copy produced under subsection
- 29 ^296(2); and
- 30 (b) make and retain copies of, or take and retain extracts from,
- 31 such a document.

EXPOSURE DRAFT

Part 17 Information-gathering powers

Section ^299

- 1 (2) The Authority may retain possession of a copy of a document
2 produced in accordance with a requirement covered by paragraph
3 ^296(2)(c).

4 **^299 Authority may retain documents**

- 5 (1) The Authority may take, and retain for as long as is necessary,
6 possession of a document produced under subsection ^296(2).
- 7 (2) The person otherwise entitled to possession of the document is
8 entitled to be supplied, as soon as practicable, with a copy certified
9 by the Authority to be a true copy.
- 10 (3) The certified copy must be received in all courts and tribunals as
11 evidence as if it were the original.
- 12 (4) Until a certified copy is supplied, the Authority must, at such times
13 and places as the Authority thinks appropriate, permit the person
14 otherwise entitled to possession of the document, or a person
15 authorised by that person, to inspect and make copies of, or take
16 extracts from, the document.

17 **^300 Self-incrimination**

- 18 (1) A person is not excused from giving information or producing a
19 document under section ^296 on the ground that the information or
20 the production of the document might tend to incriminate the
21 person or expose the person to a penalty.
- 22 (2) However, in the case of an individual:
23 (a) the information given or the document produced; or
24 (b) giving the information or producing the document; or
25 (c) any information, document or thing obtained as a direct or
26 indirect consequence of giving the information or producing
27 the document;
28 is not admissible in evidence against the individual:
29 (d) in civil proceedings for the recovery of a penalty (other than
30 proceedings for the recovery of a penalty under section ^133,
31 ^135, ^287 or ^288); or

EXPOSURE DRAFT

Information-gathering powers **Part 17**

Section ^300

- 1 (e) in criminal proceedings (other than proceedings for an
2 offence against section 137.1 or 137.2 of the *Criminal Code*
3 that relates to this Part).

EXPOSURE DRAFT

Part 18 Record-keeping requirements

Section ^301

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Part 18—Record-keeping requirements

4

^301 Simplified outline

5

The following is a simplified outline of this Part:

6

- The regulations may require a person to:

7

(a) make a record of information; and

8

(b) retain the record.

9

- Records must be kept of the quotation of OTNs.

10

^302 Record-keeping requirements—general

11

- (1) The regulations may require a person to:

12

(a) make a record of specified information, where the information is relevant to this Act; and

13

14

(b) retain:

15

(i) the record; or

16

(ii) a copy of the record;

17

for 5 years after the making of the record.

18

- (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.

19

20

21

Ancillary contraventions

22

- (3) A person must not:

23

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

24

25

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

26

EXPOSURE DRAFT

- 1 (c) be in any way, directly or indirectly, knowingly concerned in,
2 or party to, a contravention of subsection (2); or
3 (d) conspire with others to effect a contravention of
4 subsection (2).

5 *Civil penalty provisions*

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

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

9 *Other provisions do not limit this section*

- 10 (5) This section is not limited by:
11 (a) any other provision of this Act; or
12 (b) a provision of the *National Greenhouse and Energy*
13 *Reporting Act 2007*;
14 that relates to the keeping or retention of records.

15 **^303 Record-keeping requirements—quotation of OTN**

16 *Scope*

- 17 (1) This section applies if:
18 (a) a person (the ***supplier***) supplies an amount of:
19 (i) eligible upstream fuel; or
20 (ii) synthetic greenhouse gas;
21 to another person (the ***recipient***); and
22 (b) the recipient quotes the recipient's OTN in relation to the
23 supply; and
24 (c) the supplier does not, under section ^65, reject the quotation
25 of the recipient's OTN in relation to the supply.

26 *Record-keeping requirements*

- 27 (2) The supplier must retain:
28 (a) the statement by which the quotation was made; or
29 (b) a copy of that statement;
30 for 5 years after the quotation occurred.

EXPOSURE DRAFT

Part 18 Record-keeping requirements

Section ^304

- 1 (3) The recipient must:
2 (a) make a copy of the statement by which the quotation was
3 made; and
4 (b) retain that copy for 5 years after the quotation occurred.

5 *Civil penalty*

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

7 **^304 Record-keeping requirements—rejection of quotation of OTN**

8 *Scope*

- 9 (1) This section applies if:
10 (a) a person (the *supplier*) supplies an amount of:
11 (i) eligible upstream fuel; or
12 (ii) synthetic greenhouse gas;
13 to another person (the *recipient*); and
14 (b) the recipient quotes the recipient's OTN in relation to the
15 supply; and
16 (c) under section ^65, the supplier rejects the quotation of the
17 recipient's OTN in relation to the supply.

18 *Record-keeping requirements*

- 19 (2) The supplier must:
20 (a) make a record of the rejection; and
21 (b) retain:
22 (i) the record; or
23 (ii) a copy of the record;
24 for 5 years after the making of the record.

25 *Civil penalty*

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

EXPOSURE DRAFT

Monitoring powers **Part 19**
Simplified outline **Division 1**

Section ^305

1

2 **Part 19—Monitoring powers**

3 **Division 1—Simplified outline**

4 **^305 Simplified outline**

5

The following is a simplified outline of this Part:

6

- An inspector may enter premises for the purpose of:

7

- (a) determining whether this Act or the associated provisions have been complied with; or

8

9

- (b) substantiating information provided under this Act or the associated provisions.

10

11

- Entry must be with the consent of the occupier of the premises or under a monitoring warrant.

12

13

- An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.

14

15

16

- The occupier of the premises has certain rights and responsibilities.

17

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 2 Appointment of inspectors and issue of identity cards

Section ^306

1

2 **Division 2—Appointment of inspectors and issue of** 3 **identity cards**

4 **^306 Appointment of inspectors**

- 5 (1) The Authority may, in writing, appoint:
6 (a) a member of the staff of the Authority; or
7 (b) a member or special member of the Australian Federal
8 Police;
9 as an inspector for the purposes of this Act.
- 10 (2) The Authority must not appoint a person as an inspector unless the
11 Authority is satisfied that the person has suitable qualifications and
12 experience to properly exercise the powers of an inspector.
- 13 (3) An inspector must, in exercising powers as an inspector, comply
14 with any directions of the Authority.
- 15 (4) If a direction is given under subsection (3) in writing, the direction
16 is not a legislative instrument.

17 **^307 Identity cards**

- 18 (1) The Authority must issue an identity card to an inspector.

19 *Form of identity card*

- 20 (2) The identity card must:
21 (a) be in the form prescribed by the regulations; and
22 (b) contain a recent photograph of the inspector.

23 *Offence*

- 24 (3) A person commits an offence if:
25 (a) the person has been issued with an identity card; and
26 (b) the person ceases to be an inspector; and
27 (c) the person does not, as soon as practicable after so ceasing,
28 return the identity card to the Authority.

EXPOSURE DRAFT

Monitoring powers **Part 19**
Appointment of inspectors and issue of identity cards **Division 2**

Section ^307

1 Penalty: 1 penalty unit.

2 (4) An offence against subsection (3) is an offence of strict liability.

3 Note: For strict liability, see section 6.1 of the *Criminal Code*.

4 *Defence—card lost or destroyed*

5 (5) Subsection (3) does not apply if the identity card was lost or
6 destroyed.

7 Note: A defendant bears an evidential burden in relation to the matter in this
8 subsection: see subsection 13.3(3) of the *Criminal Code*.

9 *Inspector must carry card*

10 (6) An inspector must carry his or her identity card at all times when
11 exercising powers as an inspector.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 3 Powers of inspectors

Section ^308

1

2 **Division 3—Powers of inspectors**

3 **Subdivision A—Monitoring powers**

4 **^308 Inspector may enter premises by consent or under a warrant**

5 (1) For the purpose of:

- 6 (a) determining whether this Act or the associated provisions
7 have been, or are being, complied with; or
8 (b) substantiating information provided under this Act or the
9 associated provisions;

10 an inspector may:

- 11 (c) enter any premises; and
12 (d) exercise the monitoring powers set out in section ^309.

13 (2) However, an inspector is not authorised to enter the premises
14 unless:

- 15 (a) the occupier of the premises has consented to the entry and
16 the inspector has shown his or her identity card if required by
17 the occupier; or
18 (b) the entry is made under a monitoring warrant.

19 Note: If entry to the premises is with the occupier's consent, the inspector
20 must leave the premises if the consent ceases to have effect: see
21 section ^313.

22 **^309 Monitoring powers of inspectors**

23 (1) The following are the *monitoring powers* that an inspector may
24 exercise in relation to premises under section ^308:

- 25 (a) the power to search the premises and any thing on the
26 premises;
27 (b) the power to examine any activity conducted on the premises;
28 (c) the power to inspect, examine, take measurements of or
29 conduct tests on any thing on the premises;
30 (d) the power to make any still or moving image or any
31 recording of the premises or any thing on the premises;
32 (e) the power to inspect any document on the premises;

EXPOSURE DRAFT

- 1 (f) the power to take extracts from, or make copies of, any such
2 document;
- 3 (g) the power to take onto the premises such equipment and
4 materials as the inspector requires for the purpose of
5 exercising powers in relation to the premises;
- 6 (h) the powers set out in subsections (2), (3) and (5).

7 *Operating electronic equipment*

- 8 (2) The monitoring powers include the power to operate electronic
9 equipment on the premises to see whether:
- 10 (a) the equipment; or
11 (b) a disk, tape or other storage device that:
12 (i) is on the premises; and
13 (ii) can be used with the equipment or is associated with it;
14 contains information that is relevant to:
- 15 (c) determining whether this Act or the associated provisions
16 have been, or are being, complied with; or
17 (d) substantiating information provided under this Act or the
18 associated provisions.
- 19 (3) The monitoring powers include the following powers in relation to
20 information described in subsection (2) found in the exercise of the
21 power under that subsection:
- 22 (a) the power to operate electronic equipment on the premises to
23 put the information in documentary form and remove the
24 documents so produced from the premises;
- 25 (b) the power to operate electronic equipment on the premises to
26 transfer the information to a disk, tape or other storage device
27 that:
28 (i) is brought to the premises for the exercise of the power;
29 or
30 (ii) is on the premises and the use of which for that purpose
31 has been agreed in writing by the occupier of the
32 premises;
33 and remove the disk, tape or other storage device from the
34 premises.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 3 Powers of inspectors

Section 309

- 1 (4) An inspector may operate electronic equipment as mentioned in
2 subsection (2) or (3) only if he or she believes on reasonable
3 grounds that the operation of the equipment can be carried out
4 without damage to the equipment.
- 5 *Securing things if entry to premises is under a monitoring warrant*
- 6 (5) If entry to the premises is under a monitoring warrant, the
7 monitoring powers include the power to secure a thing for a period
8 not exceeding 24 hours if:
- 9 (a) the thing is found during the exercise of monitoring powers
10 on the premises; and
- 11 (b) an inspector believes on reasonable grounds that:
- 12 (i) the thing affords evidence of the commission of an
13 offence against this Act or of an offence against the
14 *Crimes Act 1914* or the *Criminal Code* that relates to
15 this Act; and
- 16 (ii) it is necessary to secure the thing in order to prevent it
17 from being concealed, lost or destroyed before a warrant
18 to seize the thing is obtained; and
- 19 (iii) the circumstances are serious and urgent.
- 20 (6) If an inspector believes on reasonable grounds that the thing needs
21 to be secured for more than 24 hours, he or she may apply to a
22 magistrate for an extension of that period.
- 23 (7) The inspector must give notice to the occupier of the premises, or
24 another person who apparently represents the occupier, of his or
25 her intention to apply for an extension. The occupier or other
26 person is entitled to be heard in relation to that application.
- 27 (8) The provisions of this Part relating to the issue of monitoring
28 warrants apply, with such modifications as are necessary, to the
29 issue of an extension.
- 30 (9) The 24 hour period may be extended more than once.

EXPOSURE DRAFT

1 **^310 Persons assisting inspectors**

2 *Inspectors may be assisted by other persons*

- 3 (1) An inspector may, in entering premises under section ^308 and in
4 exercising monitoring powers in relation to the premises, be
5 assisted by other persons if that assistance is necessary and
6 reasonable. A person giving such assistance is a **person assisting**
7 the inspector.

8 *Powers of a person assisting the inspector*

- 9 (2) A person assisting the inspector may:
10 (a) enter the premises; and
11 (b) exercise monitoring powers in relation to the premises, but
12 only in accordance with a direction given to the person by the
13 inspector.
- 14 (3) A power exercised by a person assisting the inspector as mentioned
15 in subsection (2) is taken for all purposes to have been exercised by
16 the inspector.
- 17 (4) If a direction is given under paragraph (2)(b) in writing, the
18 direction is not a legislative instrument.

19 **Subdivision B—Powers of inspectors to ask questions and seek**
20 **production of documents**

21 **^311 Inspector may ask questions and seek production of documents**

22 *Entry with consent*

- 23 (1) If an inspector is authorised to enter premises because the occupier
24 of the premises consented to the entry, the inspector may ask the
25 occupier to:
26 (a) answer any questions relating to the operation of this Act or
27 the associated provisions that are put by the inspector; and
28 (b) produce any document relating to the operation of this Act or
29 the associated provisions that is requested by the inspector.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 3 Powers of inspectors

Section ^312

1 *Entry under a monitoring warrant*

- 2 (2) If an inspector is authorised to enter premises by a monitoring
3 warrant, the inspector may require any person on the premises to:
4 (a) answer any questions relating to the operation of this Act or
5 the associated provisions that are put by the inspector; and
6 (b) produce any document relating to the operation of this Act or
7 the associated provisions that is requested by the inspector.

8 *Offence*

- 9 (3) A person commits an offence if:
10 (a) the person is subject to a requirement under subsection (2);
11 and
12 (b) the person fails to comply with the requirement.

13 Penalty: Imprisonment for 12 months.

14 **^312 Self-incrimination**

- 15 (1) A person is not excused from giving an answer or producing a
16 document under section ^311 on the ground that the answer or the
17 production of the document might tend to incriminate the person or
18 expose the person to a penalty.
- 19 (2) However, in the case of an individual:
- 20 (a) the answer given or the document produced; or
21 (b) giving the answer or producing the document; or
22 (c) any information, document or thing obtained as a direct or
23 indirect consequence of giving the answer or producing the
24 document;
- 25 is not admissible in evidence against the individual:
- 26 (d) in civil proceedings for the recovery of a penalty (other than
27 proceedings for the recovery of a penalty under section ^133,
28 ^135, ^287 or ^288); or
29 (e) in criminal proceedings (other than proceedings for an
30 offence against section 137.1 or 137.2 of the *Criminal Code*
31 that relates to this Part).

EXPOSURE DRAFT

1

2 **Division 4—Obligations and incidental powers of**
3 **inspectors**

4 **^313 Consent**

- 5 (1) An inspector must, before obtaining the consent of an occupier of
6 premises for the purposes of paragraph ^308(2)(a), inform the
7 occupier that the occupier may refuse consent.
- 8 (2) A consent has no effect unless the consent is voluntary.
- 9 (3) A consent may be expressed to be limited to entry during a
10 particular period. If so, the consent has effect for that period unless
11 the consent is withdrawn before the end of that period.
- 12 (4) A consent that is not limited as mentioned in subsection (3) has
13 effect until the consent is withdrawn.
- 14 (5) If an inspector entered premises because of the consent of the
15 occupier of the premises, the inspector, and any person assisting
16 the inspector, must leave the premises if the consent ceases to have
17 effect.

18 **^314 Announcement before entry under warrant**

- 19 (1) An inspector must, before entering premises under a monitoring
20 warrant:
- 21 (a) announce that he or she is authorised to enter the premises;
22 and
- 23 (b) show his or her identity card to the occupier of the premises,
24 or to another person who apparently represents the occupier,
25 if the occupier or other person is present at the premises; and
- 26 (c) give any person at the premises an opportunity to allow entry
27 to the premises.
- 28 (2) However, an inspector is not required to comply with
29 subsection (1) if he or she believes on reasonable grounds that
30 immediate entry to the premises is required:
- 31 (a) to ensure the safety of a person; or

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 4 Obligations and incidental powers of inspectors

Section ^315

1 (b) to ensure that the effective execution of the warrant is not
2 frustrated.

3 (3) If:

4 (a) an inspector does not comply with subsection (1) because of
5 subsection (2); and

6 (b) the occupier of the premises, or another person who
7 apparently represents the occupier, is present at the premises;
8 the inspector must, as soon as practicable after entering the
9 premises, show his or her identity card to the occupier or other
10 person.

11 **^315 Inspector to be in possession of warrant**

12 If a monitoring warrant is being executed in relation to premises,
13 an inspector executing the warrant must be in possession of the
14 warrant or a copy of the warrant.

15 **^316 Details of warrant etc. to be given to occupier**

16 If:

17 (a) a monitoring warrant is being executed in relation to
18 premises; and

19 (b) the occupier of the premises, or another person who
20 apparently represents the occupier, is present at the premises;

21 an inspector executing the warrant must, as soon as practicable:

22 (c) make a copy of the warrant available to the occupier or other
23 person (which need not include the signature of the
24 magistrate who issued it); and

25 (d) inform the occupier or other person of the rights and
26 responsibilities of the occupier or other person under
27 Division 5.

28 **^317 Expert assistance to operate electronic equipment**

29 (1) This section applies to premises to which a monitoring warrant
30 relates.

EXPOSURE DRAFT

1 *Securing equipment*

- 2 (2) If an inspector believes on reasonable grounds that:
- 3 (a) there is on the premises information that is relevant to:
- 4 (i) determining whether this Act or the associated
- 5 provisions have been, or are being, complied with; or
- 6 (ii) substantiating information provided under this Act or
- 7 the associated provisions;
- 8 and that may be accessible by operating electronic equipment
- 9 on the premises; and
- 10 (b) expert assistance is required to operate the equipment; and
- 11 (c) if he or she does not take action under this subsection, the
- 12 information may be destroyed, altered or otherwise interfered
- 13 with;
- 14 he or she may do whatever is necessary to secure the equipment,
- 15 whether by locking it up, placing a guard or other means.
- 16 (3) The inspector must give notice to the occupier of the premises, or
- 17 another person who apparently represents the occupier, of his or
- 18 her intention to secure the equipment and of the fact that the
- 19 equipment may be secured for up to 24 hours.

20 *Period equipment may be secured*

- 21 (4) The equipment may be secured:
- 22 (a) until the 24 hour period ends; or
- 23 (b) until the equipment has been operated by the expert;
- 24 whichever happens first.

25 *Extensions*

- 26 (5) If an inspector believes on reasonable grounds that the equipment
- 27 needs to be secured for more than 24 hours, he or she may apply to
- 28 a magistrate for an extension of that period.
- 29 (6) The inspector must give notice to the occupier of the premises, or
- 30 another person who apparently represents the occupier, of his or
- 31 her intention to apply for an extension. The occupier or other
- 32 person is entitled to be heard in relation to that application.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 4 Obligations and incidental powers of inspectors

Section ^318

1 (7) The provisions of this Part relating to the issue of monitoring
2 warrants apply, with such modifications as are necessary, to the
3 issue of an extension.

4 (8) The 24 hour period may be extended more than once.

5 **^318 Compensation for damage to electronic equipment**

6 (1) This section applies if:

7 (a) as a result of electronic equipment being operated as
8 mentioned in this Part:

9 (i) damage is caused to the equipment; or

10 (ii) the data recorded on the equipment is damaged; or

11 (iii) programs associated with the use of the equipment, or
12 with the use of the data, are damaged or corrupted; and

13 (b) the damage or corruption occurs because:

14 (i) insufficient care was exercised in selecting the person
15 who was to operate the equipment; or

16 (ii) insufficient care was exercised by the person operating
17 the equipment.

18 (2) The Commonwealth must pay the owner of the equipment, or the
19 user of the data or programs, such reasonable compensation for the
20 damage or corruption as the Commonwealth and the owner or user
21 agree on.

22 (3) However, if the owner or user and the Commonwealth fail to
23 agree, the owner or user may institute proceedings in the Federal
24 Court for such reasonable amount of compensation as the Court
25 determines.

26 (4) In determining the amount of compensation payable, regard is to
27 be had to whether the occupier of the premises, or the occupier's
28 employees and agents, if they were available at the time, provided
29 any appropriate warning or guidance on the operation of the
30 equipment.

31 (5) In this section:

32 *damage*, in relation to data, includes damage by erasure of data or
33 addition of other data.

EXPOSURE DRAFT

1

2 **Division 5—Occupier's rights and responsibilities**

3 **^319 Occupier entitled to observe execution of warrant**

- 4 (1) If:
- 5 (a) a monitoring warrant is being executed in relation to
- 6 premises; and
- 7 (b) the occupier of the premises, or another person who
- 8 apparently represents the occupier, is present at the premises;
- 9 the occupier or other person is entitled to observe the execution of
- 10 the warrant.
- 11 (2) The right to observe the execution of the warrant ceases if the
- 12 occupier or other person impedes that execution.
- 13 (3) This section does not prevent the execution of the warrant in 2 or
- 14 more areas of the premises at the same time.

15 **^320 Occupier to provide inspector with facilities and assistance**

- 16 (1) The occupier of premises to which a monitoring warrant relates, or
- 17 another person who apparently represents the occupier, must
- 18 provide:
- 19 (a) an inspector executing the warrant; and
- 20 (b) any person assisting the inspector;
- 21 with all reasonable facilities and assistance for the effective
- 22 exercise of their powers.
- 23 (2) A person commits an offence if:
- 24 (a) the person is subject to subsection (1); and
- 25 (b) the person fails to comply with that subsection.
- 26 Penalty: 50 penalty units.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 6 Monitoring warrants

Section ^321

1

2 **Division 6—Monitoring warrants**

3 **^321 Monitoring warrants**

4 *Application for warrant*

- 5 (1) An inspector may apply to a magistrate for a warrant under this
6 section in relation to premises.

7 *Issue of warrant*

- 8 (2) The magistrate may issue the warrant if the magistrate is satisfied,
9 by information on oath or affirmation, that it is reasonably
10 necessary that one or more inspectors should have access to the
11 premises for the purpose of:
12 (a) determining whether this Act or the associated provisions
13 have been, or are being, complied with; or
14 (b) substantiating information provided under this Act or the
15 associated provisions.
- 16 (3) However, the magistrate must not issue the warrant unless the
17 inspector or some other person has given to the magistrate, either
18 orally or by affidavit, such further information (if any) as the
19 magistrate requires concerning the grounds on which the issue of
20 the warrant is being sought.

21 *Content of warrant*

- 22 (4) The warrant must:
23 (a) describe the premises to which the warrant relates; and
24 (b) state that the warrant is issued under this section; and
25 (c) state that the warrant is issued for the purpose of:
26 (i) determining whether this Act or the associated
27 provisions have been, or are being, complied with; or
28 (ii) substantiating information provided under this Act or
29 the associated provisions; and

EXPOSURE DRAFT

Monitoring powers **Part 19**
Monitoring warrants **Division 6**

Section ^321

- 1 (d) authorise one or more inspectors (whether or not named in
2 the warrant) from time to time while the warrant remains in
3 force:
4 (i) to enter the premises; and
5 (ii) to exercise the powers set out in Divisions 3 and 4 in
6 relation to the premises; and
7 (e) state whether the entry is authorised to be made at any time
8 of the day or during specified hours of the day; and
9 (f) specify the day (not more than 6 months after the issue of the
10 warrant) on which the warrant ceases to be in force.

EXPOSURE DRAFT

Part 19 Monitoring powers

Division 7 Powers of magistrates

Section ^322

1

2 **Division 7—Powers of magistrates**

3 **^322 Powers of magistrates**

4 *Powers conferred personally*

5 (1) A power conferred on a magistrate by this Part is conferred on the
6 magistrate:

- 7 (a) in a personal capacity; and
8 (b) not as a court or a member of a court.

9 *Powers need not be accepted*

10 (2) The magistrate need not accept the power conferred.

11 *Protection and immunity*

12 (3) A magistrate exercising a power conferred by this Part has the
13 same protection and immunity as if he or she were exercising the
14 power:

- 15 (a) as the court of which the magistrate is a member; or
16 (b) as a member of the court of which the magistrate is a
17 member.

EXPOSURE DRAFT

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2

Part 20—Liability of executive officers of bodies corporate

3

4

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[^]323 Simplified outline

6

The following is a simplified outline of this Part:

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9

10

- If a body corporate contravenes a civil penalty provision, and an executive officer of the body corporate was involved in the contravention, the officer will contravene a civil penalty provision.

11

[^]324 Civil penalties for executive officers of bodies corporate

12

(1) If:

13

(a) a body corporate contravenes a civil penalty provision; and

14

(b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and

15

16

(c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

17

18

(d) the officer failed to take all reasonable steps to prevent the contravention;

19

20

the officer contravenes this subsection.

21

22

Civil penalty provision

23

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

24

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

25

26

[^]325 Reasonable steps to prevent contravention

27

(1) For the purposes of section [^]324, in determining whether an executive officer of a body corporate failed to take all reasonable

28

EXPOSURE DRAFT

Part 20 Liability of executive officers of bodies corporate

Section ^325

- 1 steps to prevent a contravention, the Federal Court is to have
2 regard to:
- 3 (a) what action (if any) the officer took directed towards
4 ensuring the following (to the extent that the action is
5 relevant to the contravention):
- 6 (i) that the body corporate arranges regular professional
7 assessments of the body corporate's compliance with
8 civil penalty provisions;
- 9 (ii) that the body corporate implements any appropriate
10 recommendations arising from such an assessment;
- 11 (iii) that the body corporate's employees, agents and
12 contractors have a reasonable knowledge and
13 understanding of the requirements to comply with civil
14 penalty provisions in so far as those requirements affect
15 the employees, agents or contractors concerned; and
- 16 (b) what action (if any) the officer took when he or she became
17 aware that the body corporate was contravening the civil
18 penalty provision concerned.
- 19 (2) This section does not limit section ^324.

1

2

Part 21—Civil penalty orders

3

4

^326 Simplified outline

5

The following is a simplified outline of this Part:

6

7

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

8

^327 Civil penalty orders

9

10

11

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

12

13

- (2) An order under subsection (1) is to be known as a *civil penalty order*.

14

Determining amount of pecuniary penalty

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23

- (3) In determining the pecuniary penalty, the Federal Court must 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
 - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

24

25

26

27

28

29

- (4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed:
 - (a) in the case of a contravention of subsection ^68(1), (2) or (3)—the amount worked out under subsection (5); or
 - (b) in the case of a contravention of subsection ^163(1), (2) or (5)—1,250 penalty units for each contravention; or

EXPOSURE DRAFT

Part 21 Civil penalty orders

Section ^328

- 1 (c) otherwise—10,000 penalty units for each contravention.
- 2 (5) For the purposes of paragraph (4)(a), the amount is whichever is
3 the greater of the following amounts:
- 4 (a) if the court can determine the total value of the benefits that:
5 (i) have been obtained by one or more persons; and
6 (ii) are reasonably attributable to the contravention;
7 3 times that total value;
- 8 (b) in any case—10,000 penalty units.
- 9 (6) The pecuniary penalty payable under subsection (1) by a person
10 other than a body corporate must not exceed:
- 11 (a) in the case of a contravention of subsection ^163(1), (2) or
12 (5)—250 penalty units for each contravention; or
13 (b) otherwise—2,000 penalty units for each contravention.
- 14 *Civil enforcement of penalty*
- 15 (7) A pecuniary penalty is a civil debt payable to the Commonwealth.
16 The Commonwealth may enforce the civil penalty order as if it
17 were an order made in civil proceedings against the person to
18 recover a debt due by the person. The debt arising from the order is
19 taken to be a judgment debt.

^328 Who may apply for a civil penalty order

- 20 (1) Only the Authority may apply for a civil penalty order.
- 21 (2) Subsection (1) does not exclude the operation of the *Director of*
22 *Public Prosecutions Act 1983*.
23

^329 2 or more proceedings may be heard together

- 24 The Federal Court may direct that 2 or more proceedings for civil
25 penalty orders are to be heard together.
26

^330 Time limit for application for an order

- 27 Proceedings for a civil penalty order may be started no later than 6
28 years after the contravention.
29

1 **^331 Civil evidence and procedure rules for civil penalty orders**

2 The Federal Court must apply the rules of evidence and procedure
3 for civil matters when hearing proceedings for a civil penalty
4 order.

5 **^332 Civil proceedings after criminal proceedings**

6 The Federal Court must not make a civil penalty order against a
7 person for a contravention of a civil penalty provision if the person
8 has been convicted of an offence constituted by conduct that is
9 substantially the same as the conduct constituting the
10 contravention.

11 **^333 Criminal proceedings during civil proceedings**

- 12 (1) Proceedings for a civil penalty order against a person for a
13 contravention of a civil penalty provision are stayed if:
- 14 (a) criminal proceedings are started or have already been started
15 against the person for an offence; and
 - 16 (b) the offence is constituted by conduct that is substantially the
17 same as the conduct alleged to constitute the contravention.
- 18 (2) The proceedings for the order may be resumed if the person is not
19 convicted of the offence. Otherwise, the proceedings for the order
20 are dismissed.

21 **^334 Criminal proceedings after civil proceedings**

22 Criminal proceedings may be started against a person for conduct
23 that is substantially the same as conduct constituting a
24 contravention of a civil penalty provision regardless of whether a
25 civil penalty order has been made against the person.

26 **^335 Evidence given in proceedings for a civil penalty order not
27 admissible in criminal proceedings**

28 Evidence of information given, or evidence of production of
29 documents, by an individual is not admissible in criminal
30 proceedings against the individual if:

EXPOSURE DRAFT

Part 21 Civil penalty orders

Section ^336

- 1 (a) the individual previously gave the evidence or produced the
2 documents in proceedings for a civil penalty order against the
3 individual for a contravention of a civil penalty provision
4 (whether or not the order was made); and
5 (b) the conduct alleged to constitute the offence is substantially
6 the same as the conduct that was claimed to constitute the
7 contravention.
- 8 However, this does not apply to a criminal proceeding in respect of
9 the falsity of the evidence given by the individual in the
10 proceedings for the civil penalty order.

11 **^336 Mistake of fact**

- 12 (1) A person is not liable to have a civil penalty order made against the
13 person for a contravention of a civil penalty provision if:
14 (a) at or before the time of the conduct constituting the
15 contravention, the person:
16 (i) considered whether or not facts existed; and
17 (ii) was under a mistaken but reasonable belief about those
18 facts; and
19 (b) had those facts existed, the conduct would not have
20 constituted a contravention of the civil penalty provision.
- 21 (2) For the purposes of subsection (1), a person may be regarded as
22 having considered whether or not facts existed if:
23 (a) the person had considered, on a previous occasion, whether
24 those facts existed in the circumstances surrounding that
25 occasion; and
26 (b) the person honestly and reasonably believed that the
27 circumstances surrounding the present occasion were the
28 same, or substantially the same, as those surrounding the
29 previous occasion.
- 30 (3) A person who wishes to rely on subsection (1) or (2) in
31 proceedings for a civil penalty order bears an evidential burden in
32 relation to that matter.

EXPOSURE DRAFT

1 **^337 State of mind**

2 *Scope*

3 (1) This section applies to proceedings for a civil penalty order against
4 a person for a contravention of subsection ^296(4).

5 *State of mind*

6 (2) In the proceedings, it is not necessary to prove:

- 7 (a) the person's intention; or
8 (b) the person's knowledge; or
9 (c) the person's recklessness; or
10 (d) the person's negligence; or
11 (e) any other state of mind of the person.

12 (3) Subsection (2) does not affect the operation of section ^336.

13 **^338 Continuing contraventions**

14 (1) If an act or thing is required, under a civil penalty provision of this
15 Act, to be done within a particular period, or before a particular
16 time, then the obligation to do that act or thing continues (even if
17 the period has expired or the time has passed) until the act or thing
18 is done.

19 (2) A person who contravenes any of the following civil remedy
20 provisions:

- 21 (a) subsection ^67(2);
22 (b) subsection ^164(4), so far as that subsection relates to a
23 requirement mentioned in subsection ^164(2);
24 (c) subsection ^173(1);
25 (d) subsection ^225(2);
26 (e) subsection ^235(2);
27 (f) subsection ^293(2);
28 (g) subsection ^294(2);
29 (h) subsection ^296(4);

30 commits a separate contravention of that provision in respect of
31 each day (including a day of the making of a relevant civil penalty

EXPOSURE DRAFT

Part 21 Civil penalty orders

Section ^338

1 order or any subsequent day) during which the contravention
2 continues.

EXPOSURE DRAFT

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Part 22—Offences relating to administrative penalties

3

4

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^339 Simplified outline

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The following is a simplified outline of this Part:

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- A person must not enter into a scheme with the intention of securing or achieving the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act.

11

^340 Scheme to avoid existing liability to pay administrative penalty

12

Intention

13

(1) A person commits an offence if:

14

(a) a penalty is due and payable by a body corporate or trust under section ^133 or ^287; and

15

16

(b) at or after the time when the penalty became due and payable, the person entered into a scheme; and

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(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:

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21

(i) will be unable; or

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(ii) will be likely to be unable; or

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(iii) will continue to be unable; or

24

(iv) will be likely to continue to be unable;

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having regard to the other debts of the body corporate or trust, to pay the penalty.

26

27

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

28

EXPOSURE DRAFT

Part 22 Offences relating to administrative penalties

Section ^341

- 1 (2) For the purposes of subsection (1), it is immaterial whether the
2 body corporate or the trustee of the trust is:
3 (a) the person mentioned in subsection (1); or
4 (b) a party to the scheme.

5 *Knowledge or belief*

- 6 (3) A person commits an offence if:
7 (a) a penalty is due and payable by a body corporate or trust
8 under section ^133 or ^287; and
9 (b) at or after the time when the penalty became due and
10 payable, the person entered into a scheme; and
11 (c) the person entered into the scheme with the knowledge or
12 belief that the scheme will, or will be likely to, secure or
13 achieve the result, either generally or for a limited period,
14 that the body corporate or trust:
15 (i) will be unable; or
16 (ii) will be likely to be unable; or
17 (iii) will continue to be unable; or
18 (iv) will be likely to continue to be unable;
19 having regard to the other debts of the body corporate or
20 trust, to pay the penalty.

21 Penalty: Imprisonment for 10 years or 10,000 penalty units, or
22 both.

- 23 (4) For the purposes of subsection (3), it is immaterial whether the
24 body corporate or the trustee of the trust is:
25 (a) the person mentioned in subsection (3); or
26 (b) a party to the scheme.

27 **^341 Scheme to avoid future liability to pay administrative penalty**

28 *Intention*

- 29 (1) A person commits an offence if:
30 (a) a penalty is due and payable by a body corporate or trust
31 under section ^133 or ^287; and

EXPOSURE DRAFT

- 1 (b) before the penalty became due and payable, the person
2 entered into a scheme; and
- 3 (c) the person entered into the scheme with the intention of
4 securing or achieving the result, either generally or for a
5 limited period, that, in the event that the body corporate or
6 trust were to become liable to pay the penalty, the body
7 corporate or trust:
- 8 (i) will be unable; or
9 (ii) will be likely to be unable; or
10 (iii) will continue to be unable; or
11 (iv) will be likely to continue to be unable;
12 having regard to the other debts of the body corporate or
13 trust, to pay the penalty.

14 Penalty: Imprisonment for 10 years or 10,000 penalty units, or
15 both.

- 16 (2) For the purposes of subsection (1), it is immaterial whether the
17 body corporate or the trustee of the trust is:
- 18 (a) the person mentioned in subsection (1); or
19 (b) a party to the scheme.

20 *Knowledge or belief*

- 21 (3) A person commits an offence if:
- 22 (a) a penalty is due and payable by a body corporate or trust
23 under section ^133 or ^287; and
- 24 (b) before the penalty became due and payable, the person
25 entered into a scheme; and
- 26 (c) the person entered into the scheme with the knowledge or
27 belief that the scheme will, or will be likely to, secure or
28 achieve the result, either generally or for a limited period,
29 that, in the event that the body corporate or trust were to
30 become liable to pay the penalty, the body corporate or trust:
- 31 (i) will be unable; or
32 (ii) will be likely to be unable; or
33 (iii) will continue to be unable; or
34 (iv) will be likely to continue to be unable;

EXPOSURE DRAFT

Part 22 Offences relating to administrative penalties

Section ^341

- 1 having regard to the other debts of the body corporate or
2 trust, to pay the penalty.
- 3 Penalty: Imprisonment for 10 years or 10,000 penalty units, or
4 both.
- 5 (4) For the purposes of subsection (3), it is immaterial whether the
6 body corporate or the trustee of the trust is:
7 (a) the person mentioned in subsection (3); or
8 (b) a party to the scheme.

1

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Part 23—Enforceable undertakings

3

4

[^]342 Simplified outline

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The following is a simplified outline of this Part:

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- A person may give the Authority an enforceable undertaking about compliance with this Act or the associated provisions.

8

[^]343 Acceptance of undertakings

9

(1) The Authority may accept any of the following undertakings:

10

(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;

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(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;

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(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.

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(2) The undertaking must be expressed to be an undertaking under this section.

22

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(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Authority.

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(4) The Authority may, by written notice given to the person, cancel the undertaking.

26

27

(5) The Authority must publish the undertaking on its website.

EXPOSURE DRAFT

Part 23 Enforceable undertakings

Section ^344

1 **^344 Enforcement of undertakings**

2 (1) If:

- 3 (a) a person has given an undertaking under section ^343; and
4 (b) the undertaking has not been withdrawn or cancelled; and
5 (c) the Authority considers that the person has breached the
6 undertaking;

7 the Authority may apply to the Federal Court for an order under
8 subsection (2).

9 (2) If the Federal Court is satisfied that the person has breached the
10 undertaking, the court may make any or all of the following orders:

- 11 (a) an order directing the person to comply with the undertaking;
12 (b) an order directing the person to pay to the Authority, on
13 behalf of the Commonwealth, an amount up to the amount of
14 any financial benefit that the person has obtained directly or
15 indirectly and that is reasonably attributable to the breach;
16 (c) any order that the court considers appropriate directing the
17 person to compensate any other person who has suffered loss
18 or damage as a result of the breach;
19 (d) any other order that the court considers appropriate.

EXPOSURE DRAFT

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Part 24—Review of decisions

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^345 Simplified outline

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The following is a simplified outline of this Part:

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- Certain decisions of delegates of the Authority may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the Authority.
- Certain decisions of the Authority may be reviewed by the Administrative Appeals Tribunal.

11

^346 Reviewable decisions

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For the purposes of this Act, each of the following decisions of the Authority is a *reviewable decision*:

Reviewable decisions

Item	Decision
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1	A decision to make a determination under subsection ^23(2).
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2	A decision to make a determination under subsection ^30(2).
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3	A decision to refuse to issue an OTN under section ^44.
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4	A decision to refuse to give consent to the surrender of an OTN under section ^46.
---	--

5	A decision to cancel an OTN under section ^47.
---	--

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.
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7	A decision to refuse to issue a liability transfer certificate under section ^72 or ^76.
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8	A decision to refuse to give consent to the surrender of a liability transfer certificate under section ^78.
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9	A decision to cancel a liability transfer certificate under section ^79.
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EXPOSURE DRAFT

Part 24 Review of decisions

Section 346

Reviewable decisions

Item	Decision
10	A decision under subsection 97(5) to refuse to extend a period.
11	A prescribed decision under a subsection 103(1) or (2) determination.
12	A decision to make an assessment under section 126.
13	A decision under subsection 126(4) to amend an assessment under section 126.
14	A decision under subsection 126(4) to refuse to amend an assessment under section 126.
15	A decision to make an assessment under section 127.
16	A decision under subsection 127(4) to amend an assessment under section 127.
17	A decision under subsection 127(4) to refuse to amend an assessment under section 127.
18	A decision to make an assessment under section 131.
19	A decision under subsection 131(5) or (6) to amend an assessment under section 131.
20	A decision under subsection 131(5) or (6) to refuse to amend an assessment under section 131.
21	A decision under subsection 135(2) to refuse to remit the whole or a part of an amount.
22	A decision under section 147 to refuse to open a Registry account.
23	A decision under section 155 to alter the Registry.
24	A decision to refuse to alter the Registry under section 155.
25	A decision under section 156, 157 or 158 to make an alteration to the Registry.
26	A decision to refuse to make an alteration to the Registry under section 156, 157 or 158.
27	A prescribed decision under the emissions-intensive trade-exposed assistance program.
28	A decision under subsection 180(3) to state that a specified number is the annual assistance factor in respect of a generation asset.
29	A decision to refuse to issue a certificate of eligibility for coal-fired electricity generation assistance under section 180.
30	A decision to make a windfall gain declaration under section 186.

EXPOSURE DRAFT

Reviewable decisions

Item Decision

31	A decision under subsection ^195(5) to state that a specified number is the unit entitlement in respect of a certificate of reforestation.
32	A decision to refuse to issue a certificate of reforestation under section ^195.
33	A decision to refuse to recognise a person as a reforestation entity under section ^201.
34	A decision under section ^202 to cancel a person's recognition as a reforestation entity.
35	A decision to refuse to declare that a reforestation project is an eligible reforestation project under section ^209.
36	A decision under section ^212, ^213 or ^214 to vary an eligible reforestation project declaration.
37	A decision under section ^212 to refuse to vary an eligible reforestation project declaration.
38	A decision under section ^215, ^216, ^217, ^218 or ^219 to revoke an eligible reforestation project declaration.
39	A decision under subsection ^220(2) to declare that a specified number is the reforestation unit limit for a project.
40	A decision under section ^221 to refuse to increase the reforestation unit limit for a project.
41	A decision under section ^222 to decrease the reforestation unit limit for a project.
42	A decision to give a direction under subsection ^226(3).
43	A decision under section ^232 or ^233 to require a person to relinquish a specified number of Australian emissions units.
44	A decision to refuse to approve a relinquishment obligation transfer agreement under section ^234.
45	A decision to refuse to issue a certificate of eligible synthetic greenhouse gas destruction under section ^249.
46	A decision under subsection ^249(3) to state that a specified number is the unit entitlement in respect of a certificate of eligible synthetic greenhouse gas destruction.
47	A decision to refuse to recognise a company as a synthetic greenhouse gas destruction customer under section ^256.
48	A decision to cancel a company's recognition as a synthetic greenhouse gas

EXPOSURE DRAFT

Part 24 Review of decisions

Section ^347

Reviewable decisions

Item	Decision
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	destruction customer under section ^257.
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49	A decision under section ^262 to refuse to remove an entry for a person in the Information Database.
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50	A decision under subsection ^288(2) to refuse to remit the whole or a part of an amount.
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^347 Applications for reconsideration of decisions made by delegates of the Authority

Scope

- (1) This section applies to a reviewable decision if the decision is made by a delegate of the Authority.

Application

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Authority for the Authority to reconsider the decision.
- (3) The application must:
- (a) be in a form approved in writing by the Authority; 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 Authority.
- (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 Authority extends the period within which the application may be made—the extended period.
- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.
- (6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

1 **^348 Reconsideration by the Authority**

- 2 (1) Upon receiving such an application, the Authority must:
- 3 (a) reconsider the decision; and
- 4 (b) affirm, vary or revoke the decision.
- 5 (2) The Authority's decision on reconsideration of a decision has
- 6 effect as if it had been made under the provision under which the
- 7 original decision was made.
- 8 (3) The Authority must give to the applicant a written notice stating its
- 9 decision on the reconsideration.
- 10 (4) Within 28 days after making its decision on the reconsideration,
- 11 the Authority must give the applicant a written statement of its
- 12 reasons for its decision.

13 **^349 Deadline for reconsideration**

- 14 (1) The Authority must make its decision on reconsideration of a
- 15 decision within 90 days after receiving an application for
- 16 reconsideration.
- 17 (2) The Authority is taken, for the purposes of this Part, to have made
- 18 a decision affirming the original decision if it has not informed the
- 19 applicant of its decision on the reconsideration before the end of
- 20 the period of 90 days.

21 **^350 Review by the Administrative Appeals Tribunal**

- 22 (1) Applications may be made to the Administrative Appeals Tribunal
- 23 to review a reviewable decision if the Authority has affirmed or
- 24 varied the decision under section ^348.
- 25 (2) Applications may be made to the Administrative Appeals Tribunal
- 26 to review a reviewable decision if the decision was not made by a
- 27 delegate of the Authority.

EXPOSURE DRAFT

Part 24 Review of decisions

Section ^351

^351 Stay of proceedings for the recovery of an administrative penalty

Scope

- (1) This section applies if:
- (a) proceedings for the recovery of an amount under section ^133 or ^135 are before a court; and
 - (b) under section ^133, a notice of assessment under section ^131 is prima facie evidence of a matter relevant to the proceedings; and
 - (c) 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 Authority under section ^348;
 - (ii) a decision to make, to amend, or to refuse to amend, the assessment has been affirmed or varied by the Authority under section ^348, 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)(c)(i) applies—the Authority notifies the applicant for reconsideration of the Authority’s decision on the reconsideration; or
 - (b) if subparagraph (1)(c)(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
 - (b) a Judge; or
 - (c) a magistrate;
- under any other law to order a stay of proceedings.

EXPOSURE DRAFT

Independent reviews **Part 25**
Simplified outline **Division 1**

Section ^352

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Part 25—Independent reviews

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Division 1—Simplified outline

4

^352 Simplified outline

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The following is a simplified outline of this Part:

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- An expert advisory committee must conduct periodic reviews of certain matters relating to the carbon pollution reduction scheme.
- The first review must be completed before the end of 30 June 2014.
- Subsequent reviews will be conducted at 5-yearly intervals.
- In addition to periodic reviews, an expert advisory committee is to conduct a review of matters that:
 - (a) are specified by the Minister; and
 - (b) relate to the carbon pollution reduction scheme.
- Members of expert advisory committees are to be appointed by the Minister.

EXPOSURE DRAFT

Part 25 Independent reviews

Division 2 Periodic reviews

Section ^353

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Division 2—Periodic reviews

3

^353 Periodic reviews to be conducted by an expert advisory committee

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(1) Reviews of the following matters are to be conducted by an expert advisory committee:

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(a) the effectiveness and efficiency of the carbon pollution reduction scheme, including:

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(i) the effectiveness of reporting requirements imposed on liable entities; and

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11

(ii) the effectiveness of the coverage of emissions, and potential emissions, of greenhouse gases; and

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13

(iii) administrative costs incurred by liable entities in complying with the scheme;

14

15

(b) whether national targets relating to emissions of greenhouse gases should be changed or extended;

16

17

(c) the regulations that should be made for the purposes of section ^14 (national scheme cap);

18

19

(d) the regulations that should be made for the purposes of section ^15 (national scheme gateway);

20

21

(e) policies and procedures that should be applied by the Authority in relation to the auctioning of Australian emissions units;

22

23

24

(f) the extent to which units other than Australian emissions units should be able to be surrendered;

25

26

(g) the extent to which a liable entity should be able to meet an obligation under section ^132 in relation to an eligible financial year by surrendering an Australian emissions unit with a vintage year that is later than the eligible financial year;

27

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29

30

(h) the emissions-intensive trade-exposed assistance program;

31

32

(i) the arrangements for the governance and administration of the carbon pollution reduction scheme, including:

33

34

(i) the functions and powers of the Authority; and

EXPOSURE DRAFT

Independent reviews **Part 25**

Periodic reviews **Division 2**

Section ^353

- 1 (ii) the Minister's power to give directions to the Authority;
2 and
3 (iii) the other powers of the Minister;
4 (j) such other matters (if any) that:
5 (i) are specified in a written instrument given by the
6 Minister to the Chair of the expert advisory committee;
7 and
8 (ii) relate to the carbon pollution reduction scheme.

9 Note: Expert advisory committees are established under section ^357.

10 *Timing of reviews*

- 11 (2) The first review must be completed before the end of 30 June
12 2014.
13 (3) Each subsequent review must be completed within 5 years after the
14 last day on which a copy of a statement setting out the
15 Commonwealth Government's response to the recommendations of
16 the previous review was tabled in a House of the Parliament under
17 paragraph ^354(6)(b).
18 (4) For the purposes of subsections (2) and (3), a review is completed
19 when the report of the review is given to the Minister under section
20 ^354.

21 *Consultation*

- 22 (5) In conducting a review, an expert advisory committee must make
23 provision for public consultation.

24 *Relevant matters*

- 25 (6) In conducting a review, an expert advisory committee must have
26 regard to:
27 (a) any policies of the Commonwealth Government notified to
28 the expert advisory committee by the Minister; and
29 (b) such other matters as the expert advisory committee
30 considers relevant.

EXPOSURE DRAFT

Part 25 Independent reviews

Division 2 Periodic reviews

Section ^354

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Instrument

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- (7) An instrument given under paragraph (1)(j) is not a legislative instrument.

3

4

^354 Report of periodic review

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- (1) An expert advisory committee must:

6

(a) prepare a report of a review under section ^353; and

7

(b) give the report to the Minister.

8

- (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.

9

10

11

Recommendations

12

- (3) The report may set out recommendations to the Commonwealth Government.

13

14

- (4) In formulating a recommendation that the Commonwealth Government should take particular action, the expert advisory committee must assess the costs and benefits of that action.

15

16

17

- (5) Subsection (4) does not prevent the expert advisory committee from taking other matters into account in formulating a recommendation.

18

19

20

Government response to recommendations

21

- (6) If a report sets out one or more recommendations to the Commonwealth Government:

22

23

(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 the recommendations; and

24

25

26

27

(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.

28

29

EXPOSURE DRAFT

Independent reviews **Part 25**

Periodic reviews **Division 2**

Section [^]354

- 1 (7) The Commonwealth Government's response to the
2 recommendations may have regard to the views of the following:
3 (a) the Authority;
4 (b) such other persons as the Minister considers relevant.

EXPOSURE DRAFT

Part 25 Independent reviews

Division 3 Special reviews

Section ^355

1

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Division 3—Special reviews

3

^355 Special reviews to be conducted by an expert advisory committee

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(1) An expert advisory committee is to conduct a review of such matters that:

6

7

(a) are specified in a written instrument given by the Minister to the Chair of the expert advisory committee; and

8

9

(b) relate to the carbon pollution reduction scheme.

10

Note: Expert advisory committees are established under section ^357.

11

Consultation

12

(2) In conducting a review, an expert advisory committee must make provision for public consultation.

13

14

Relevant matters

15

(3) In conducting a review, an expert advisory committee must have regard to:

16

17

(a) any policies of the Commonwealth Government notified to the expert advisory committee by the Minister; and

18

19

(b) such other matters as the expert advisory committee considers relevant.

20

21

Instrument

22

(4) An instrument given under paragraph (1)(a) is not a legislative instrument.

23

24

^356 Report of special review

25

(1) An expert advisory committee must:

26

(a) prepare a report of a review under section ^355; and

27

(b) give the report to the Minister.

EXPOSURE DRAFT

Independent reviews **Part 25**

Special reviews **Division 3**

Section [^]356

- 1 (2) The Minister must cause copies of the report to be tabled in each
2 House of the Parliament within 15 sitting days of that House after
3 receiving the report.

4 *Recommendations*

- 5 (3) The report may set out recommendations to the Commonwealth
6 Government.

- 7 (4) In formulating a recommendation that the Commonwealth
8 Government should take particular action, the expert advisory
9 committee must assess the costs and benefits of that action.

- 10 (5) Subsection (4) does not prevent the expert advisory committee
11 from taking other matters into account in formulating a
12 recommendation.

13 *Government response to recommendations*

- 14 (6) If a report sets out one or more recommendations to the
15 Commonwealth Government:
16 (a) as soon as practicable after receiving the report, the Minister
17 must cause to be prepared a statement setting out the
18 Commonwealth Government's response to the
19 recommendations; and
20 (b) within 6 months after receiving the report, the Minister must
21 cause copies of the statement to be tabled in each House of
22 the Parliament.

- 23 (7) The Commonwealth Government's response to the
24 recommendations may have regard to the views of the following:
25 (a) the Authority;
26 (b) such other persons as the Minister considers relevant.

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Part 25 Independent reviews

Division 4 Expert advisory committees

Section ^357

1

2 **Division 4—Expert advisory committees**

3 **^357 Establishment of expert advisory committees**

4 (1) The Minister may, by writing, establish committees, to be known
5 as expert advisory committees.

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

8 (2) An instrument made under subsection (1) is not a legislative
9 instrument.

10 **^358 Functions of an expert advisory committee**

11 An expert advisory committee has the functions that are conferred
12 on it by this Part.

13 **^359 Membership of an expert advisory committee**

14 An expert advisory committee consists of the following members:

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

17 **^360 Appointment of expert advisory committee members**

18 (1) Each expert advisory committee member is to be appointed by the
19 Minister by written instrument.

20 Note: The expert advisory committee member is eligible for reappointment:
21 see subsection 33(4A) of the *Acts Interpretation Act 1901*.

22 (2) A person is not eligible for appointment as an expert advisory
23 committee member unless the Minister is satisfied that the person
24 has:

- 25 (a) substantial experience or knowledge; and
26 (b) significant standing;

27 in at least one of the following fields:

- 28 (c) economics;
29 (d) law;
-

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- 1 (e) Australian industry;
2 (f) climate science;
3 (g) energy measurement and reporting;
4 (h) greenhouse gas emissions measurement and reporting;
5 (i) greenhouse gas abatement;
6 (j) financial markets;
7 (k) trading of environmental instruments.
- 8 (3) The Minister must ensure that:
9 (a) the Chair of an expert advisory committee is not a person
10 covered by subsection (4); and
11 (b) a majority of the other expert advisory committee members
12 are not persons covered by subsection (4).
- 13 (4) This subsection applies to the following persons:
14 (a) an employee of the Commonwealth;
15 (b) an employee of an authority of the Commonwealth;
16 (c) a person who holds a full-time office under a law of the
17 Commonwealth.
- 18 (5) A person is not eligible for appointment at a particular time as an
19 expert advisory committee member if:
20 (a) the person is a director, officer or employee of another person
21 who, at that time, is, or is likely to be, a liable entity for the
22 eligible financial year in which that time occurs; or
23 (b) the person was a director, officer or employee of another
24 person who was a liable entity for any of the 5 eligible
25 financial years that preceded the eligible financial year in
26 which that time occurs.
- 27 (6) An expert advisory committee member holds office on a part-time
28 basis.

29 **^361 Period for appointment for expert advisory committee**
30 **members**

31 An expert advisory committee member holds office for the period
32 specified in the instrument of appointment. The period must not
33 exceed 5 years.

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Part 25 Independent reviews

Division 4 Expert advisory committees

Section ^362

1 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*
2 *Act 1901*.

3 **^362 Acting expert advisory committee members**

4 *Acting Chair of expert advisory committee*

- 5 (1) The Minister may appoint an expert advisory committee member
6 to act as the Chair of an expert advisory committee:
7 (a) during a vacancy in the office of the expert advisory
8 committee Chair (whether or not an appointment has
9 previously been made to the office); or
10 (b) during any period, or during all periods, when the Chair of an
11 expert advisory committee:
12 (i) is absent from duty or from Australia; or
13 (ii) is, for any reason, unable to perform the duties of the
14 office.

15 *Acting expert advisory committee member (other than the Chair)*

- 16 (2) The Minister may appoint a person to act as an expert advisory
17 committee member (other than the Chair of an expert advisory
18 committee):
19 (a) during a vacancy in the office of an expert advisory
20 committee member (other than the Chair of an expert
21 advisory committee), whether or not an appointment has
22 previously been made to the office; or
23 (b) during any period, or during all periods, when an expert
24 advisory committee member (other than the Chair of an
25 expert advisory committee):
26 (i) is absent from duty or Australia; or
27 (ii) is, for any reason, unable to perform the duties of the
28 office.

29 *Eligibility*

- 30 (3) A person is not eligible for appointment to act as:
31 (a) the Chair of an expert advisory committee; or
32 (b) an expert advisory committee member (other than the Chair
33 of an expert advisory committee);

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1 unless the person is eligible for appointment as an expert advisory
2 committee member.

3 Note: See subsection ^360(2).

4 *Validation*

5 (4) Anything done by or in relation to a person purporting to act under
6 an appointment is not invalid merely because:

- 7 (a) the occasion for the appointment had not arisen; or
- 8 (b) there was a defect or irregularity in connection with the
9 appointment; or
- 10 (c) the appointment ceased to have effect; or
- 11 (d) the occasion to act had not arisen or had ceased.

12 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

13 **^363 Procedures**

14 (1) The regulations may prescribe the procedures to be followed at or
15 in relation to meetings of an expert advisory committee, including
16 matters relating to the following:

- 17 (a) the convening of meetings of the expert advisory committee;
- 18 (b) the number of expert advisory committee members who are
19 to constitute a quorum;
- 20 (c) the selection of an expert advisory committee member to
21 preside at meetings of the expert advisory committee in the
22 absence of the Chair of the expert advisory committee;
- 23 (d) the manner in which questions arising at a meeting of the
24 expert advisory committee are to be decided.

25 (2) A resolution is taken to have been passed at a meeting of an expert
26 advisory committee if:

- 27 (a) without meeting, a majority of expert advisory committee
28 members indicate agreement with the resolution in
29 accordance with the method determined by the expert
30 advisory committee under subsection (3); and
- 31 (b) all expert advisory committee members were informed of the
32 proposed resolution, or reasonable efforts had been made to

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Part 25 Independent reviews

Division 4 Expert advisory committees

Section ^364

1 inform all expert advisory committee members of the
2 proposed resolution.

- 3 (3) Subsection (2) applies only if the expert advisory committee:
4 (a) determines that it applies; and
5 (b) determines the method by which expert advisory committee
6 members are to indicate agreement with resolutions.

7 **^364 Disclosure of interests to the Minister**

8 An expert advisory committee member must give written notice to
9 the Minister of all interests, pecuniary or otherwise, that the
10 member has or acquires and that conflict or could conflict with the
11 proper performance of the member's functions.

12 **^365 Disclosure of interests to expert advisory committee**

- 13 (1) An expert advisory committee member who has an interest,
14 pecuniary or otherwise, in a matter being considered or about to be
15 considered by the expert advisory committee must disclose the
16 nature of the interest to a meeting of the expert advisory
17 committee.
- 18 (2) The disclosure must be made as soon as possible after the relevant
19 facts have come to the expert advisory committee member's
20 knowledge.
- 21 (3) The disclosure must be recorded in the minutes of the meeting of
22 the expert advisory committee.
- 23 (4) Unless the expert advisory committee otherwise determines, the
24 expert advisory committee member:
25 (a) must not be present during any deliberation by the expert
26 advisory committee on the matter; and
27 (b) must not take part in any decision of the expert advisory
28 committee with respect to the matter.
- 29 (5) For the purposes of making a determination under subsection (4),
30 the expert advisory committee member:

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- 1 (a) must not be present during any deliberation of the expert
2 advisory committee for the purpose of making the
3 determination; and
4 (b) must not take part in making the determination.
- 5 (6) A determination under subsection (4) must be recorded in the
6 minutes of the meeting of the expert advisory committee.

7 **[^]366 Outside employment**

8 An expert advisory committee member must not engage in any
9 paid employment that conflicts or may conflict with the proper
10 performance of his or her duties.

11 **[^]367 Remuneration and allowances**

- 12 (1) An expert advisory committee member is to be paid the
13 remuneration that is determined by the Remuneration Tribunal. If
14 no determination of that remuneration by the Tribunal is in
15 operation, the member is to be paid the remuneration that is
16 prescribed.
- 17 (2) An expert advisory committee member is to be paid the allowances
18 that are prescribed.
- 19 (3) This section has effect subject to the *Remuneration Tribunal Act*
20 *1973*.

21 **[^]368 Leave of absence**

- 22 (1) The Minister may grant leave of absence to the Chair of an expert
23 advisory committee on the terms and conditions that the Minister
24 determines.
- 25 (2) The Chair of an expert advisory committee may grant leave of
26 absence to an expert advisory committee member on the terms and
27 conditions that the Chair determines.

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Part 25 Independent reviews

Division 4 Expert advisory committees

Section ^369

1 **^369 Resignation**

- 2 (1) An expert advisory committee member may resign his or her
3 appointment by giving the Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.

7 **^370 Termination of appointment**

- 8 (1) The Minister may terminate the appointment of an expert advisory
9 committee member for misbehaviour or physical or mental
10 incapacity.
- 11 (2) The Minister may terminate the appointment of an expert advisory
12 committee member if:
- 13 (a) the member:
- 14 (i) becomes bankrupt; or
- 15 (ii) applies to take the benefit of any law for the relief of
16 bankrupt or insolvent debtors; or
- 17 (iii) compounds with his or her creditors; or
- 18 (iv) makes an assignment of remuneration for the benefit of
19 his or her creditors; or
- 20 (b) the member is absent, except on leave of absence, for 3
21 consecutive meetings of the expert advisory committee of
22 which he or she is a member; or
- 23 (c) the member engages in paid employment that conflicts or
24 may conflict with the proper performance of his or her duties
25 (see section ^366); or
- 26 (d) the member fails, without reasonable excuse, to comply with
27 section ^364 or ^365.
- 28 (3) The Minister may terminate the appointment of the Chair of an
29 expert advisory committee if the Chair is:
- 30 (a) an employee of the Commonwealth; or
- 31 (b) an employee of an authority of the Commonwealth; or
- 32 (c) a person who holds a full-time office under a law of the
33 Commonwealth.

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Independent reviews **Part 25**
Expert advisory committees **Division 4**

Section ^371

- 1 (4) The Minister may terminate the appointment of an expert advisory
2 committee member if the member is a director, officer or employee
3 of another person who is, or is likely to be, a liable entity for the
4 eligible financial year in which the termination occurs.

5 **^371 Other terms and conditions**

6 An expert advisory committee member holds office on the terms
7 and conditions (if any) in relation to matters not covered by this
8 Act that are determined by the Minister.

9 **^372 Assistance to expert advisory committee**

- 10 (1) Any or all of the following:
11 (a) the Authority;
12 (b) the Department;
13 (c) any other Department, agency or authority of the
14 Commonwealth;
15 may assist an expert advisory committee in the performance of its
16 functions.
- 17 (2) The assistance may include the following:
18 (a) the provision of information;
19 (b) the provision of advice;
20 (c) the making available of resources and facilities (including
21 secretariat services and clerical assistance).

22 **^373 Consultants**

- 23 (1) The Chair of an expert advisory committee may, on behalf of the
24 Commonwealth, engage persons having suitable qualifications and
25 experience as consultants to the committee.
- 26 (2) The consultants are to be engaged on the terms and conditions that
27 the Chair determines in writing.

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Part 26 Miscellaneous

Section ^374

1

2

Part 26—Miscellaneous

3

4

^374 Miscellaneous functions of the Authority

5

The Authority has the following functions:

6

(a) to monitor compliance with this Act and the associated provisions;

7

8

(b) to promote compliance with this Act and the associated provisions;

9

10

(c) to conduct and/or co-ordinate education programs about:

11

(i) this Act and the associated provisions; and

12

(ii) emissions trading schemes;

13

(d) to advise the Minister on matters relating to:

14

(i) this Act and the associated provisions; and

15

(ii) emissions trading schemes;

16

(e) to advise and assist persons in relation to their obligations under this Act and the associated provisions;

17

18

(f) to advise and assist the representatives of persons in relation to compliance by persons with this Act and the associated provisions;

19

20

21

(g) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about co-operative arrangements for matters relating to:

22

23

(i) this Act and the associated provisions; and

24

25

(ii) emissions trading schemes;

26

(h) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act and the associated provisions.

27

28

29

^374A Computerised decision-making

30

(1) The Authority may, by legislative instrument, arrange for the use, under the Authority's control, of computer programs for any purposes for which the Authority may, or must, under this Act or the regulations:

31

32

33

- 1 (a) make a decision; or
2 (b) exercise any power or comply with any obligation; or
3 (c) do anything else related to making a decision or exercising a
4 power or complying with an obligation.
- 5 (2) For the purposes of this Act and the regulations, the Authority is
6 taken to have:
7 (a) made a decision; or
8 (b) exercised a power or complied with an obligation; or
9 (c) done something else related to the making of a decision or
10 the exercise of a power or the compliance with an obligation;
11 that was made, exercised, complied with or done by the operation
12 of a computer program under such an arrangement.

13 **^375 Delegation by the Minister**

- 14 (1) The Minister may, by writing, delegate any or all of his or her
15 functions or powers under this Act or the regulations to:
16 (a) the Secretary; or
17 (b) an SES employee, or acting SES employee, in the
18 Department.
- 19 Note: The expressions *SES employee* and *acting SES employee* are defined
20 in section 17AA of the *Acts Interpretation Act 1901*.
- 21 (2) In exercising powers under a delegation, the delegate must comply
22 with any directions of the Minister.
- 23 (3) Subsection (1) does not apply to a power to make, vary or revoke a
24 legislative instrument.

25 **^376 Concurrent operation of State and Territory laws**

26 This Act is not intended to exclude or limit the operation of a law
27 of a State or Territory that is capable of operating concurrently
28 with this Act.

29 **^377 Law relating to legal professional privilege not affected**

30 The Act does not affect the law relating to legal professional
31 privilege.

EXPOSURE DRAFT

Part 26 Miscellaneous

Section ^378

1 **^378 Arrangements with States and Territories**

2 *States*

- 3 (1) The Minister may make arrangements with a Minister of a State
4 with respect to the administration of this Act, including
5 arrangements for the performance of the functions of a magistrate
6 under this Act by a magistrate of that State.
- 7 (2) The Minister may arrange with a Minister of a State with whom an
8 arrangement is in force under subsection (1) for the variation or
9 revocation of the arrangement.

10 *Australian Capital Territory*

- 11 (3) The Minister may make arrangements with a Minister of the
12 Australian Capital Territory with respect to the administration of
13 this Act, including arrangements for the performance of the
14 functions of a magistrate under this Act by a magistrate of the
15 Australian Capital Territory.
- 16 (4) The Minister may arrange with a Minister of the Australian Capital
17 Territory for the variation or revocation of an arrangement in force
18 under subsection (3).

19 *Northern Territory*

- 20 (5) The Minister may make arrangements with a Minister of the
21 Northern Territory with respect to the administration of this Act,
22 including arrangements for the performance of the functions of a
23 magistrate under this Act by a magistrate of the Northern Territory.
- 24 (6) The Minister may arrange with a Minister of the Northern Territory
25 for the variation or revocation of an arrangement in force under
26 subsection (5).

27 *Norfolk Island*

- 28 (7) The Minister may make arrangements with a Minister of Norfolk
29 Island with respect to the administration of this Act, including
30 arrangements for the performance of the functions of a magistrate
31 under this Act by a magistrate of Norfolk Island.

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1 (8) The Minister may arrange with a Minister of Norfolk Island for the
2 variation or revocation of an arrangement in force under
3 subsection (7).

4 *Gazettal*

5 (9) A copy of each instrument by which an arrangement under this
6 section is made, varied or revoked is to be published in the *Gazette*.

7 *Legislative Instruments Act*

8 (10) An instrument by which an arrangement under this section is made,
9 varied or revoked is not a legislative instrument.

10 **^379 Liability for damages**

11 None of the following:

- 12 (a) the Minister;
- 13 (b) a delegate of the Minister;
- 14 (c) the Authority;
- 15 (d) an official of the Authority;
- 16 (e) a delegate of the Authority;
- 17 (f) a member of an expert advisory committee;

18 is liable to an action or other proceeding for damages for, or in
19 relation to, an act or matter in good faith done or omitted to be
20 done:

- 21 (e) in the performance or purported performance of any function;
22 or
- 23 (f) in the exercise or purported exercise of any power;
24 conferred by this Act or the associated provisions.

25 **^380 Executive power of the Commonwealth**

26 This Act does not, by implication, limit the executive power of the
27 Commonwealth.

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Part 26 Miscellaneous

Section ^381

1 **^381 Notional payments by the Commonwealth**

2 (1) The purpose of this section is to ensure that amounts payable under
3 this Act are notionally payable by the Commonwealth (or parts of
4 the Commonwealth).

5 (2) The Minister responsible for administering the *Financial*
6 *Management and Accountability Act 1997* may give written
7 directions for the purposes of this section, including directions
8 relating to the transfer of amounts within, or between, accounts
9 operated by the Commonwealth.

10 **^382 Alternative constitutional basis**

11 (1) Without limiting its effect apart from this section, this Act and the
12 associated provisions also have effect as provided by this section.

13 *Limited types of liable entities*

14 (2) This Act and the associated provisions also have the effect they
15 would have if:
16 (a) subsections (3) to (6) had not been enacted; and
17 (b) each reference in this Act and the associated provisions to a
18 liable entity were, by express provision, confined to a liable
19 entity who is:
20 (i) a constitutional corporation; or
21 (ii) the Commonwealth; or
22 (iii) an authority of the Commonwealth.

23 *Limited types of facilities*

24 (3) This Act and the associated provisions also have the effect they
25 would have if subsection (2) had not been enacted and each
26 reference in this Act and the associated provisions to a facility
27 were, by express provision, confined to a facility:
28 (a) in a Territory; or
29 (b) outside Australia; or
30 (c) in a Commonwealth place; or
31 (d) over which the Commonwealth, or an authority of the
32 Commonwealth, has operational control; or

EXPOSURE DRAFT

- 1 (e) operated in the course of, or in relation to, any of the
2 following:
3 (i) trade or commerce between Australia and places outside
4 Australia;
5 (ii) trade or commerce among the States;
6 (iii) trade or commerce within a Territory, between a State
7 or Territory or between 2 Territories.

8 *Limited types of supply or re-supply*

- 9 (4) This Act and the associated provisions also have the effect they
10 would have if subsection (2) had not been enacted and each
11 reference in this Act and the associated provisions to supply or
12 re-supply were, by express provision, confined to supply or
13 re-supply:
14 (a) in a Territory; or
15 (b) outside Australia; or
16 (c) in a Commonwealth place; or
17 (d) by the Commonwealth or an authority of the Commonwealth;
18 or
19 (e) in the course of, or in relation to, any of the following:
20 (i) trade or commerce between Australia and places outside
21 Australia;
22 (ii) trade or commerce among the States;
23 (iii) trade or commerce within a Territory, between a State
24 or Territory or between 2 Territories.

25 *Limited types of application to own use*

- 26 (5) This Act and the associated provisions also have the effect they
27 would have if subsection (2) had not been enacted and each
28 reference in this Act and the associated provisions to application to
29 own use were, by express provision, confined to application to own
30 use:
31 (a) in a Territory; or
32 (b) outside Australia; or
33 (c) in a Commonwealth place; or

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Part 26 Miscellaneous

Section ^383

- 1 (d) by the Commonwealth or an authority of the Commonwealth;
2 or
3 (e) in the course of, or in relation to, any of the following:
4 (i) trade or commerce between Australia and places outside
5 Australia;
6 (ii) trade or commerce among the States;
7 (iii) trade or commerce within a Territory, between a State
8 or Territory or between 2 Territories.

9 *Limited types of manufacture or production*

- 10 (6) This Act and the associated provisions also have the effect they
11 would have if subsection (2) had not been enacted and each
12 reference in this Act and the associated provisions to manufacture
13 or production were, by express provision, confined to manufacture
14 or production:
15 (a) in a Territory; or
16 (b) outside Australia; or
17 (c) in a Commonwealth place; or
18 (d) by the Commonwealth or an authority of the Commonwealth;
19 or
20 (e) in the course of, or in relation to, any of the following:
21 (i) trade or commerce between Australia and places outside
22 Australia;
23 (ii) trade or commerce among the States;
24 (iii) trade or commerce within a Territory, between a State
25 or Territory or between 2 Territories.

26 **^383 Compensation for acquisition of property**

- 27 (1) If the operation of this Act or the regulations would result in an
28 acquisition of property from a person otherwise than on just terms,
29 the Commonwealth is liable to pay a reasonable amount of
30 compensation to the person.
31 (2) If the Commonwealth and the person do not agree on the amount
32 of the compensation, the person may institute proceedings in a
33 court of competent jurisdiction for the recovery from the

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1 Commonwealth of such reasonable amount of compensation as the
2 court determines.

3 (3) In this section:

4 *acquisition of property* has the same meaning as in paragraph
5 51(xxxi) of the Constitution.

6 *just terms* has the same meaning as in paragraph 51(xxxi) of the
7 Constitution.

8 **^384 Prescribing matters by reference to other instruments**

9 (1) The regulations may make provision in relation to a matter by
10 applying, adopting or incorporating, with or without modification,
11 a matter contained in an instrument or writing:

12 (a) as in force or existing at a particular time; or

13 (b) as in force or existing from time to time.

14 (2) Subsection (1) has effect despite anything in subsection 14(2) of
15 the *Legislative Instruments Act 2003*.

16 (3) If the regulations make provision in relation to a matter by
17 applying, adopting or incorporating, with or without modification,
18 a matter contained in an instrument or writing, the Authority must
19 ensure that the text of the matter applied, adopted or incorporated
20 is published on its website.

21 (4) Subsection (3) does not apply if the publication would infringe
22 copyright.

23 **^385 Administrative decisions under the regulations**

24 The regulations may make provision in relation to a matter by
25 conferring a power to make a decision of an administrative
26 character on the Authority.

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Part 26 Miscellaneous

Section ^386

1 **^386 Transitional—definitions**

2 *Scope*

- 3 (1) This section applies to a definition in section ^5 if that definition
4 defines an expression to have the same meaning as in the *National*
5 *Greenhouse and Energy Reporting Act 2007*.

6 *Transitional*

- 7 (2) The definition has effect as if the amendments of the *National*
8 *Greenhouse and Energy Reporting Act 2007* made by Part 2 of
9 Schedule 1 to the *Carbon Pollution Reduction Scheme*
10 *(Consequential Amendments) Act 2009* had commenced at the
11 same time as section ^3 of this Act.

12 **^387 Regulations**

13 The Governor-General may make regulations prescribing matters:

- 14 (a) required or permitted by this Act to be prescribed; or
15 (b) necessary or convenient to be prescribed for carrying out or
16 giving effect to this Act.