Clean Energy (Consequential Amendments) Act 2011

No. 132, 2011

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

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

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Clean Energy (Consequential Amendments) Act 2011

No. 132, 2011

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

[*Assented to 18 November 2011*]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	18 November 2011
2. Schedule 1, Part 1	At the same time as section 3 of the *Clean Energy Act 2011* commences.	
3. Schedule 1, Part 2	1 July 2012.	1 July 2012
4. Schedule 2, Part 1	The later of: (a) the day after the Treasurer announces by notice in the *Gazette* that the States, the Australian Capital Territory and the Northern Territory have agreed to amendments made by the provision(s); and (b) the day section 3 of the *Clean Energy Act 2011* commences. A notice under paragraph (a) is not a legislative instrument.	
5. Schedule 2, Part 2	At the same time as section 3 of the *Clean Energy Act 2011* commences.	
6. Schedule 2, Part 3	1 July 2015.	1 July 2015
7. Schedule 3	The day after this Act receives the Royal Assent.	19 November 2011
8. Schedule 4	The later of: (a) the day this Act receives the Royal Assent; and (b) the day section 3 of the *Australian*	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	National Registry of Emissions Units Act 2011 commences.	
9. Schedule 5	The later of: (a) the day this Act receives the Royal Assent; and (b) the day section 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* commences.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

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

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

Schedule 1—General amendments

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

Division 1—Amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

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

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

Insert:

(baa) a carbon unit; or

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

After "derivatives,", insert "carbon units,".

Australian National Registry of Emissions Units Act 2011

5 Section 4 (definition of *Administrator*)

Repeal the definition.

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

Repeal the definition.

7 Section 4

Insert:

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

13 Section 4

Insert:

Regulator means the Clean Energy Regulator.

15 Section 5

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

43 Subsection 85(1)

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

44 Subsection 85(2)

Omit "he or she", substitute "the Regulator".

45 Subsection 85(2)

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

46 Bulk amendments—references to the Administrator etc.

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

(a) by omitting "the Administrator" (wherever occurring) and substituting "the Regulator";

(b) by omitting "The Administrator" (wherever occurring) and substituting "The Regulator";

(c) by omitting "the Administrator's" (wherever occurring) and substituting "the Regulator's";

(d) by omitting "The Administrator's" (wherever occurring) and substituting "The Regulator's";

(e) by omitting "**Administrator**" (wherever occurring) and substituting "**Regulator**";

(f) by omitting "*Administrator*" (wherever occurring) and substituting "*Regulator*";

(g) by omitting "**Administrator's**" (wherever occurring) and substituting "**Regulator's**".

Australian Securities and Investments Commission Act 2001

47 After paragraph 12BAA(7)(k)

Insert:

(ka) a carbon unit;

48 Paragraph 12BAB(1)(g)

After "other than", insert "a carbon unit,".

49 Paragraph 127(2A)(e)

Omit "Carbon Credits Administrator", substitute "Clean Energy Regulator".

Carbon Credits (Carbon Farming Initiative) Act 2011

51 Section 4

Omit "Carbon Credits Administrator", substitute "Clean Energy Regulator".

52 Section 5 (definition of *Administrator*)

Repeal the definition.

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

Repeal the definition.

54 Section 5

Insert:

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

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

Repeal the paragraphs.

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

Repeal the definition.

57 Section 5

Insert:

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

(a) an audit team leader; or

(b) a person assisting an audit team leader.

58 Section 5

Insert:

Regulator means the Clean Energy Regulator.

59 Subsection 7(1)

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

61 Subsection 243(1)

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

62 Subsection 243(2)

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

63 Subsection 243(2)

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

64 Part 25

Repeal the Part.

65 At the end of section 270

Add:

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

66 Section 274

Repeal the section.

67 Subsection 275(2)

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

68 Subsection 275(2)

Omit "protected Administrator information", substitute "protected audit information".

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

Repeal the paragraphs.

70 Subsection 276(1)

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

71 Paragraph 276(1)(a)

Repeal the paragraph.

72 Subsection 276(2)

Repeal the subsection (not including the heading).

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

Repeal the paragraphs.

74 Subsection 276(3)

Omit "by the Administrator", substitute "by the Regulator".

75 Subsection 276(3)

Omit "protected Administrator information", substitute "protected audit information".

76 Paragraph 276(4)(b)

Repeal the paragraph, substitute:

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

77 Subsection 276(5)

Omit "Administrator", substitute "Regulator".

78 Subsection 276(6)

Repeal the subsection, substitute:

Conditions

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

79 Subsection 277(1)

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

80 Subsection 277(2)

Repeal the subsection (not including the heading).

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

Repeal the paragraphs.

82 Subsection 277(3)

Omit "by the Administrator", substitute "by the Regulator".

83 Subsection 277(3)

Omit "protected Administrator information", substitute "protected audit information".

84 Paragraph 277(4)(b)

Repeal the paragraph, substitute:

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

85 Paragraph 277(5)(a)

Omit "Administrator", substitute "Regulator".

86 Subsection 277(6)

Repeal the subsection, substitute:

Conditions

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

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

87 Paragraphs 281(a) to (e)

Repeal the paragraphs.

88 Paragraphs 281(h) and (i)

Omit "protected Administrator information", substitute "protected audit information".

88A Section 282 (heading)

Repeal the heading, substitute:

282 Disclosure for purposes of law enforcement—protected audit information

89 Subsection 282(1)

Omit "the Administrator is satisfied that disclosure of particular protected Administrator information", substitute "the Regulator is satisfied that disclosure of particular protected audit information".

90 Subsection 282(2)

Repeal the subsection (not including the heading).

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

Repeal the paragraphs.

92 Subsection 282(3)

Omit "by the Administrator", substitute "by the Regulator".

93 Subsection 282(3)

Omit "protected Administrator information", substitute "protected audit information".

94 Paragraph 282(4)(b)

Repeal the paragraph, substitute:

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

95 Paragraph 282(5)(a)

Omit "Administrator", substitute "Regulator".

96 Subsection 282(6)

Repeal the subsection, substitute:

Conditions

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

97 Section 285

Repeal the section.

99 Bulk amendments—references to the Administrator etc.

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

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

is amended as follows:

(g) by omitting "the Administrator" (wherever occurring) and substituting "the Regulator";
(h) by omitting "The Administrator" (wherever occurring) and substituting "The Regulator";
(i) by omitting "the Administrator's" (wherever occurring) and substituting "the Regulator's";
(j) by omitting "The Administrator's" (wherever occurring) and substituting "The Regulator's";
(k) by omitting "**Administrator**" (wherever occurring) and substituting "**Regulator**";
(l) by omitting "**Administrator's**" (wherever occurring) and substituting "**Regulator's**".

Competition and Consumer Act 2010

100 After paragraph 44AAF(3)(c)

Insert:

(ca) the Clean Energy Regulator;

101 Paragraph 44AAF(3)(d)

Omit "(b) or (c)", substitute "(b), (c) or (ca)".

102 Paragraph 155AAA(12)(la)

Omit "Carbon Credits Administrator", substitute "Clean Energy Regulator".

Financial Management and Accountability Regulations 1997

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

Insert:

133	Clean Energy Regulator, comprising: (a) the Chair and the other members of the Clean Energy Regulator; and (b) the staff mentioned in section 36 of the *Clean Energy Regulator Act 2011*; and (c) the persons whose services are made available to the Clean Energy Regulator under section 37 of that Act; and (d) the consultants engaged under subsection 38(1) of that Act. *See Note B*	Chair

105 Part 1 of Schedule 1 (table item 173)

Repeal the item.

National Greenhouse and Energy Reporting Act 2007

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

Repeal the definition.

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

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

108 Section 7

Insert:

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

109 Section 7

Insert:

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

110 Section 7

Insert:

Regulator means the Clean Energy Regulator.

111 Paragraph 9(1)(b)

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

112 Paragraph 11(1)(b)

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

113 Paragraph 15(a)

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

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

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

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

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

116 Subsections 18(1) and (3)

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

117 Subsection 18(4)

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

118 Subsection 18(4)

Omit "his or her", substitute "the Regulator's".

119 Subsection 18(5)

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

119A Section 19 (heading)

Repeal the heading, substitute:

19 Report to be given to the Regulator

120 Subsection 19(1)

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

121 Subsections 19(6) and (9)

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

122 Subsection 20(1)

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

123 Subsections 20(2) and (3)

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

124 Subsections 20(4) and (5)

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

125 Subsection 21(1)

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

126 Subsection 21(4) (note)

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

127 Subsection 21(6)

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

128 Subsection 21A(1)

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

129 Subsection 21A(2) (note)

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

130 Subsection 21A(3)

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

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

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

131A Section 22G (heading)

Repeal the heading, substitute:

22G Report to be given to the Regulator

132 Subsections 22G(1) and (2)

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

133 Subsection 22G(5)

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

134 Paragraph 22H(1)(b)

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

135 Subsection 22K(2)

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

136 Paragraph 22K(5)(b)

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

137 Subsection 22KA(1)

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

138 Subsection 22KA(2)

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

139 Subsection 22L(2)

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

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

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

141 Subsections 22N(2) and (3)

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

142 Subsection 22N(4)

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

143 Subsection 22P(2)

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

144 After paragraph 23(1)(a)

Insert:

(aa) the information is not protected information; and

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

Repeal the paragraphs.

145A Paragraph 23(2)(g)

Omit "is disclosed under section 26", substitute "was disclosed under repealed section 26".

146 At the end of section 23

Add:

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

147 Subsections 24(1) and (1A)

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

148 Subsection 24(1AD)

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

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

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

150 Subsection 24(1C)

Omit "he or she", substitute "the Regulator".

151 Subsection 24(1F)

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

152 Subsection 24(1G)

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

153 Subsections 24(2) and (3)

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

153A Subsections 24(5) and (6)

Repeal the subsections, substitute:

Publication by States or Territories

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

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

information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific:

(a) registered corporation; or

(b) registered corporation's group; or

(c) non-corporate entity; or

(d) facility.

Publication by other persons

(6) A person may publish greenhouse and energy information disclosed to it under Part 3 of the *Clean Energy Regulator Act 2011* if the information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific:

(a) registered corporation; or

(b) registered corporation's group; or

(c) non-corporate entity; or

(d) facility.

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

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

155 Section 26

Repeal the section.

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

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

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

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

160 Subsection 31(1)

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

161 Subsection 39(1)

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

162 Paragraph 40(1)(c)

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

163 Subsection 42(2)

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

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

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

165 Subsections 46(1) and (2)

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

166 Division 1 of Part 6

Repeal the Division.

167 Division 2 of Part 6 (heading)

Repeal the heading, substitute:

Division 2—Decisions by the Regulator

167A Section 54 (heading)

Repeal the heading, substitute:

54 Regulator may declare facility

168 Subsection 54(1)

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

169 Paragraph 54(1)(b)

Omit "his or her", substitute "the Regulator's".

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

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

171 Subsection 54(5)

Omit "he or she" (wherever occurring), substitute "the Regulator".

171A Section 55 (heading)

Repeal the heading, substitute:

55 Regulator may declare corporation etc. has operational control

172 Subsection 55(1)

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

173 Paragraph 55(1)(b)

Omit "his or her", substitute "the Regulator's".

174 Paragraph 55(2)(d)

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

175 Subsection 55(3)

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

176 Subsections 55(4) and (5)

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

177 Subsection 55(5)

Omit "he or she" (wherever occurring), substitute "the Regulator".

178 Section 56

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

179 Subsections 57(1) and (2)

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

180 Subsections 58(1) and (2)

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

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

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

182 Subsection 73(1)

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

183 Subsection 73(2)

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

184 Subsection 73(5)

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

185 Subsection 73A(1)

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

186 Subsection 73A(2)

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

187 Subsection 73A(5)

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

188 Subsections 74(1) and (2)

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

189 Subsections 74A(1) and (2)

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

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

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

191 Subsection 75A(7)

Omit "Greenhouse and Energy Data Officer's", substitute "Regulator's".

192 Subsection 75A(8)

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

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

194 After section 67A

Insert:

67B Disclosure of information to the Clean Energy Regulator

Scope

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

Disclosure

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

Other powers of disclosure not limited

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

Renewable Energy (Electricity) Act 2000

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

Repeal the definition.

196 Subsection 5(1)

Insert:

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

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

Repeal the definition.

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

Repeal the definition.

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

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

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

Omit "Office of the Renewable Energy Regulator", substitute "Regulator".

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

Repeal the definition, substitute:

senior officer of the Regulator means a person who:

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

(b) either:

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

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

202 Subsection 5(1)

Insert:

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

203 Subsection 30D(5)

Omit "he or she", substitute "the Regulator".

204 Subsection 107(1)

Omit "an officer or employee of the Office of the Renewable Energy Regulator", substitute "a member of the staff of the Regulator".

205 Part 12 (heading)

Repeal the heading, substitute:

Part 12—Publication of information

206 Sections 126 to 133

Repeal the sections.

207 Part 14

Repeal the Part.

207A Subsection 156(1) (heading)

Repeal the heading, substitute:

Delegation to senior officers of the Regulator

208 Subsection 156(1)

Omit "Office of the Renewable Energy Regulator", substitute "Regulator".

209 Section 158

Repeal the section.

210 Paragraph 159(1)(b)

Omit "the Regulator", substitute "an official of the Regulator".

211 Subsection 159(2)

Omit "the Regulator" (first occurring), substitute "an official of the Regulator".

212 Subsections 159(3) and (4)

Omit "the Regulator", substitute "an official of the Regulator".

Taxation Administration Act 1953

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

Add:

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

Division 2—Transitional provisions

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

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

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

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

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

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

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

(1) This item applies to anything done by, or in relation to, the Carbon Credits Administrator under:

(a) the *Carbon Credits (Carbon Farming Initiative) Act 2011* or regulations under that Act; or

(b) the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;

before the commencement of this item.

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

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

(1) This item applies to proceedings to which the Greenhouse and Energy Data Officer, the Renewable Energy Regulator or the Carbon Credits Administrator was a party and that were pending in any court or tribunal immediately before the commencement of this item.

(2) The Clean Energy Regulator is substituted for the Greenhouse and Energy Data Officer, the Renewable Energy Regulator or the Carbon Credits Administrator, as the case requires, from that commencement, as a party to those proceedings.

217 Transitional—transfer of records to the Clean Energy Regulator

(1) This item applies to any records or documents that:

(a) were in the possession of the Greenhouse and Energy Data Officer, the Renewable Energy Regulator or the Carbon Credits Administrator immediately before the commencement of this item; and

(b) relate to the Greenhouse and Energy Data Officer, the Renewable Energy Regulator, the Office of the Renewable Energy Regulator or the Carbon Credits Administrator.

(2) The records and documents are to be transferred to the Clean Energy Regulator after the commencement of this item.

218 Transitional—transfer of Ombudsman investigations

If:

(a) before the commencement of this item, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to action taken by the Greenhouse and Energy Data Officer, the Renewable Energy Regulator or the Carbon Credits Administrator; and

(b) immediately before the commencement of this item, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the commencement of this item as if that action had been taken by the Clean Energy Regulator.

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

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

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

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

(a) the definition of ***Office of the Renewable Energy Regulator*** in subsection 5(1);
(b) the definition of ***protected document*** in subsection 5(1);
(c) the definition of ***protected information*** in subsection 5(1);
(d) the definition of ***Regulator*** in subsection 5(1);
(e) subsection 126(1);
(f) sections 127 to 133;

those provisions continue to apply, in relation to:

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

as if:

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

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

Despite:

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

(b) the amendment of the following provisions of that Act by this Part:

(i) the definition of ***entrusted public official*** in section 5;

(ii) Part 27;

those provisions continue to apply, in relation to protected information obtained by a person, in the person's capacity as an entrusted public official, before the commencement of this item as if:

(c) the repeals had not happened; and

(d) the amendments had not been made; and

(e) each reference in sections 271, 274, 275, 276, 277, 281, 282 and 285 of that Act to the Administrator were a reference to the Clean Energy Regulator; and

(f) each reference in sections 271, 272, 273, 275, 278, 279, 280 and 284 to an entrusted public official were a reference to an official of the Regulator.

221 Transitional—documents signed by the Renewable Energy Regulator

(1) Despite the repeal of section 158 of the *Renewable Energy (Electricity) Act 2000* by this Part, that section continues to apply, in relation to a person who held the office of the Renewable Energy Regulator at any time before the commencement of this item, as if that repeal had not happened.

(2) Despite the amendments of section 159 of the *Renewable Energy (Electricity) Act 2000* made by this Part, that section continues to apply, in relation to documents or certificates signed by the Renewable Energy Regulator before the commencement of this item, as if those amendments had not been made.

222 Transitional—references in instruments

(1) For the purposes of this item, an ***eligible instrument*** is an instrument that:

(a) was in force immediately before the commencement of this item; and

(b) contains a reference to the Greenhouse and Energy Data Officer, the Renewable Energy Regulator or the Carbon Credits Administrator.

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

223 Transitional—employees of the Clean Energy Regulator

Transferring employees

(1) For the purposes of this item, a person is a ***transferring employee*** if:

(a) the person was an APS employee in:

(i) the Department; or

(ii) the Office of the Renewable Energy Regulator;

immediately before the transition time; and

(b) the person is covered by a determination that:

(i) is made under section 72 of the *Public Service Act 1999*; and

(ii) causes the person, at the transition time, to become an APS employee in the Clean Energy Regulator.

(2) If:

(a) a person is a transferring employee; and

(b) immediately before the transition time, a designated agreement applied to the person's employment in the Department or the Office of the Renewable Energy Regulator, as the case may be;

then:

(c) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the Clean Energy Regulator; and

(d) the designated agreement has effect after the transition time, in relation to the transferring employee's employment in the Clean Energy Regulator, as if it had been made by the Chair of the Clean Energy Regulator on behalf of the Commonwealth; and

(e) if:

(i) an enterprise agreement commences after the transition time; and

(ii) the enterprise agreement was made by the Chair of the Clean Energy Regulator on behalf of the Commonwealth; and

(iii) the enterprise agreement covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the Clean Energy Regulator;

paragraphs (c) and (d) cease to apply in relation to the transferring employee when the enterprise agreement commences.

(3) If:

(a) a person is a transferring employee; and

(b) immediately before the transition time, a determination under subsection 24(1) of the *Public Service Act 1999* applied to the person's employment in:

(i) the Department; or

(ii) the Office of the Renewable Energy Regulator;

then:

(c) the determination (to the extent to which it relates to the transferring employee) has effect after the transition time, in relation to the transferring employee's employment in the Clean Energy Regulator, as if:

(i) the determination had been made by the Chair of the Clean Energy Regulator; and

(ii) the determination were applicable to the person's employment in the Clean Energy Regulator; and

(d) paragraph (c) does not prevent the variation or revocation of the determination.

New employees

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

(a) the person is an APS employee in the Clean Energy Regulator; and

(b) the person is not a transferring employee.

(5) If:

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

(b) after the transition time, a person becomes a new employee; and

(c) either:

(i) the designated agreement would have covered the Commonwealth and the new employee in relation to the new employee's employment in the Department if the new employee had been an APS employee at the same level in the Department immediately before the transition time; or

(ii) the designated agreement would have covered the Commonwealth and the new employee in relation to the new employee's employment in the Office of the Renewable Energy Regulator if the new employee had been an APS employee at the same level in the Office of the Renewable Energy Regulator immediately before the transition time; and

(d) the Chair of the Clean Energy Regulator, by written notice given to the new employee before or within 14 days after the person becomes a new employee, determines that the designated agreement is applicable to the new employee for the purposes of this subitem from the time when the person becomes a new employee;

then:

(e) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the new employee in relation to the new employee's employment in the Clean Energy Regulator; and

(f) the designated agreement has effect after the transition time, in relation to the new employee's employment in the Clean Energy Regulator, as if it had been made by the Chair of the Clean Energy Regulator on behalf of the Commonwealth; and

(g) if:

(i) an enterprise agreement commences after the transition time; and

(ii) the enterprise agreement was made by the Chair of the Clean Energy Regulator on behalf of the Commonwealth; and

(iii) the enterprise agreement covers the Commonwealth and the new employee in relation to the new employee's employment in the Clean Energy Regulator;

paragraphs (e) and (f) cease to apply in relation to the new employee when the enterprise agreement commences.

Delegation

(6) The Chair of the Clean Energy Regulator may, in writing, delegate the power conferred by paragraph (5)(d) to:

(a) a member of the Clean Energy Regulator; or

(b) a person who is:

(i) a member of the staff of the Clean Energy Regulator; and

(ii) an SES employee or acting SES employee; or

(c) a person who is:

(i) a member of the staff of the Clean Energy Regulator; and

(ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or

(d) a person who is:

(i) an APS employee in the Department; and

(ii) a person assisting the Clean Energy Regulator under section 37 of the *Clean Energy Regulator Act 2011*.

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

Legislative instrument

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

Definitions

(8) In this item:

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

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

designated agreement means:

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

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

(c) an enterprise agreement.

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

transition time means the commencement of this item.

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

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

(a) the Department; or

(b) the Office of the Renewable Energy Regulator;

to the Clean Energy Regulator.

225 Transitional—employees of the Climate Change Authority

Transferring employees

(1) For the purposes of this item, a person is a ***transferring employee*** if:

(a) the person was an APS employee in:

(i) the Department; or

(ii) the Office of the Renewable Energy Regulator;

immediately before the transition time; and

(b) the person is covered by a determination that:

(i) is made under section 72 of the *Public Service Act 1999*; and

(ii) causes the person, at the transition time, to become an APS employee in the Climate Change Authority.

(2) If:

(a) a person is a transferring employee; and

(b) immediately before the transition time, a designated agreement applied to the person's employment in the Department or the Office of the Renewable Energy Regulator, as the case may be;

then:

(c) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the Climate Change Authority; and

(d) the designated agreement has effect after the transition time, in relation to the transferring employee's employment in the Climate Change Authority, as if it had been made by the Chief Executive Officer of the Climate Change Authority on behalf of the Commonwealth; and

(e) if:

(i) an enterprise agreement commences after the transition time; and

(ii) the enterprise agreement was made by the Chief Executive Officer of the Climate Change Authority on behalf of the Commonwealth; and

(iii) the enterprise agreement covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the Climate Change Authority;

paragraphs (c) and (d) cease to apply in relation to the transferring employee when the enterprise agreement commences.

(3) If:

(a) a person is a transferring employee; and

(b) immediately before the transition time, a determination under subsection 24(1) of the *Public Service Act 1999* applied to the person's employment in:

(i) the Department; or

(ii) the Office of the Renewable Energy Regulator;

then:

(c) the determination (to the extent to which it relates to the transferring employee) has effect after the transition time, in relation to the transferring employee's employment in the Climate Change Authority, as if:

(i) the determination had been made by the Chief Executive Officer of the Climate Change Authority; and

(ii) the determination were applicable to the person's employment in the Climate Change Authority; and

(d) paragraph (c) does not prevent the variation or revocation of the determination.

New employees

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

(a) the person is an APS employee in the Climate Change Authority; and

(b) the person is not a transferring employee.

(5) If:

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

(b) after the transition time, a person becomes a new employee; and

(c) either:

(i) the designated agreement would have covered the Commonwealth and the new employee in relation to the new employee's employment in the Department if the new employee had been an APS employee at the same level in the Department immediately before the transition time; or

(ii) the designated agreement would have covered the Commonwealth and the new employee in relation to the new employee's employment in the Office of the Renewable Energy Regulator if the new employee had been an APS employee at the same level in the Office of the Renewable Energy Regulator immediately before the transition time; and

(d) the Chief Executive Officer of the Climate Change Authority, by written notice given to the new employee before or within 14 days after the person becomes a new employee, determines that the designated agreement is applicable to the new employee for the purposes of this subitem from the time when the person becomes a new employee;

then:

(e) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the new

employee in relation to the new employee's employment in the Climate Change Authority; and

(f) the designated agreement has effect after the transition time, in relation to the new employee's employment in the Climate Change Authority, as if it had been made by the Chief Executive Officer of the Climate Change Authority on behalf of the Commonwealth; and

(g) if:

(i) an enterprise agreement commences after the transition time; and

(ii) the enterprise agreement was made by the Chief Executive Officer of the Climate Change Authority on behalf of the Commonwealth; and

(iii) the enterprise agreement covers the Commonwealth and the new employee in relation to the new employee's employment in the Climate Change Authority;

paragraphs (e) and (f) cease to apply in relation to the new employee when the enterprise agreement commences.

Delegation

(6) The Chief Executive Officer of the Climate Change Authority may, in writing, delegate the power conferred by paragraph (5)(d) to:

(a) a person who is:

(i) a member of the staff of the Climate Change Authority; and

(ii) an SES employee or acting SES employee; or

(b) a person who is:

(i) an SES employee, or acting SES employee, in the Department; and

(ii) a person assisting the Climate Change Authority under section 53 of the *Climate Change Authority Act 2011*; or

(c) a person who:

(i) is an APS employee in the Department; and

(ii) is a person assisting the Climate Change Authority under section 53 of the *Climate Change Authority Act 2011*; and

(iii) holds or performs the duties of an Executive Level 2 position or an equivalent position.

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

Legislative instrument

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

Definitions

(8) In this item:

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

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

designated agreement means:

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

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

(c) an enterprise agreement.

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

transition time means the start of 1 July 2012.

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

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

(a) the Department; or

(b) the Office of the Renewable Energy Regulator;

to the Climate Change Authority.

227 Separate agreements relating to employment

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

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

(b) under either or both of subitems 225(2) and (5), a designated agreement covers the Commonwealth and one or more employees in relation to their employment in the Climate Change Authority;

the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* have effect as if the following were separate agreements:

(c) the designated agreement, in so far as it has the coverage mentioned in paragraph (a);

(d) the designated agreement, in so far as it has the coverage mentioned in paragraph (b);

(e) the designated agreement, in so far as it has neither the coverage mentioned in paragraph (a) nor the coverage mentioned in paragraph (b).

Definitions

(2) In this item:

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

designated agreement means:

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

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

(c) an enterprise agreement.

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

228 Transitional—regulations

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

Part 2—Amendments commencing on 1 July 2012

Division 1—Amendments

Australian National Registry of Emissions Units Act 2011

229 Section 3

Omit:

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

substitute:

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

230 Section 4

Insert:

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

231 Section 4

Insert:

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

232 Section 4 (definition of *hold*)

Repeal the definition, substitute:

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

233 Section 4

Insert:

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

234 Section 4 (definition of *issue*)

Repeal the definition, substitute:

issue:

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

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

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

Insert:

(aa) a carbon unit; or

236 Section 4

Insert:

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

237 Paragraph 9(4)(a)

Omit "Australian carbon credit units", substitute "carbon units, Australian carbon credit units and prescribed international units".

238 Paragraph 11(5)(a)

After "any", insert "carbon units or".

239 After section 14

Insert:

14A Units in certain accounts cannot be surrendered

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

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

240 After paragraph 15(2)(a)

Insert:

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

241 After subsection 16(2)

Insert:

Cancellation or transfer of units

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

241A Subsection 16(3) (heading)

Repeal the heading.

242 Before subsection 17(1)

Insert:

Carbon units

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

242A Before subsection 19(4)

Insert:

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

242B Before subsection 22(5)

Insert:

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

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

Insert:

(ia) carbon units; or

244 Before paragraph 28A(1)(a)

Insert:

(aa) carbon units; or

245 After paragraph 28A(4)(a)

Insert:

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

246 Before paragraph 28B(1)(a)

Insert:

(aa) carbon units; or

247 After paragraph 28B(11)(a)

Insert:

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

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

Add:

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

249 After paragraph 28C(17)(a)

Insert:

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

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

After "issue any", insert "carbon units or".

251 Paragraph 28D(5)(b)

Repeal the paragraph, substitute:

(b) none of the following notices have effect:

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

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

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

252 After paragraph 28D(16)(a)

Insert:

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

253 Section 58

Repeal the section, substitute:

58 Simplified outline

The following is a simplified outline of this Part:

- The Regulator must publish certain information about:
  - (a) the holders of Registry accounts; and
  - (b) carbon units; and
  - (c) Kyoto units; and
  - (d) prescribed international units.

254 After section 61

Insert:

61A Information about number of voluntarily cancelled carbon units

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

(a) the name of the person; and

(b) the total number of carbon units cancelled.

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

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

(a) the name of the person; and

(b) the total number of Australian carbon credit units cancelled.

255 At the end of Part 5

Add:

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

Scope

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

Carbon units

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

Australian carbon credit units

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

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

Kyoto units

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

Prescribed international units

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

256 Section 64

Repeal the section, substitute:

64 Simplified outline

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more carbon units, the person may request the Regulator to cancel any or all of those units. However, this rule does not apply to a unit that was issued for a fixed charge and has a vintage year that is a fixed charge year.
- If a person is the registered holder of one or more Australian carbon credit units, the person may request the Regulator to cancel any or all of those units.
- If a person is the registered holder of one or more Kyoto units, the person may request the Regulator to transfer to a voluntary cancellation account any or all of those units.
- If a person is the registered holder of one or more prescribed international units, the person may request the Regulator to cancel any or all of those units.

64A Voluntary cancellation of carbon units

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

(2) A notice under subsection (1) must:
  (a) specify the carbon 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 carbon unit or units that are to be cancelled.

(3) A person is not entitled to request the Regulator to cancel a carbon unit that:
  (a) was issued in accordance with section 100 of the *Clean Energy Act 2011*; or
  (b) has a vintage year that is a fixed charge year.

(4) If the Regulator receives a notice under subsection (1) in relation to a carbon unit:
  (a) the unit is cancelled; and
  (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

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

64B Voluntary cancellation of Australian carbon credit units

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

(2) A notice under subsection (1) must:
  (a) specify the Australian carbon credit 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 carbon credit unit or units that are to be cancelled.

(3) If the Regulator receives a notice under subsection (1) in relation to an Australian carbon credit unit:

(a) the unit is cancelled; and

(b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit; and

(c) if the unit is a Kyoto Australian carbon credit unit:

(i) the Minister must, by written notice given to the Regulator, direct the Regulator to transfer a Kyoto unit from a Commonwealth holding account to a voluntary cancellation account before the end of the true-up period for the relevant commitment period; and

(ii) the Regulator must comply with a direction under subparagraph (i).

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

Australian Securities and Investments Commission Act 2001

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

Add:

; (f) the Climate Change Authority.

Carbon Credits (Carbon Farming Initiative) Act 2011

257 Section 163

Repeal the section.

258 Part 14

Repeal the Part.

258A Section 306

Repeal the section, substitute:

306 Periodic reviews of operation of this Act etc.

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

Public consultation

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

Report

(3) The Climate Change Authority must:
  (a) give the Minister a report of the review; and
  (b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

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

Subsequent reviews

(6) Each subsequent review under subsection (1) must be completed within 3 years after the deadline for completion of the previous review.

(7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

Recommendations

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

(9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(11) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:
(a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
(b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(13) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
(a) the Climate Change Authority;
(b) the Clean Energy Regulator;
(c) such other persons as the Minister considers relevant.

Competition and Consumer Act 2010

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

Insert:

(cb) the Climate Change Authority;

258C Paragraph 44AAF(3)(d)

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

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

Insert:

(lb) the Climate Change Authority;

Corporations Act 2001

259 Section 9

Insert:

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

260 After paragraph 764A(1)(k)

Insert:

(kaa) a carbon unit;

Evidence Act 1995

260A Part 1 of the Dictionary (subparagraph (b)(vi) of the definition of *Commonwealth document*)

After "section 46", insert "or 46A".

Financial Management and Accountability Regulations 1997

261 Part 1 of Schedule 1 (before table item 134)

Insert:

133A	Climate Change Authority, comprising: (a) the Chair and the other members of the Climate Change Authority; and (b) the associate members of the Climate Change Authority; and (c) the Chief Executive Officer of the Climate Change Authority; and (d) the staff mentioned in section 52 of the *Climate Change Authority Act 2011*; and (e) the persons whose services are made available to the Climate Change Authority under section 53 of that Act; and (f) the consultants engaged under subsection 54(1) of that Act.	Chief Executive Officer

See Note B

National Greenhouse and Energy Reporting Act 2007

261A Section 3 (heading)

Repeal the heading, substitute:

3 Objects

262 Section 3

Before "The", insert "(1)".

263 Section 3

Before "object", insert "first".

264 Paragraph 3(a)

Repeal the paragraph.

265 At the end of section 3

Add:

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

266 Section 4

Before "This Act", insert "(1)".

267 Section 4

After "This Act", insert "(except to the extent to which it underpins the *Clean Energy Act 2011*)".

268 At the end of section 4

Add:

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

269 Section 5

Before "This Act", insert "(1)".

270 Subparagraph 5(a)(i)

Repeal the subparagraph.

271 Paragraph 5(b)

Omit "this section", substitute "this subsection".

272 At the end of section 5

Add:

(2) This Act is intended to apply to the exclusion of a law of a State or Territory, or a part of such a law:

(a) that provides for the reporting or disclosure of information related to greenhouse gas emissions; and

(b) that the regulations provide is a law, or part of a law, to which this subsection applies;

so far as the law, or part of the law, would otherwise apply in relation to a person other than:

(c) a local governing body; or

(d) an authority of a State or Territory.

273 After section 5

Insert:

5A Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Crown.

274 Section 6

Repeal the section, substitute:

6 Extension to external Territories

This Act extends to every external Territory.

6A Extension to exclusive economic zone and continental shelf

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

6B Extension to Joint Petroleum Development Area

This Act extends to the Joint Petroleum Development Area.

6C Application to foreign ships

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

(a) the territorial sea; or

(b) the exclusive economic zone; or

(c) waters of the continental shelf;

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

275 Section 7

Insert:

activity includes:

(a) a condition; or

(b) a circumstance; or

(c) a state of affairs;

relating to:

(d) solid waste; or

(e) carbon capture and storage; or

(f) other storage; or

(g) stockpiling; or

(h) any other matter or thing.

276 Section 7

Insert:

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

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

277 Section 7

Insert:

carbon capture and storage means:

(a) the storage of a greenhouse gas substance in a part of a geological formation; or

(b) the injection of a greenhouse gas substance into a part of a geological formation for the purposes of such storage; or

(c) the capture, compression, processing, offloading, transportation or piped conveyance of a greenhouse gas substance, where the compression, processing, offloading, transportation or piped conveyance is for the purposes of such storage.

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

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

Repeal the definition, substitute:

carbon dioxide equivalence:

(a) of an amount of greenhouse gas—means the amount of the gas multiplied by a value specified in the regulations in relation to that kind of greenhouse gas; or

(b) of an amount of potential greenhouse gas emissions embodied in an amount of natural gas—has the meaning given by section 7C.

280 Section 7

Insert:

designated generation facility means a facility that is:

(a) attributable to the industry sector mentioned in item 54 of Schedule 2 to the *National Greenhouse and Energy Reporting Regulations 2008* (which deals with electricity generation); and

(b) not a vertically integrated production process (within the meaning of those regulations).

281 Section 7

Insert:

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

282 Section 7 (definition of *emission*)

Repeal the definition, substitute:

emission of greenhouse gas means:

(a) a scope 1 emission of greenhouse gas; or

(b) a scope 2 emission of greenhouse gas.

283 Section 7

Insert:

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

284 Section 7

Insert:

executive officer of a body corporate means:

(a) a director of the body corporate; or

(b) the chief executive officer (however described) of the body corporate; or

(c) the chief financial officer (however described) of the body corporate; or

(d) the secretary of the body corporate.

285 Section 7

Insert:

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

286 Section 7

Insert:

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

287 Section 7

Insert:

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

288 Section 7

Insert:

foreign person means any of the following:

(a) an individual who is not ordinarily resident in Australia;

(b) a body corporate that:

(i) is incorporated outside Australia; or

(ii) is an authority of a foreign country;

(c) a corporation sole that:

(i) is incorporated outside Australia; or

(ii) is an authority of a foreign country;

(d) a body politic of a foreign country;

(e) a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.

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

Omit "74A", substitute "74C".

290 Section 7 (definition of *greenhouse gas*)

Repeal the definition, substitute:

greenhouse gas has the meaning given by section 7A.

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

Omit "regulations;", substitute "regulations.".

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

Omit all the words from and including "but" to the end of the definition.

293 Section 7 (definition of *group*)

Omit "subsection 8(1)", substitute "section 8".

294 Section 7 (definition of *innocent passage*)

Repeal the definition.

295 Section 7

Insert:

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

296 Section 7

Insert:

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

297 Section 7 (definition of *joint venture*)

Repeal the definition, substitute:

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

298 Section 7

Insert:

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

299 Section 7

Insert:

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

300 Section 7 (definition of *member*)

Before "has", insert ", in relation to a group,".

301 Section 7

Insert:

natural gas has the meaning given by the regulations.

303 Section 7

Insert:

non-group entity means a person who is not a member of a controlling corporation's group.

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

Repeal the definition.

305 Section 7

Insert:

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

307 Section 7 (definition of *operational control*)

Omit "11", substitute "11, 11A, 11AA, 11AB, 11B or 11C".

308 Section 7

Insert:

person means any of the following:

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

309 Section 7

Insert:

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

310 Section 7

Insert:

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

312 Section 7

Insert:

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

313 Section 7 (definition of *registered corporation*)

Omit "Division 3 of Part 2", substitute "this Act".

314 Section 7

Insert:

registered person means a person registered under this Act.

315 Section 7

Insert:

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

316 Section 7

Insert:

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

319 Section 7

Insert:

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

320 Section 7

Insert:

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

321 Section 7

Insert:

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

322 Section 7

Insert:

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

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

323 After section 7

Insert:

7A Greenhouse gas

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

(a) carbon dioxide;

(b) methane;

(c) nitrous oxide;

(d) sulfur hexafluoride;

(e) a hydrofluorocarbon of a kind specified in the table in subsection (2);

(f) a perfluorocarbon of a kind specified in the table in subsection (3);

(g) a prescribed gas.

Table 1—Hydrofluorocarbons

(2) Table 1 is as follows:

Hydrofluorocarbons		
Item	**Hydrofluorocarbon**	**Chemical formula**
1	HFC-23	CHF_3
2	HFC-32	CH_2F_2
3	HFC-41	CH_3F
4	HFC-43-10mee	$C_5H_2F_{10}$
5	HFC-125	C_2HF_5
6	HFC-134	$C_2H_2F_4$ (CHF_2CHF_2)
7	HFC-134a	$C_2H_2F_4$ (CH_2FCF_3)
8	HFC-143	$C_2H_3F_3$ (CHF_2CH_2F)
9	HFC-143a	$C_2H_3F_3$ (CF_3CH_3)
10	HFC-152a	$C_2H_4F_2$ (CH_3CHF_2)
11	HFC-227ea	C_3HF_7
12	HFC-236fa	$C_3H_2F_6$
13	HFC-245ca	$C_3H_3F_5$

Table 2—Perfluorocarbons

(3) Table 2 is as follows:

Perfluorocarbons		
Item	**Perfluorocarbon**	**Chemical formula**
1	Perfluoromethane (tetrafluoromethane)	CF_4
2	Perfluoroethane (hexafluoroethane)	C_2F_6
3	Perfluoropropane	C_3F_8
4	Perfluorobutane	C_4F_{10}
5	Perfluorocyclobutane	c-C_4F_8
6	Perfluoropentane	C_5F_{12}
7	Perfluorohexane	C_6F_{14}

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

(1) For the purposes of this Act and the *Clean Energy Act 2011*, the ***potential greenhouse gas emissions*** embodied in an amount of natural gas is:

(a) the amount of the greenhouse gas; or

(b) the amounts of the greenhouse gases;

that would be released into the atmosphere as a result of the combustion of the amount of the natural gas.

Default method

(2) The Minister may determine that the amount of greenhouse gas that would be released into the atmosphere as a result of the combustion of an amount of natural gas is taken, for the purposes of:

(a) this Act (other than subsections (3) and (4) of this section); and

(b) the *Clean Energy Act 2011*;

to be the amount of the natural gas multiplied by a value specified in the determination.

Prescribed alternative method

(3) However, if:

(a) a report relating to an eligible financial year was given by a person under section 22A; and

(b) the report was given before the end of 4 months after the end of the eligible financial year; and

(c) ascertaining the potential greenhouse gas emissions embodied in an amount of natural gas is relevant to working out a provisional emissions number of the person for the eligible financial year; and

(d) the report contained a statement to the effect that the person has made a choice to use the prescribed alternative method to ascertain the potential greenhouse gas emissions; and

(e) the prescribed alternative method was complied with in ascertaining the potential greenhouse gas emissions;

then, for the purposes of this Act and the *Clean Energy Act 2011*:

(f) the potential greenhouse gas emissions are to be ascertained in accordance with the prescribed alternative method; and

(g) a determination under subsection (2) does not apply in ascertaining the potential greenhouse gas emissions.

(4) For the purposes of this section, the ***prescribed alternative method*** is a method that:

(a) is for ascertaining the potential greenhouse gas emissions embodied in an amount of natural gas; and

(b) is specified in a determination made by the Minister; and

(c) involves testing one or more samples of the natural gas.

Combustion

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

Determination

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

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

Scope

(1) This section applies if the potential greenhouse gas emissions embodied in an amount of natural gas consist of:

(a) an amount of a greenhouse gas; or

(b) amounts of one or more greenhouse gases.

Carbon dioxide equivalence

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

324 Subsection 8(1)

Omit "A controlling", substitute "For the purposes of this Act and the *Clean Energy Act 2011*, a controlling".

325 Paragraph 8(1)(b)

Omit "(if any);", substitute "(if any).".

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

Repeal the paragraphs.

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

Repeal the subsections, substitute:

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

328 Subsection 9(1)

Omit "A ***facility*** is", substitute "For the purposes of this Act and the *Clean Energy Act 2011*, a ***facility*** is".

329 Subsection 9(1)

Omit "the production of" (first occurring).

330 Paragraph 9(1)(b)

Omit "54;", substitute "54 or 54A.".

331 Subsection 9(1)

Omit all the words from and including "but" to the end of the subsection.

332 Subsection 9(3)

Repeal the subsection.

333 Subsection 10(1)

After "References", insert "in this Act or the *Clean Energy Act 2011*".

334 Paragraph 10(1)(a)

Repeal the paragraph, substitute:

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

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

336 Subsection 10(2)

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

337 Subsection 10(3)

Omit "emissions," (wherever occurring), substitute "scope 1 emissions, scope 2 emissions,".

338 Subsection 10(3)

After "this Act", insert "and the *Clean Energy Act 2011*".

339 Paragraph 10(3)(a)

Repeal the paragraph, substitute:

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

339AA At the end of section 10

Add:

(4) A determination under subsection (3) may also deal with matters required or permitted by section 32 or 32A of the *Clean Energy Act 2011* to be dealt with by such a determination.

339A Section 11 (heading)

Repeal the heading, substitute:

11 Operational control—basic rule

340 Subsection 11(1)

Omit "A controlling corporation or another member of the corporation's group", substitute "For the purposes of this Act and the *Clean Energy Act 2011*, a person".

341 Paragraph 11(1)(a)

Omit "it", substitute "the person".

342 Paragraph 11(1)(b)

Omit "corporation or member", substitute "person".

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

Add "or 55A".

344 Subsection 11(2)

After "apply", insert "in relation to a facility".

345 At the end of subsection 11(2)

Add "in relation to the facility".

346 Subsection 11(3)

After "this Act", insert "and the *Clean Energy Act 2011*".

347 Subsection 11(3)

Omit "such corporation or member", substitute "person".

348 Subsection 11(4)

Repeal the subsection, substitute:

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

349 At the end of Part 1

Add:

11A Operational control—person with greatest authority

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, an eligible financial year:

(a) 2 or more persons could satisfy paragraph 11(1)(a) in relation to a facility throughout the period;

(b) a particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility throughout the period;

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period.

Operational control

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

11AA Operational control during part of fixed charge year—nominated person

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, the first 9 months of a fixed charge year:

(a) 2 or more persons could satisfy paragraph 11(1)(a) in relation to a facility throughout the period;

(b) no particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility throughout the period;

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;

(d) as at the start of 1 April in the fixed charge year, it may reasonably be expected that a person would have had an interim emissions number for the fixed charge year if it were assumed that:

(i) the person had operational control over the facility throughout the period; and

(ii) none of the persons mentioned in paragraph (a) of this subsection had operational control over the facility throughout the period.

Nomination

(2) The persons mentioned in paragraph (1)(a) must, before the end of 30 April in the fixed charge year, jointly nominate one of them to be the nominated person in relation to the facility for the period.

Civil penalty: 1,000 penalty units.

(3) A nomination must:

(a) be in writing; and

(b) be in a form approved by the Regulator; and

(c) be accompanied by such information as is specified in the regulations.

(4) If:

(a) any of those persons is a foreign person; and

(b) any of those persons is not a foreign person;

a foreign person cannot be nominated.

Operational control—nomination made

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

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

Operational control—nomination not made

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

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

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

(b) if there is a provisional emissions number of such a person for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period—for the purposes of this Act and the *Clean Energy Act 2011*, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (9).

(9) The formula is:

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

where:

unadjusted provisional emissions number means the number that, apart from paragraph (8)(b), would be the provisional emissions number of the person for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period.

Exception

(10) A person is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:

(a) this Act; or

(b) the *Clean Energy Act 2011*.

11AB Operational control during part of fixed charge year—trust with multiple trustees

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, the first 9 months of a fixed charge year:

(a) because of section 11, 11A or 11AA, a trust has operational control over a facility throughout the period;

(b) throughout the period, there are 2 or more trustees of the trust;

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;

(d) as at the start of 1 April in the fixed charge year, it may reasonably be expected that a person would have had an interim emissions number for the fixed charge year if it were assumed that:

(i) the person had operational control over the facility throughout the period; and

(ii) the trust did not have operational control over the facility throughout the period.

Nomination

(2) The trustees must, before the end of 30 April in the fixed charge year, jointly nominate one of them to be the nominated trustee in relation to the facility for the period.

Civil penalty: 1,000 penalty units.

(3) A nomination must:
(a) be in writing; and
(b) be in a form approved by the Regulator; and
(c) be accompanied by such information as is specified in the regulations.

(4) If:
(a) any of those trustees is a foreign person; and
(b) any of those trustees is not a foreign person;
a foreign person cannot be nominated.

Operational control

(5) If a nomination is made, the nominated trustee is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to have ***operational control*** over the facility throughout the period.

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

(7) The formula is:

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

where:

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

Exception

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

11B Operational control—nominated person

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, an eligible financial year:
  (a) 2 or more persons could satisfy paragraph 11(1)(a) in relation to a facility throughout the period;
  (b) no particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility throughout the period;
  (c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;
  (d) if the period is included in a fixed charge year—section 11AA does not apply to the facility for the period.

Nomination

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

Civil penalty: 1,000 penalty units.

(3) A nomination must:
(a) be in writing; and
(b) be in a form approved by the Regulator; and
(c) be accompanied by such information as is specified in the regulations.

(4) If:
(a) any of those persons is a foreign person; and
(b) any of those persons is not a foreign person;
a foreign person cannot be nominated.

Operational control—nomination made

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

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

Operational control—nomination not made

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

(8) If no nomination is made and the facility is not a facility of a joint venture:
(a) each of the persons mentioned in paragraph (1)(a) is taken, for the purposes of this Act and the *Clean Energy Act 2011*,

to have ***operational control*** over the facility throughout the period; and

(b) if there is a provisional emissions number of such a person for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period—

for the purposes of this Act and the *Clean Energy Act 2011*, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (9).

(9) The formula is:

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

where:

unadjusted provisional emissions number means the number that, apart from paragraph (8)(b), would be the provisional emissions number of the person for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period.

Exception

(10) A person is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:

(a) this Act; or

(b) the *Clean Energy Act 2011*.

11C Operational control—trust with multiple trustees

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, an eligible financial year:

(a) because of section 11, 11A or 11B, a trust has operational control over a facility throughout the period;

(b) throughout the period, there are 2 or more trustees of the trust;

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;

(d) if the period is included in a fixed charge year—section 11AB does not apply to the facility for the period.

Nomination

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

Civil penalty: 1,000 penalty units.

(3) A nomination must:

(a) be in writing; and

(b) be in a form approved by the Regulator; and

(c) be accompanied by such information as is specified in the regulations.

(4) If:

(a) any of those trustees is a foreign person; and

(b) any of those trustees is not a foreign person;

a foreign person cannot be nominated.

Operational control

(5) If a nomination is made, the nominated trustee is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to have ***operational control*** over the facility throughout the period.

(6) If no nomination is made:

(a) each of those trustees is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to have ***operational control*** over the facility throughout the period; and

(b) if there is a provisional emissions number of such a trustee for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period—for the purposes of this Act and the *Clean Energy Act 2011*, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (7).

(7) The formula is:

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

where:

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

Exception

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

350 Before section 12

Insert:

Subdivision A—Application by a controlling corporation

351 After subsection 13(1)

Insert:

(1A) Subsection (1) does not apply in relation to:
  (a) greenhouse gas emissions; or
  (b) energy production; or
  (c) energy consumption;

unless the Minister has, under subsection 10(3), determined:
  (d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or
  (e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

351A At the end of section 13

Add:

Financial control liability transfer certificate

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

352 At the end of Division 1 of Part 2

Add:

Subdivision B—Application by a liable entity

15A Application by a liable entity

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

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

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

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

(4) An application under subsection (1) must:

(a) be made to the Regulator; and

(b) be in a form approved by the Regulator; and

(c) set out the information specified by the regulations for the purposes of this paragraph.

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

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

(a) either:

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

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

(b) either:

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

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

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

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

(2) However, a person is not required to make an application under subsection (1) if the person is registered under this Act at the start of 1 April in the current fixed charge year.

(3) An application under subsection (1) must be made by 1 May in the current fixed charge year.

(4) An application under subsection (1) must:

(a) be made to the Regulator; and

(b) be in a form approved by the Regulator; and

(c) set out the information specified by the regulations for the purposes of this paragraph.

353 Division 2 of Part 2

Repeal the Division, substitute:

Division 2—National Greenhouse and Energy Register

16 National Greenhouse and Energy Register

(1) The Regulator is to maintain a register, to be known as the National Greenhouse and Energy Register, that sets out:

(a) the name of each person registered under this Act; and

(b) any other matters, specified in the regulations, that relate to the following:

(i) information included in the application for registration;

(ii) whether the person has complied with provisions of this Act;

(iii) information included in a report given by the person under this Act;

(iv) information that is published under section 24;

(v) the results of a greenhouse and energy audit carried out in relation to the person.

(2) The National Greenhouse and Energy Register may be maintained by electronic means.

(3) The National Greenhouse and Energy Register may be made available for inspection in any way the Regulator thinks appropriate.

(4) The Regulator must ensure that the National Greenhouse and Energy Register is up-to-date.

(5) The National Greenhouse and Energy Register is not a legislative instrument.

(6) Before the end of 28 February next following each financial year, the Regulator must publish on its website the name of each person registered under this Act at any time during the financial year.

(7) Subsection (6) does not limit subsection (3).

354 Division 3 of Part 2 (heading)

Repeal the heading, substitute:

Division 3—Registration of controlling corporations

355 Section 18

Repeal the section.

356 At the end of Part 2

Add:

Division 4—Registration of other persons

18A Registration of other persons

(1) The Regulator must register a person under this Act if the person has applied for registration under section 15A or 15AA.

(2) The Regulator must notify the person, in writing, of the Regulator's decision on the application.

(3) The person is registered under this Act when the Regulator has entered the name of the person on the Register.

Division 5—Deregistration

18B Deregistration

Deregistration on application

(1) A registered person may apply to the Regulator to be deregistered.

(2) An application must:
  (a) be in writing; and
  (b) be in a form approved by the Regulator; and
  (c) set out such information as is specified in the regulations.

(3) The Regulator must remove the person's name from the Register if the Regulator is satisfied that:
  (a) in a case where the person is the controlling corporation of a group—the group is not likely to meet any of the thresholds under section 13 for:
    (i) the financial year in which the application is made; and
    (ii) the next 2 financial years; and

(b) the person:

(i) is not a liable entity for the financial year in which the application is made; and

(ii) is not likely to be a liable entity for any of the next 2 financial years; and

(c) the person does not hold a reporting transfer certificate; and

(d) the person has complied with the person's obligations under this Act.

(4) The Regulator must notify the person, in writing, of the Regulator's decision on the application.

Deregistration on the Regulator's own initiative

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

When registration ceases

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

357 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Reporting obligations of registered corporations etc.

358 Subsection 19(1)

Omit "registered corporation", substitute "corporation registered under Division 3 of Part 2".

359 At the end of subsection 19(1)

Add:

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

360 After subsection 19(1)

Insert:

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

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

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

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

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

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

361 Subsections 19(4) and (5)

Repeal the subsections, substitute:

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

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

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

362 Paragraph 19(6)(c)

Omit "include any", substitute "set out the".

363 At the end of section 19

Add:

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

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

After "this Act", insert "(other than Part 3A or 3D)".

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

After "this Act", insert "(other than Part 3A or 3D)".

366 Subsection 22(3)

Omit "7 years", substitute "5 years".

367 After Part 3

Insert:

Part 3A—Reporting obligations of liable entities etc.

22A Report to be given to Regulator—general

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

(a) the calculation of the person's provisional emissions numbers for the eligible financial year; and

(b) if a provisional emissions number of the person for the eligible financial year is attributable to scope 1 emissions of greenhouse gas—those emissions; and

(c) if a provisional emissions number of the person for the eligible financial year is attributable to potential greenhouse gas emissions embodied in an amount of natural gas—those potential greenhouse gas emissions; and

(d) the calculation of the person's emissions number for the eligible financial year.

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

Note 2: Under section 30, a person may be liable for an additional civil penalty for each day after the end of the period mentioned in

paragraph (2)(c) of this section for which the person fails to provide a report in accordance with this section.

(2) A report under this section must:

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

(b) set out the information specified by the regulations for the purposes of this paragraph; and

(c) be given to the Regulator before the end of 4 months after the end of the eligible financial year.

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

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

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

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

(1) If:

(a) a person is a liable entity for a fixed charge year; and

(b) the person has an interim emissions number for the fixed charge year;

the person must, in accordance with this section, provide a report to the Regulator relating to:

(c) the calculation of the person's interim emissions numbers for the fixed charge year; and

(d) if an interim emissions number of the person for the fixed charge year is attributable to scope 1 emissions of greenhouse gas—those emissions; and

(e) if an interim emissions number of the person for the fixed charge year is attributable to potential greenhouse gas emissions embodied in an amount of natural gas—those potential greenhouse gas emissions.

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

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

(2) A report under this section must:

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

(b) set out the information specified by the regulations for the purposes of this paragraph; and

(c) be given to the Regulator before the end of 15 June in the eligible financial year.

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

22B Records to be kept—general

(1) A person who is or was a liable entity for an eligible financial year must keep records of the person's activities that:

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

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

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

22C Records to be kept—fixed charge year

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

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

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

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

Part 3D—Reporting obligations of holders of liability transfer certificates

22E Report to be given to Regulator

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

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

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

(2) A report under this section must:

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

(b) be based on:

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

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

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

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

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

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

(4) In particular, and without limiting subsection (3), the regulations may specify different requirements for persons who:

(a) do not meet any threshold; or

(b) do not meet specified thresholds;

for an eligible financial year to which a report relates.

(5) Regulations made for the purposes of paragraph (2)(c) may also specify information that a State or Territory has requested the Regulator to collect.

(6) The regulations may provide that a person is not required to provide a report under subsection (1) for an eligible financial year in relation to a facility if the facility does not meet a specified threshold for the eligible financial year.

(7) Reports under this section and section 22A may be set out in the same document.

22F Records to be kept

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

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

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

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

Civil penalty:

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

(b) otherwise—10,000 penalty units.

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

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

368 After subsection 22G(1)

Insert:

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

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

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

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

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

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

368A Subsection 22H(2)

Omit "7 years", substitute "5 years".

369 After Part 3E

Insert:

Part 3F—Reporting obligations transferred to member of corporate group

22X Reporting obligations transferred to member of corporate group

Scope

(1) This section applies if:

(a) either:

(i) a facility is under the operational control of a member (the ***responsible member***) of a controlling corporation's group during the whole or a part of a financial year; or

(ii) during the whole or a part of a financial year, a member (the ***responsible member***) of a controlling corporation's group is the holder of a liability transfer certificate that was issued under section 83 of the *Clean Energy Act 2011* in relation to a facility; and

(b) the controlling corporation and the responsible member have agreed to transfer reporting obligations for the facility to the responsible member; and

(c) before the end of the financial year, the controlling corporation and the responsible member have jointly notified the Regulator, in writing, of:

(i) the agreement; and

(ii) the facility to which the agreement relates.

Obligation to report

(2) The responsible member must, in accordance with this section and in respect of the financial year, provide a report to the Regulator relating to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

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

Civil penalty: 2,000 penalty units.

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

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

(3) Subsection (1) does not apply to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

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

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

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

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

(4) A report under this section must:

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

(b) be based on:

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

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

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

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

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

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

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

22XA Records to be kept

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

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

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

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

Civil penalty: 1,000 penalty units.

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

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

370 Subsection 23(1) (penalty)

Repeal the penalty, substitute:

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

371 Subsections 24(1) and (1A)

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

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

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

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

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

(i) reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(ii) adjusted in accordance with the regulations.

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

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

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

(ii) each business unit in relation to the corporation's group;

reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(b) totals of greenhouse gas emissions that are scope 2 emissions for:

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

(ii) each business unit in relation to the corporation's group;

reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(c) the totals of energy consumption for each member of the corporation's group, or each business unit in relation to the corporation's group:

(i) reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(ii) adjusted in accordance with the regulations; and

(d) the methods mentioned in paragraph 19(6)(b) or 22X(4)(b) that were used to measure:

(i) the totals for the corporation's group referred to in paragraphs (1)(a) and (b); and

(ii) the totals of energy consumption reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(e) the rating given to each of those methods under the determination under subsection 10(3).

This subsection is subject to subsection 25(3).

375 After subsection 24(1A)

Insert:

(1AA) If a person gives the Regulator a report under section 22A in relation to an eligible financial year, the Regulator must publish on its website, by 28 February next following the eligible financial year:

(a) the total of the numbers specified in the report as the person's provisional emissions numbers for the eligible financial year; and

(b) if any of those provisional emissions numbers are attributable to scope 1 emissions of greenhouse gas—the total of those provisional emissions numbers; and

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

375A Subsection 24(1AD)

Omit "a corporation", substitute "a person".

375B Subsection 24(1AD)

After "section", insert "22E or".

376 Subsection 24(1AD)

Omit "a website", substitute "its website".

377 Subsection 24(1AE)

Omit "the website", substitute "its website".

377A Paragraph 24(1AE)(a)

After "paragraph", insert "22E(2)(b) or".

378 After subsection 24(1AE)

Insert:

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

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

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

379 Subsection 24(1C)

Omit "a website the fact that the totals", substitute "its website the fact that the totals or adjusted totals".

379A Subsection 24(1G)

Omit "a website", substitute "its website".

380 After subsection 24(1G)

Insert:

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

(a) emissions of greenhouse gases that have a carbon dioxide equivalence of 25 kilotonnes or more; or

(b) production of energy of 100 terajoules or more; or

(c) consumption of energy of 100 terajoules or more.

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

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

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

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

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

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

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

381 Subsections 24(2) and (3)

Omit "a website", substitute "its website".

384 Subsection 25(1)

Omit "or" (first occurring).

385 Subsection 25(1)

After "section 20,", insert "or a person required to provide a report under section 22A, 22AA, 22E or 22X".

386 At the end of section 25

Add:

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

387 Subsection 30(2) (civil penalty)

Repeal the civil penalty, substitute:

Civil penalty: 100 penalty units per day.

388 After subsection 30(2)

Insert:

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

Civil penalty:

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

(b) otherwise—100 penalty units per day.

389 Subsection 31(4)

Omit "must have regard", substitute "may have regard".

390 At the end of subsection 31(4)

Add:

; and (e) the extent to which the person has co-operated with the authorities; and

(f) if the person is a body corporate:

(i) the level of the employees, officers or agents of the body corporate involved in the contravention; and

(ii) whether the body corporate exercised due diligence to avoid the contravention; and

(iii) whether the body corporate had a corporate culture conducive to compliance.

391 Division 4 of Part 5 (heading)

Repeal the heading, substitute:

Division 4—Liability of executive officers of bodies corporate

391A Section 47 (heading)

Repeal the heading, substitute:

47 Civil penalties for executive officers of bodies corporate

392 Paragraph 47(1)(a)

Omit "corporation", substitute "body corporate".

393 Paragraph 47(1)(b)

Omit "chief".

394 Paragraphs 47(1)(b) and (c)

Omit "corporation", substitute "body corporate".

395 After subsection 47(1)

Insert:

(1A) For the purposes of subsection (1), the officer is ***reckless*** as to whether the contravention would occur if:

(a) the officer is aware of a substantial risk that the contravention would occur; and

(b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

(1B) For the purposes of subsection (1), the officer is ***negligent*** as to whether the contravention would occur if the officer's conduct involves:

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the contravention would occur; and

that the conduct merits the imposition of a pecuniary penalty.

396 Subsection 47(3)

Omit "corporation", substitute "body corporate".

396A Section 48 (heading)

Repeal the heading, substitute:

48 Did an executive officer take reasonable steps to prevent contravention?

397 Subsection 48(1)

Omit “a chief”, substitute “an”.

398 Subsection 48(1)

Omit “corporation” (first occurring), substitute “body corporate”.

399 Subparagraph 48(1)(a)(i)

Omit “corporation”, substitute “body corporate”.

400 Subparagraph 48(1)(a)(i)

Omit “corporation’s”, substitute “body corporate’s”.

401 Subparagraph 48(1)(a)(ii)

Omit “corporation”, substitute “body corporate”.

402 Subparagraph 48(1)(a)(iii)

Omit “corporation’s”, substitute “body corporate’s”.

403 Paragraph 48(1)(b)

Omit “that the corporation was contravening this Act or the regulations”, substitute “of the contravention”.

403A Section 54 (heading)

Repeal the heading, substitute:

54 Regulator may declare facility—group

404 Subsection 54(5)

Omit “corporation, joint venture or partnership”, substitute “person”.

405 After section 54

Insert:

54A Regulator may declare facility—non-group entity

(1) The Regulator may declare that an activity or series of activities (including ancillary activities) are a facility:

(a) on application by a non-group entity; or

(b) on the Regulator’s own initiative.

(2) An application must:
(a) identify the facility for which a declaration is sought; and
(b) include any other information required by the regulations; and
(c) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that an activity or series of activities are a facility, the Regulator must have regard to:
(a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
(b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.

(4) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare a facility or to refuse the application.

(5) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

406 After subsection 55(3)

Insert:

(3A) The Regulator must not declare that a controlling corporation or another member of the corporation's group has operational control of a facility unless the Regulator is satisfied that the corporation or member has substantial authority to introduce and implement either or both of the following for the facility:
(a) operating policies;
(b) environmental policies.

(3B) The Regulator must not declare that a member of a controlling corporation's group (other than the controlling corporation) has operational control of a facility on application made by the member unless the controlling corporation has given written consent to the making of the declaration.

407 At the end of Division 2 of Part 6

Add:

55A Regulator may declare non-group entity has operational control

(1) The Regulator may declare that a non-group entity has operational control of a facility:
  (a) on application by the non-group entity; or
  (b) on the Regulator's own initiative.

(2) An application must:
  (a) identify the facility for which a declaration of operational control is sought; and
  (b) include any other information required by the regulations; and
  (c) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that a non-group entity has operational control of a facility, the Regulator must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.

(4) The Regulator must not declare that a non-group entity has operational control of a facility unless the Regulator is satisfied that the non-group entity has substantial authority to introduce and implement either or both of the following for the facility:
  (a) operating policies;
  (b) environmental policies.

(5) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare the non-group entity to have operational control of the facility or to refuse the application.

(6) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the non-group entity which the Regulator has declared to have operational control of the facility to which the declaration relates.

408 After paragraph 56(a)

Insert:

  (aa) not register a person under section 18A;

409 Paragraph 56(b)

Omit "corporation under section 18", substitute "person under section 18B".

410 After paragraph 56(g)

Insert:

(ga) refuse an application under section 54A;

(gb) declare a facility under paragraph 54A(1)(b);

411 At the end of section 56

Add:

; (k) refuse an application under section 55A;

(l) declare that a non-group entity has operational control of a facility under paragraph 55A(1)(b).

412 Subsection 61(3) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

413 Subsection 69(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

414 Before section 75

Insert:

74AA Audit of persons providing reports under section 22A

(1) This section applies if:

(a) a person is required to provide a report under section 22A for an eligible financial year; and

(b) the person's emissions number for the eligible financial year exceeds the number specified in the regulations in relation to the eligible financial year.

(2) The person must:

(a) appoint as an audit team leader a registered greenhouse and energy auditor of the person's choice; and

(b) arrange for the audit team leader to carry out an audit of:

(i) the section 22A report; and

(ii) such other matters (if any) relating to the section 22A report as are specified in the regulations; and

(iii) the person's compliance with section 22B in relation to the eligible financial year; and

(c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report:

(i) on the day on which the section 22A report is provided to the Regulator; and

(ii) in the manner specified in the regulations.

Civil penalty:

(a) for an individual—200 penalty units; or

(b) otherwise—1,000 penalty units.

Note: Under section 30, a person may be liable for an additional civil penalty for each day after the day mentioned in paragraph (d) for which the person fails to provide an audit report in accordance with this section.

(3) The regulations may specify:

(a) the type of audit to be carried out; and

(b) the matters to be covered by the audit; and

(c) the form of the audit report and the kinds of details it is to contain.

(4) The person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or

(b) otherwise—250 penalty units.

74B Audits of certain entities—compliance

(1) For the purposes of this section, a person is a ***relevant person*** if:

(a) the following subparagraphs apply:

(i) the person is a non-group entity;

(ii) the Regulator has reasonable grounds to suspect that the person has contravened, is contravening, or is proposing to contravene, this Act or the regulations; or

(b) the following subparagraphs apply:

(i) the person is the responsible member mentioned in subsection 22X(1);

(ii) the person is not a registered corporation;

(iii) the Regulator has reasonable grounds to suspect that the person has contravened, is contravening, or is proposing to contravene, this Act or the regulations.

(2) The Regulator may, by written notice given to a relevant person, require the relevant person to:

(a) appoint as an audit team leader:

(i) a registered greenhouse and energy auditor of the relevant person's choice; or

(ii) if the Regulator specifies a registered greenhouse and energy auditor in the notice—that auditor; or

(iii) if the Regulator specifies more than one registered greenhouse and energy auditor in the notice—any one of those auditors; and

(b) arrange for the audit team leader to carry out an audit on one or more aspects of the relevant person's compliance with this Act or the regulations; and

(c) arrange for the audit team leader to give the relevant person a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report on or before the day specified in the notice.

(3) The notice must specify:

(a) the type of audit to be carried out; and

(b) the matters to be covered by the audit; and

(c) the form of the audit report and the kinds of details it is to contain.

(4) The relevant person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or
(b) otherwise—250 penalty units.

(5) If the Regulator gives the relevant person written notice under subsection (2), the relevant person must comply with the requirements of the notice.

Civil penalty:
(a) for an individual—200 penalty units; or
(b) otherwise—1,000 penalty units.

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

74C Audits of certain entities—other

(1) For the purposes of this section, a person is a ***relevant person*** if:
(a) the person is a non-group entity; or
(b) the person:
(i) is the responsible member mentioned in subsection 22X(1); and
(ii) is not a registered corporation.

(2) The Regulator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of a relevant person's compliance with one or more aspects of this Act or the regulations.

(3) The Regulator must give written notice to the relevant person of a decision to appoint an audit team leader under subsection (2). The notice must:
(a) specify the audit team leader; and
(b) specify the period within which the audit is to be undertaken; and
(c) specify the type of audit to be carried out; and
(d) specify the matters to be covered by the audit; and
(e) be given to the relevant person at a reasonable time before the audit is to be undertaken.

(4) The relevant person must provide the audit team leader and any audit team members with all reasonable facilities and assistance

necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or
(b) otherwise—250 penalty units.

(5) If a relevant person is given a notice under subsection (3), the relevant person must arrange for the audit team leader to carry out the audit.

Civil penalty:

(a) for an individual—200 penalty units; or
(b) otherwise—1,000 penalty units.

415 Subsection 75A(7)

Omit "signed", substitute "written".

415A After section 76

Insert:

76A Periodic reviews of operation of this Act etc.

(1) The Climate Change Authority must conduct reviews of the operation of:

(a) this Act; and
(b) legislative instruments under this Act.

Public consultation

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

Report

(3) The Climate Change Authority must:

(a) give the Minister a report of the review; and
(b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

(5) The first review under subsection (1) must be completed during the period:

(a) beginning at the start of 30 June 2016; and

(b) ending at the end of 31 December 2018.

Subsequent reviews

(6) Each subsequent review under subsection (1) must be completed within 5 years after the deadline for completion of the previous review.

(7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

Recommendations

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

(9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(11) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:

(a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and

(b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(13) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

(a) the Climate Change Authority;

(b) the Regulator;

(c) such other persons as the Minister considers relevant.

76B Special reviews of operation of this Act etc.

Scope

(1) This section applies if:

(a) the Minister, by written instrument given to the Chair of the Climate Change Authority, requests the Climate Change Authority to conduct a review under this section of such matters as are specified in the instrument; and

(b) the matters specified in the instrument are covered by subsection (4).

Review

(2) The Climate Change Authority must conduct a review of those matters.

Consultation

(3) In conducting a review, the Climate Change Authority must make provision for public consultation.

Covered matters

(4) This subsection covers the operation of:

(a) this Act; and

(b) legislative instruments under this Act.

Report

(5) The Climate Change Authority must:
  (a) give the Minister a report of the review; and
  (b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(6) The Minister must cause copies of a report under subsection (5) to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Recommendations

(7) A report of a review under subsection (2) may set out recommendations to the Commonwealth Government.

(8) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(9) Subsection (8) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(10) If a report of a review under subsection (2) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(11) If a report of a review under subsection (2) sets out one or more recommendations to the Commonwealth Government:
  (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(12) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

(a) the Climate Change Authority;
(b) the Regulator;
(c) such other persons as the Minister considers relevant.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

415B Paragraph 3(d)

After "Climate Change", insert "and the Kyoto Protocol".

416 Subsection 7(1)

Omit "(1)" (first occurring).

416A Subsection 7(1) (definition of *licence*)

Omit "or a used substances licence", substitute ", a used substances licence or an ODS/SGG equipment licence".

416B Subsection 7(1)

Insert:

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

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

417 Subsection 7(1)

Insert:

ODS equipment has the meaning given by section 8C.

418 Subsection 7(1)

Insert:

ODS/SGG equipment licence means an ODS/SGG equipment licence under section 13A.

419 Subsection 7(1) (definition of *pre-charged equipment*)

Repeal the definition.

420 Subsection 7(1) (definition of *pre-charged equipment licence*)

Repeal the definition.

420A Subsection 7(1) (paragraph (b) of the definition of *recycled or used HCFCs*)

Omit "after undergoing a cleaning process", substitute "or destroyed".

420B Subsection 7(1) (paragraph (b) of the definition of *recycled or used methyl bromide*)

Omit "after undergoing a cleaning process", substitute "or destroyed".

420C Subsection 7(1) (paragraph (b) of the definition of *recycled stage-1 or stage-2 scheduled substances*)

Omit "after undergoing a cleaning process", substitute "or destroyed".

421 Subsection 7(1) (definition of *SGG* or *synthetic greenhouse gas*)

Omit "or a PFC", substitute ", a PFC or sulfur hexafluoride".

421A Subsection 7(1)

Insert:

> ***SGG equipment*** has the meaning given by section 8D.

422 Subsection 7(1)

Insert:

> ***sulfur hexafluoride*** means the substance referred to in Part XI of Schedule 1, whether existing alone or in a mixture.

423 After section 8B

Insert:

8C ODS equipment

For the purposes of this Act, ***ODS equipment*** means air-conditioning equipment, or refrigeration equipment, that contains a substance that is an HCFC or, but for section 9, would be an HCFC.

8D SGG equipment

(1) For the purposes of this Act, ***SGG equipment*** means:

(a) equipment, or a product, that contains a substance that is an HFC or a PFC; or

(b) equipment, or a product, that contains a substance that is sulfur hexafluoride;

but does not include:

(c) equipment, or a product, prescribed by the regulations; or

(d) equipment, or a product, specified in a legislative instrument made by the Minister.

(2) Unless sooner revoked, a legislative instrument made under paragraph (1)(d) ceases to be in force 12 months after it is registered under the *Legislative Instruments Act 2003*.

424A Section 9 (heading)

Repeal the heading, substitute:

9 Scheduled substances (other than SGGs) in manufactured products

424B Subsection 9(1)

After "Schedule 1", insert "(other than a substance referred to in Part IX, X or XI of that Schedule)".

425 Subsection 13(6A)

Repeal the subsection, substitute:

(6A) A person must not import ODS equipment or SGG equipment unless:

(a) the person holds an ODS/SGG equipment licence; or

(b) the following conditions are satisfied:

(i) the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use;

(ii) the equipment is prescribed by the regulations or specified in a legislative instrument made by the Minister;

(iii) if the equipment is prescribed by regulations made for the purposes of subparagraph (ii)—the conditions (if any) prescribed by the regulations;

(iv) if the equipment is specified in an instrument made by the Minister under subparagraph (ii)—the conditions (if any) specified in a legislative instrument made by the Minister.

(6B) Unless sooner revoked, a legislative instrument made by the Minister under subparagraph (6A)(b)(ii) or (iv) ceases to be in force 12 months after it is registered under the *Legislative Instruments Act 2003*.

426 Subsection 13(9) (note 2)

Omit "subsection 65AC(4)", substitute "subsections 65AC(4) and (4A)".

427 Paragraph 13A(1)(d)

Omit "a pre-charged equipment licence", substitute "an ODS/SGG equipment licence".

428 Subsection 13A(5)

Repeal the subsection, substitute:

(5) An ODS/SGG equipment licence allows the licensee to import ODS equipment or SGG equipment.

429 Subsection 16(3)

Omit "a pre-charged equipment licence", substitute "an ODS/SGG equipment licence".

430 Subsection 19(4)

Omit "A pre-charged equipment licence", substitute "An ODS/SGG equipment licence".

431 Subsection 19A(2)

Omit "a pre-charged equipment licence", substitute "an ODS/SGG equipment licence".

431A Section 46 (heading)

Repeal the heading, substitute:

46 Quarterly reports by manufacturers, importers and exporters of scheduled substances (other than SGGs and substances in ODS equipment or SGG equipment)

432 Paragraph 46(1A)(b)

Omit "pre-charged equipment", substitute: "ODS equipment or SGG equipment".

433 Subsection 46(1B)

Repeal the subsection.

434 Subsection 46(1BA)

Repeal the subsection.

435 Subsection 46(1C)

Repeal the subsection.

436 Subsection 46(2AA)

Repeal the subsection.

437 Subsection 46(2A)

Omit "or (2AA)".

438 Subsection 46(2B)

Omit "or (2AA)".

439 Subsection 46(2D)

Repeal the subsection.

440 Subsection 46(2E)

Omit "Subsections (2C) and (2D) are ***civil penalty provisions***", substitute "Subsection (2C) is a ***civil penalty provision***".

441 Subsection 46(2F)

Omit "Subsections (2C) and (2D) do not", substitute "Subsection (2C) does not".

442 After section 46

Insert:

46A Quarterly reports by manufacturers, importers and exporters of SGGs, ODS equipment or SGG equipment

Manufacturer

(1) If:

(a) a person manufactures an SGG during:

(i) the quarter beginning on 1 July 2012; or

(ii) a later quarter; and

(b) the manufacture is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b);

the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Importer

(2) If:

(a) a person imports an SGG during:

(i) the quarter beginning on 1 July 2012; or

(ii) a later quarter; and

(b) the import is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b); and

(c) the SGG is not contained in ODS equipment or SGG equipment;

the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

(3) If:

(a) a person imports ODS equipment or SGG equipment during:

(i) the quarter beginning on 1 July 2012; or

(ii) a later quarter; and

(b) the import is not covered by paragraph 13(6A)(b);

the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Exporter

(4) If:

(a) a person exports an SGG during:

(i) the quarter beginning on 1 July 2012; or

(ii) a later quarter; and

(b) the export is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b);

the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Offence

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (2), (3) or (4); and

(b) the person omits to do an act; and

(c) the omission breaches the requirement.

Penalty: 60 penalty units.

(6) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

442A Subparagraph 65AA(1)(a)(vii)

Omit "46; or", substitute "46;".

442B At the end of paragraph 65AA(1)(a)

Add:

(viii) section 46A; or

443 Subsection 65AC(4)

After "subsection", insert "13(1A) or (6A) or".

444 After subsection 65AC(4)

Insert:

(4A) The pecuniary penalty payable by a person in respect of a contravention of subsection 13(1A) or (6A) must not exceed:

(a) if the person is not a body corporate—2,000 penalty units; or

(b) if the person is a body corporate—10,000 penalty units.

445 Before paragraph 65C(1)(a)

Insert:

(aa) amounts equal to the prescribed rate component of an amount of levy received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;

(ab) amounts equal to the prescribed rate component of an amount of levy received by the Commonwealth under section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;

(ac) amounts equal to the prescribed rate component of an amount of levy received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;

446 Subparagraph 65C(1)(a)(i)

Before "the", insert "section 4 or 4B of".

447 Subparagraph 65C(1)(a)(ii)

Before "the", insert "section 4 of".

447A Paragraph 65C(1)(b)

Omit "licence".

448 At the end of section 65C

Add:

Prescribed rate component

(4) For the purposes of paragraph (1)(aa), the ***prescribed rate component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the SGG} \times \text{Prescribed rate}$$

where:

number of tonnes of the SGG means the number of tonnes of the SGG to which the levy relates.

prescribed rate means the applicable rate prescribed by the regulations made for the purposes of the definition of ***prescribed rate*** in subsection 3A(7) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(5) For the purposes of paragraph (1)(ab), the ***prescribed rate component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the SGG contained in the equipment} \times \text{Prescribed rate}$$

where:

number of tonnes of the SGG contained in the equipment means the number of tonnes of the SGG contained in the equipment to which the levy relates.

prescribed rate means the applicable rate prescribed by the regulations made for the purposes of the definition of ***prescribed rate*** in subsection 4A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(6) For the purposes of paragraph (1)(ac), the ***prescribed rate component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the SGG} \times \text{Prescribed rate}$$

where:

number of tonnes of the SGG means the number of tonnes of the SGG to which the levy relates.

prescribed rate means the rate prescribed by the regulations made for the purposes of the definition of ***prescribed rate*** in subsection 3A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

449 Subsection 69(1)

Repeal the subsection, substitute:

(1) A licence levy is due and payable:
  (a) at the end of 60 days after the end of the quarter to which the levy relates; or
  (b) if the Minister allows the licensee concerned a longer period—at the end of that longer period.

450 After section 69

Insert:

69AA Remission and refund of import levy—SGGs

Export by licensee

(1) If:
  (a) levy is imposed by section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect of the import of an SGG by a licensee; and
  (b) the Minister is satisfied that the licensee exported the SGG within 12 months (or such longer period as is prescribed by the regulations) after the import; and
  (c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and
  (d) the application is accompanied by such information (if any) as is specified in the regulations; and
  (e) the application is accompanied by such documents (if any) as are specified in the regulations; and

(f) the licensee is not exempt from the carbon charge component of the amount of the levy (see section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*);

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(2) For the purposes of subsection (1), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 3A(7) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(3) The regulations may provide for verification by statutory declaration of statements in applications under subsection (1).

Export by purchaser

(4) If:

(a) levy is imposed by section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect of the import of an SGG by a licensee; and

(b) the Minister is satisfied that:

(i) the licensee sold the SGG to another person; and

(ii) the other person exported the SGG within 12 months (or such longer period as is prescribed by the regulations) after the import of the SGG; and

(c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and

(d) the application is accompanied by such information (if any) as is specified in the regulations; and

(e) the application is accompanied by such documents (if any) as are specified in the regulations; and

(f) the licensee is not exempt from the carbon charge component of the amount of the levy (see section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*);

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(5) For the purposes of subsection (4), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 3A(7) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(6) The regulations may provide for verification by statutory declaration of statements in applications under subsection (4).

Assignment of right to receive refund

(7) The regulations may authorise a licensee to assign a right to receive a refund under this section.

69AB Remission and refund of import levy—SGG equipment

Export by licensee

(1) If:

(a) levy is imposed by section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect of the import of SGG equipment by a licensee; and

(b) the Minister is satisfied that the licensee exported the equipment within 12 months (or such longer period as is prescribed by the regulations) after the import; and

(c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and

(d) the application is accompanied by such information (if any) as is specified in the regulations; and

(e) the application is accompanied by such documents (if any) as are specified in the regulations;

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(2) For the purposes of subsection (1), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG contained in the equipment} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 4A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(3) For the purposes of subsection (2), disregard an SGG that is used, or for use, for a purpose prescribed by regulations made for the purposes of subsection 4A(7) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(4) The regulations may provide for verification by statutory declaration of statements in applications under subsection (1).

Export by purchaser

(5) If:

(a) levy is imposed by section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* in respect of the import of SGG equipment by a licensee; and

(b) the Minister is satisfied that:

(i) the licensee sold the equipment to another person; and

(ii) the other person exported the equipment within 12 months (or such longer period as is prescribed by the regulations) after the import of the equipment; and

(c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and

(d) the application is accompanied by such information (if any) as is specified in the regulations; and

(e) the application is accompanied by such documents (if any) as are specified in the regulations;

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(6) For the purposes of subsection (5), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG contained in the equipment} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 4A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(7) For the purposes of subsection (6), disregard an SGG that is used, or for use, for a purpose prescribed by regulations made for the purposes of subsection 4A(7) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

(8) The regulations may provide for verification by statutory declaration of statements in applications under subsection (5).

Assignment of right to receive refund

(9) The regulations may authorise a licensee to assign a right to receive a refund under this section.

69AC Remission and refund of manufacture levy—SGGs

Export by licensee

(1) If:

(a) levy is imposed by section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* in respect of the manufacture of an SGG by a licensee; and

(b) the Minister is satisfied that the licensee exported the SGG within 12 months (or such longer period as is prescribed by the regulations) after the manufacture; and

(c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and

(d) the application is accompanied by such information (if any) as is specified in the regulations; and

(e) the application is accompanied by such documents (if any) as are specified in the regulations; and

(f) the licensee is not exempt from the carbon charge component of the amount of the levy (see section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*);

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(2) For the purposes of subsection (1), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 3A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

(3) The regulations may provide for verification by statutory declaration of statements in applications under subsection (1).

Export by purchaser

(4) If:

(a) levy is imposed by section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* in respect of the manufacture of an SGG by a licensee; and

(b) the Minister is satisfied that:

(i) the licensee sold the SGG to another person; and

(ii) the other person exported the SGG within 12 months (or such longer period as is prescribed by the regulations) after the manufacture of the SGG; and

(c) the licensee applies to the Minister, in accordance with the regulations, for remission or refund of the whole or a part of the carbon charge component of the amount of the levy; and

(d) the application is accompanied by such information (if any) as is specified in the regulations; and

(e) the application is accompanied by such documents (if any) as are specified in the regulations; and

(f) the licensee is not exempt from the carbon charge component of the amount of the levy (see section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*);

the Minister must, on behalf of the Commonwealth, remit or refund the whole or a part of the carbon charge component of the amount of the levy.

(5) For the purposes of subsection (4), the ***carbon charge component*** of an amount of levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\text{Number of tonnes of the carbon dioxide equivalence of the SGG} \times \text{Applicable charge}$$

where:

applicable charge means the charge that was the applicable charge for the purposes of the application of subsection 3A(5) of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to the levy.

carbon dioxide equivalence has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

(6) The regulations may provide for verification by statutory declaration of statements in applications under subsection (4).

Assignment of right to receive refund

(7) The regulations may authorise a licensee to assign a right to receive a refund under this section.

450A Section 69B

Omit "and the Framework Convention on Climate Change" (wherever occurring), substitute ", the Framework Convention on Climate Change and the Kyoto Protocol".

451 At the end of Schedule 1

Add:

Part XI—Sulfur hexafluoride

Substance
Sulfur hexafluoride (SF_6)

Renewable Energy (Electricity) Act 2000

451A Section 162

Repeal the section, substitute:

162 Periodic reviews of operation of renewable energy legislation

(1) The Climate Change Authority must conduct reviews of the following:

(a) the operation of this Act and the scheme constituted by this Act;

(b) the operation of the regulations;

(c) the operation of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;

(d) the operation of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;

(e) the diversity of renewable energy access to the scheme constituted by this Act, to be considered with reference to a cost benefit analysis of the environmental and economic impact of that access.

Public consultation

(2) In conducting a review, the Climate Change Authority must make provision for public consultation.

Report

(3) The Climate Change Authority must:

(a) give the Minister a report of the review; and

(b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

(5) The first review under subsection (1) must be completed before the end of 31 December 2012.

Subsequent reviews

(6) Each subsequent review under subsection (1) must be completed within 2 years after the deadline for completion of the previous review.

(7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

Recommendations

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

(9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(11) A recommendation must not be inconsistent with the objects of this Act.

(12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(13) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:

(a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and

(b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(14) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

(a) the Climate Change Authority;

(b) the Regulator;

(c) such other persons as the Minister considers relevant.

Division 2—Application and transitional provisions

452 Application—registration and reports under the *National Greenhouse and Energy Reporting Act 2007*

(1) Despite the repeal of section 18 of the *National Greenhouse and Energy Reporting Act 2007* by this Part, that section continues to apply after the commencement of this item, in relation to an application for deregistration that was made before the commencement of this item, as if that repeal had not happened.

(2) Despite the amendment of paragraph 56(b) of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, that paragraph continues to apply after the commencement of this item, in relation to a decision under section 18 of that Act, as if that amendment had not been made.

(3) The amendments of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, in so far as they are relevant to determining whether a controlling corporation's group meets a threshold under section 13 of that Act for a financial year, apply in relation to a threshold for:

(a) the financial year beginning on 1 July 2012; or

(b) a later financial year.

(4) The amendments of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, in so far as they relate to reports under section 19 of that Act, apply in relation to reports for:

(a) the financial year beginning on 1 July 2012; or

(b) a later financial year.

(5) The amendments of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, in so far as they relate to reports under section 22G of that Act, apply in relation to reports for:

(a) the financial year beginning on 1 July 2012; or

(b) a later financial year.

453 Application—civil penalty orders under the *National Greenhouse and Energy Reporting Act 2007*

The amendments of section 31 of the *National Greenhouse and Energy Reporting Act 2007* made by this Part apply in relation to proceedings instituted after the commencement of this item.

454 Application—liability of executive officers under the *National Greenhouse and Energy Reporting Act 2007*

The amendments of sections 47 and 48 of the *National Greenhouse and Energy Reporting Act 2007* made by this Part apply in relation to a contravention of a civil penalty provision that occurs after the commencement of this item.

455 Transitional—continuation of Register

The National Greenhouse and Energy Register maintained under section 16 of the *National Greenhouse and Energy Reporting Act 2007* after the commencement of this item is, for all purposes, a continuation of the Register kept under section 16 of that Act immediately before the commencement of this item.

456 Application—section 13 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

The amendments of section 13 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Part apply in relation to imports that occur after the commencement of this item.

457 Application—civil penalty orders under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

The amendments of section 65AC of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Part apply to contraventions of civil penalty provisions that occur after the commencement of this item.

458 Application—section 69 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

(1) Subsection 69(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* as amended by this Part applies in relation to levy for a quarter that begins at or after the commencement of this item.

(2) Despite the repeal of subsection 69(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* by this Part, that subsection continues to apply, in relation to levy for a quarter ending before the commencement of this item, as if that repeal had not happened.

459 Transitional—pre-charged equipment licences under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

Scope

(1) This item applies to a pre-charged equipment licence that was in force under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* immediately before the commencement of this item.

Effect

(2) The pre-charged equipment licence has effect, after the commencement of this item, as if it were an ODS/SGG equipment licence in force under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* as amended by this Act.

460 Transitional—reports under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* for pre-commencement quarters

Despite the amendments of section 46 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Part, that section continues to apply, in relation to a quarter ending before the commencement of this item, as if those amendments had not been made.

461 Transitional—regulations

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

Schedule 2—Taxation amendments

Part 1—Amendments relating to GST

A New Tax System (Goods and Services Tax) Act 1999

1 At the end of Division 38

Add:

Subdivision 38-S—Eligible emissions units

38-590 Eligible emissions units

A supply of an *eligible emissions unit is ***GST-free***.

2 Section 195-1

Insert:

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

Part 2—Amendments commencing at the same time as section 3 of the Clean Energy Act 2011 commences

Income Tax Assessment Act 1936

3 Subsection 136AB(2)

Omit "section 70-20", substitute "sections 70-20, 420-20 and 420-30".

Income Tax Assessment Act 1997

4 Section 10-5 (after table item headed "recoupment")

Insert:

registered emissions units

disposal of 420-25
disposal for a non-commercial purpose..... 420-40
difference between opening and closing value of..... 420-45

5 Section 12-5 (after table item headed "children's income")

Insert:

clean energy

unit shortfall charge..... 26-18

6 Section 12-5 (after table item headed "regional headquarters (RHQs)")

Insert:

registered emissions units

expenditure incurred in becoming the holder of..... 420-15
expenditure incurred in ceasing to hold..... 420-42
excess of opening over closing value of..... 420-45

7 Subsection 20-30(1) (after table item 1.27)

Insert:

1.27A	420-15	registered emissions unit

8 After section 26-17

Insert:

26-18 Unit shortfall charge—clean energy

You cannot deduct under this Act unit shortfall charge (within the meaning of the *Clean Energy Act 2011*).

9 Section 67-23 (after table item 23)

Insert:

24	conservation tillage	the *tax offset available under Subdivision 385-J

10 At the end of Subdivision 70-A

Add:

70-12 Registered emissions units

A *registered emissions unit is not *trading stock.

11 At the end of section 70-30 (before the note)

Add:

(6) Subsection (1) does not apply if:

(a) you start holding an item as *trading stock; and

(b) immediately before you started holding the item as trading stock, you *held the item as a *registered emissions unit.

12 Section 70-110

Before "If you stop", insert "(1)".

13 At the end of section 70-110 (after example 2, before the note)

Add:

(2) This section does not apply if:

(a) you stop holding an item as *trading stock; and

(b) immediately after you stopped holding the item as trading stock, you start to *hold the item as a *registered emissions unit.

14 Section 104-5 (before table item relating to CGT event K2)

Insert:

K1 As the result of an incoming international transfer of a *carbon unit, an *international emissions unit or an *Australian carbon credit unit from your foreign account or your nominee's foreign account, you start to hold the unit as a registered emissions unit *[See section 104-205]*	when you start to hold the unit as a registered emissions unit	market value of unit *less* its cost base	reduced cost base of unit *less* its market value

15 Before section 104-210

Insert:

104-205 Incoming international transfer of emissions unit: CGT event K1

(1) ***CGT event K1*** happens if:

(a) any of the following conditions is satisfied:

(i) a *carbon unit is transferred from your foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(ii) a *carbon unit is transferred from your nominee's foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(iii) an *international emissions unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(iv) an *international emissions unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(v) an *Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(vi) an *Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); and

(b) as a result of the transfer, you start to *hold the unit as a *registered emissions unit; and

(c) just before the transfer, the unit was neither your *trading stock nor your *revenue asset.

(2) The time of the event is when you start to *hold the unit as a *registered emissions unit.

(3) You make a ***capital gain*** if the unit's *market value (just before you started to *hold the unit as a *registered emissions unit) is *more* than its *cost base. You make a ***capital loss*** if that market value is *less* than its *reduced cost base.

15A Section 109-60 (table item 11)

Omit "70-110(b)", substitute "70-110(1)(b)".

15B Section 112-97 (table item 1)

Omit "70-110(b)", substitute "70-110(1)(b)".

16 Section 112-97 (after table item 18)

Insert:

18A	You cease to hold a registered emissions unit as the result of an outgoing international transfer of an *international emissions unit	First element of cost base and reduced cost base	Section 420-35

17 After section 118-13

Insert:

118-15 Registered emissions units

(1) A *capital gain or *capital loss you make from a *registered emissions unit is disregarded.

(2) A *capital gain or *capital loss you make from a right to receive a *free carbon unit is disregarded.

(3) A *capital gain or *capital loss you make from a right to receive an *Australian carbon credit unit is disregarded.

18 Subsection 122-25(2) (paragraph (d) of the cell at table item 1, column headed "This Subdivision does not apply to:")

Omit "creation", substitute "creation; or".

19 Subsection 122-25(2) (at the end of the cell at table item 1, column headed "This Subdivision does not apply to:")

Add:

(e) an asset that becomes a *registered emissions unit *held by the company just after the *disposal or creation

20 Subsection 122-25(2) (paragraph (c) of the cell at table item 2, column headed "This Subdivision does not apply to:")

Omit "disposed of it)", substitute "disposed of it); or".

21 Subsection 122-25(2) (at the end of the cell at table item 2, column headed "This Subdivision does not apply to:")

Add:

(d) an asset that becomes a *registered emissions unit *held by the company just after the *disposal or creation (unless it was a registered emissions unit held by you when you disposed of it)

22 At the end of subsection 122-25(3)

Add:

; or (d) a *registered emissions unit.

23 At the end of section 124-75

Add:

(6) The other asset cannot become a *registered emissions unit *held by you just after you *acquire it.

23A At the end of subsection 124-80(2)

Add "nor can it be a *registered emissions unit".

24 Subsection 126-50(2)

Omit all the words after "not", substitute:

be:

(a) *trading stock of the recipient company just after the time of the trigger event; or

(b) a *registered emissions unit *held by the recipient company just after the time of the trigger event.

25 After subsection 126-50(3)

Insert:

(3A) If:

(a) the roll-over asset is an option referred to in Division 134; and

(b) the recipient company *acquires another *CGT asset by exercising the option;

the other asset cannot become a *registered emissions unit *held by the recipient company just after the recipient company acquired it.

26 At the end of Subdivision 230-H

Add:

230-481 Registered emissions units

A *registered emissions unit is exempt from this Division.

27 At the end of Division 385

Add:

Subdivision 385-J—Refundable tax offset for conservation tillage

385-175 Refundable tax offset for conservation tillage

(1) You are entitled to a *tax offset under this section (the ***conservation tillage offset***) for an income year in respect of a *depreciating asset if:

(a) the asset is an *eligible no-till seeder; and

(b) the income year is:

(i) the 2012-13 income year; or

(ii) the 2013-14 income year; or

(iii) the 2014-15 income year; and

(c) at a particular time during the income year, you:
(i) start to use the asset to carry on a *primary production business (without previously having the asset *installed ready for use); or
(ii) have the asset installed ready for use to carry on a primary production business; and
(d) at the time mentioned in paragraph (c), you *hold the asset; and
(e) the time mentioned in paragraph (c) is not:
(i) before 1 July 2012; or
(ii) after 30 June 2015; and
(f) the *Agriculture Secretary has issued a Research Participation Certificate to you under section 385-190 for the income year; and
(g) you claim the offset in your *income tax return for the income year.

Note: The conservation tillage offset is a refundable tax offset: see section 67-23.

(2) You are not entitled to the conservation tillage offset if the *depreciating asset has, at any time before the time mentioned in paragraph (1)(c), been used, or *installed ready for use, by:
(a) you; or
(b) any other entity.

385-180 Amount of the conservation tillage offset

The amount of the conservation tillage offset is 15% of the *cost of the *depreciating asset.

385-185 Application for Research Participation Certificate

Application

(1) An entity may apply to the *Agriculture Secretary for the issue of a Research Participation Certificate to the entity for an income year under section 385-190.

Form of application

(2) The application must:

(a) be in writing; and
(b) be in a form approved, in writing, by the *Agriculture Secretary.

385-190 Issue of Research Participation Certificate

(1) The *Agriculture Secretary must issue a written certificate to an entity for an income year if:
(a) the entity has made an application under section 385-185 in relation to the income year; and
(b) the Agriculture Secretary is satisfied that the entity has, at any time during the income year, completed a conservation tillage survey; and
(c) the time mentioned in paragraph (b) is not:
(i) before 1 July 2012; or
(ii) after 30 June 2015.

(2) A certificate under this section is to be known as a ***Research Participation Certificate***.

(3) For the purposes of this section, a ***conservation tillage survey*** is a survey:
(a) conducted by the *Agriculture Secretary; and
(b) that relates to:
(i) farming practices; and
(ii) climate change.

(4) For the purposes of this section, an entity ***completes*** a conservation tillage survey if the entity:
(a) fills up and supplies, in accordance with the instructions set out in the relevant survey form, the information specified in the survey form; and
(b) gives the filled-up survey form to a person specified in the instructions.

385-195 Notice of refusal to issue Research Participation Certificate

If:
(a) an entity makes an application under section 385-185 for the issue of a Research Participation Certificate to the entity for an income year; and

(b) the *Agriculture Secretary decides not to issue a Research Participation Certificate under section 385-190 to the applicant for the income year;

the Agriculture Secretary must give the applicant written notice of the decision (including reasons for the decision).

385-200 Revocation of Research Participation Certificate

(1) The *Agriculture Secretary may revoke a Research Participation Certificate issued to an entity under section 385-190 if the Agriculture Secretary is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

(2) If the *Agriculture Secretary revokes a Research Participation Certificate under subsection (1), the Agriculture Secretary must give the entity to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).

(3) If a certificate is revoked under subsection (1), it is taken, for the purposes of this Subdivision, never to have been issued.

Note: This means that if an assessment of an entity's income tax is issued on the basis that the entity is entitled to a conservation tillage offset and the Research Participation Certificate is then revoked, the assessment will be amended to take account of the fact that the entity was never entitled to conservation tillage offset: see section 385-220.

(4) Subsection (3) does not apply for the purposes of:

(a) the operation of this section or section 385-210; or

(b) a review by a court or the *AAT of the decision to revoke the Research Participation Certificate.

385-205 Notification relating to Research Participation Certificate

(1) The *Agriculture Secretary must:

(a) give the Commissioner written notice of the issue of a Research Participation Certificate to an entity; and

(b) do so within 30 days after issuing the certificate.

(2) The *Agriculture Secretary must:

(a) give the Commissioner written notice of the revocation of a Research Participation Certificate issued to an entity; and

(b) do so within 30 days after revoking the certificate.

(3) A notice under subsection (1) or (2) must specify:
  (a) the income year to which the Research Participation Certificate relates; and
  (b) the date of issue of the Research Participation Certificate; and
  (c) the name of the entity; and
  (d) if the entity has an *ABN—the ABN; and
  (e) such other matters (if any) as the *Agriculture Secretary considers should be reported to the Commissioner.

(4) A notice under subsection (1) or (2) must be accompanied by a copy of the Research Participation Certificate concerned.

385-210 Notice of decision or determination

(1) This section applies to a notice of a decision given under section 385-195 (refusal to issue a Research Participation Certificate) or 385-200 (revocation of a Research Participation Certificate).

(2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).

(3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the *AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

(4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
  (a) setting out the findings on material questions of fact; and
  (b) referring to the evidence or other material on which those findings were based; and
  (c) giving the reasons for the decision or determination;
except where subsection 28(4) of that Act applies.

(5) If the *Agriculture Secretary fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

385-215 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:

(a) a decision made by the *Agriculture Secretary to refuse an application for a Research Participation Certificate under section 385-190; or

(b) a decision made by the Agriculture Secretary under section 385-200 to revoke a Research Participation Certificate.

385-220 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Subdivision for an income year if:

(a) a Research Participation Certificate issued to an entity for an income year is revoked under section 385-200 after the time the entity lodged its *income tax return for the income year; and

(b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the Research Participation Certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

385-225 Evidentiary certificate

(1) If requested to do so by the Commissioner, the *Agriculture Secretary may, by writing, certify that a specified asset is an *eligible no-till seeder.

(2) In any proceedings arising out of this Subdivision, a certificate under subsection (1) is prima facie evidence of the matter certified.

(3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly given.

385-230 Delegation by Agriculture Secretary

The *Agriculture Secretary may, by writing, delegate any or all of his or her functions and powers under this Subdivision to an SES

employee, or acting SES employee, in the *Agriculture Department.

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

385-235 Eligible no-till seeder

An ***eligible no-till seeder*** is a no-till seeder (comprising the combination of cart and tool) that is:

(a) a tine machine fitted with minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out; or

(b) a disc opener with single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; or

(c) a disc/tine hybrid machine fitted with:

(i) single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; and

(ii) minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out; or

(d) a disc/blade hybrid machine fitted with:

(i) single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; and

(ii) blades designed to achieve minimum soil disturbance and less than full cut-out.

For the purposes of paragraph (a) and subparagraph (c)(ii), each of the following points are taken to be minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out:

(e) narrow points;

(f) knife points;

(g) inverted “T” points.

28 After Part 3-45

Insert:

Part 3-50—Climate change

Division 420—Registered emissions units

Table of Subdivisions

Guide to Division 420
420-A Registered emissions units
420-B Acquiring registered emissions units
420-C Disposing of registered emissions units etc.
420-D Accounting for registered emissions units you hold at the start or end of the income year
420-E Exclusivity of Division

Guide to Division 420

420-1 What this Division is about

This Division deals with amounts you can deduct, and amounts included in your assessable income, because of these situations:

- you acquire a registered emissions unit;
- you hold a registered emissions unit at the start or the end of the income year;
- you dispose of a registered emissions unit.

Table of sections

420-5 The 4 key features of tax accounting for registered emissions units

420-5 The 4 key features of tax accounting for registered emissions units

The purpose of income tax accounting for registered emissions units is to produce the same tax treatment, irrespective of your purpose in acquiring or holding the registered emissions units.

There are 4 key features:

(1) You bring your gross expenditure and gross proceeds to account, not your net profits and losses on disposal of a registered emissions unit.

(2) The gross expenditure is deductible.

(3) The gross proceeds are assessable income.

(4) You must bring to account any difference between the value of your registered emissions units held at the start and at the end of the income year. This is done in such a way that:
  (a) any increase in value is included in assessable income; and
  (b) any decrease in value is a deduction.

Subdivision 420-A—Registered emissions units

Table of sections

420-10 Meaning of ***registered emissions unit***
420-12 Meaning of ***hold*** a registered emissions unit

420-10 Meaning of *registered emissions unit*

A ***registered emissions unit*** is:
  (a) a *carbon unit; or
  (b) a *Kyoto unit; or
  (c) a *prescribed international unit; or
  (d) an *Australian carbon credit unit;

for which there is an entry in a Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*).

420-12 Meaning of *hold* a registered emissions unit

(1) You ***hold*** a *registered emissions unit if you are the entity in whose Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) there is an entry for the unit.

(2) However, if the entity (the ***nominee entity***) in whose Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) there is an entry for a *registered emissions unit holds the unit as nominee for another entity:

(a) the other entity is taken to ***hold*** the unit; and
(b) the nominee entity is taken not to hold the unit.

Subdivision 420-B—Acquiring registered emissions units

Table of sections

420-15 What you can deduct
420-20 Non-arm's length transactions and transactions with associates
420-21 Incoming international transfers of emissions units
420-22 Becoming taxable in Australia on the proceeds of sale of registered emissions units

420-15 What you can deduct

(1) You can deduct expenditure to the extent that you incur it in becoming the *holder of a *registered emissions unit.

Note: A carbon unit is an example of a registered emissions unit. You can become the holder of a carbon unit as a result of the unit being issued to you under the *Clean Energy Act 2011* or as a result of your acquisition of the unit from another entity.

Timing

(2) You deduct the expenditure in the income year in which you start to *hold the *registered emissions unit.

Free carbon units

(3) You cannot deduct under this section expenditure you incur in becoming the *holder of a *carbon unit issued to you in accordance with:
(a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or
(b) Part 8 (coal-fired electricity generation) of that Act.

Australian carbon credit units

(4) You cannot deduct under this section expenditure you incur in becoming the *holder of an *Australian carbon credit unit issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* unless you incur the expenditure in preparing or lodging:

(a) an application for a certificate of entitlement (within the meaning of that Act); or

(b) an offsets report (within the meaning of that Act).

No deduction if sale proceeds would not be assessable

(5) You cannot deduct under this section expenditure you incur in becoming the *holder of a *registered emissions unit if, assuming that you had sold the unit to someone else immediately after you started to *hold the unit, the proceeds of the sale would not have been included in your assessable income under section 420-25.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

420-20 Non-arm's length transactions and transactions with associates

(1) If:

(a) an entity becomes the *holder of a *registered emissions unit; and

(b) either:

(i) the entity and the previous holder of the unit did not deal with each other at arm's length; or

(ii) the previous holder is the entity's *associate; and

(c) the entity did not pay or give consideration equal to the *market value of the unit for becoming the holder of the unit;

the entity is treated as if:

(d) the entity had incurred expenditure in becoming the holder of the unit; and

(e) the amount of the expenditure were equal to that market value.

(2) This section does not apply if a *registered emissions unit *held by an individual just before the individual's death:

(a) devolves to the individual's *legal personal representative; or

(b) *passes to a beneficiary in the individual's estate.

(3) This section does not apply to:

(a) the issue of a *carbon unit under the *Clean Energy Act 2011*; or

(b) the issue of an *Australian carbon credit unit under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing arrangements), this section is disregarded—see subsection 136AB(2) of the *Income Tax Assessment Act 1936*.

420-21 Incoming international transfers of emissions units

Unit held as trading stock or as a revenue asset

(1) If:

(a) any of the following conditions is satisfied:

(i) a *carbon unit is transferred from your foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(ii) a carbon unit is transferred from your nominee's foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(iii) an *international emissions unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(iv) an international emissions unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(v) an *Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon*

Credits (Carbon Farming Initiative) Act 2011) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(vi) an Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); and

(b) as a result of the transfer, you start to *hold the unit as a *registered emissions unit; and

(c) just before the transfer, the unit was your *trading stock or *revenue asset;

you are treated as if:

(d) just before the transfer, you had sold the unit to someone else for its *cost; and

(e) you had, immediately after the sale, bought it back as a registered emissions unit for the same amount.

Example: An Australian resident company carries on a business of trading in emissions units. The units are trading stock. The company owns 10,000 emission reduction units (a type of international emissions unit) that are registered in New Zealand. 5,000 of those emission reduction units are transferred from the company's New Zealand registry account to the company's Australian registry account.

The company is treated as having sold each unit to someone else at its cost just before it became a registered emissions unit. As the unit was previously held as trading stock, the unit ceases to be trading stock (section 70-12). The cost of the unit just before it became a registered emissions unit is included in the company's assessable income.

The company is also treated as having bought 5,000 registered emissions units for the same amount. The company is entitled to a deduction for that amount (section 420-15).

Unit held otherwise than as trading stock or as a revenue asset

(2) If:

(a) any of the following conditions is satisfied:

(i) a *carbon unit is transferred from your foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(ii) a carbon unit is transferred from your nominee's foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(iii) an *international emissions unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(iv) an international emissions unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

(v) an *Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);

(vi) an Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the

meaning of the *Australian National Registry of Emissions Units Act 2011*); and

(b) as a result of the transfer, you start to *hold the unit as a *registered emissions unit; and

(c) just before the transfer, the unit was neither your *trading stock nor your *revenue asset;

you are treated as if:

(d) just before the transfer, you had sold the unit to someone else for its *market value just before the transfer; and

(e) you had, immediately after the sale, bought it back as a registered emissions unit for the same amount.

420-22 Becoming taxable in Australia on the proceeds of sale of registered emissions units

If:

(a) you start to *hold a *registered emissions unit at a particular time; and

(b) assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of the sale would not have been included in your assessable income under section 420-25; and

(c) you hold the unit until a later time (the ***taxable status commencement time***), where the following conditions are satisfied:

(i) assuming that you had sold the unit to someone else immediately before the taxable status commencement time, the proceeds of the sale would not have been included in your assessable income under section 420-25;

(ii) assuming that you had sold the unit to someone else at the taxable status commencement time, the proceeds of the sale would have been included in your assessable income under section 420-25;

you are treated as if:

(d) immediately after the taxable status commencement time, you had bought the unit from someone else for its *market value; and

(e) you had started to hold the unit immediately after the taxable status commencement time instead of at the time mentioned in paragraph (a).

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

Subdivision 420-C—Disposing of registered emissions units etc.

Table of sections

420-25 Assessable income on disposal of registered emissions units
420-30 Non-arm's length transactions and transactions with associates
420-35 Outgoing international transfers of emissions units
420-40 Disposal of registered emissions units for a purpose other than gaining assessable income
420-41 Ceasing to be taxable in Australia on the proceeds of sale of registered emissions units
420-42 Deduction for expenses incurred in ceasing to hold a registered emissions unit
420-43 Deduction for charge imposed on the surrender of an eligible international emissions unit

420-25 Assessable income on disposal of registered emissions units

(1) Your assessable income includes an amount that you are entitled to receive because you cease to *hold a *registered emissions unit.

Timing

(2) The amount is included in your assessable income for the income year in which you cease to *hold the unit.

Source

(3) An amount included in your assessable income under subsection (1) is taken, for the purposes of the *income tax laws, to have a source in Australia.

420-30 Non-arm's length transactions and transactions with associates

If:

(a) an entity (the ***transferor***) ceases to *hold a *registered emissions unit; and

(b) the cessation is because of the transfer of the unit to:

(i) a Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); or

(ii) a foreign account (within the meaning of that Act);

kept by another entity (the ***transferee***); and

(c) either:

(i) the transferor and the transferee did not deal with each other at arm's length; or

(ii) the transferee is the transferor's *associate; and

(d) the transferee did not pay or give consideration equal to the *market value of the unit for the transfer of the unit;

the transferor is treated as if the transferor were entitled to receive an amount equal to that market value because the transferor ceased to be the holder of the unit.

Note: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing arrangements), this section is disregarded—see subsection 136AB(2) of the *Income Tax Assessment Act 1936*.

420-35 Outgoing international transfers of emissions units

If:

(a) you stop *holding a *registered emissions unit; and

(b) you do so as a result of the transfer of the unit to:

(i) if the unit is a *carbon unit—your foreign account (within the meaning of the *Clean Energy Act 2011*) or your nominee's foreign account (within the meaning of that Act); or

(ii) if the unit is an *international emissions unit—your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's foreign account (within the meaning of that Act); or

(iii) if the unit is an *Australian carbon credit unit—your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) or your nominee's foreign account (within the meaning of that Act);

you are treated as if:

(c) just before the transfer, you had sold the unit to someone else for its *market value just before the transfer; and

(d) you had, immediately after the sale, bought it back for the same amount.

Example: An Australian resident company carries on a business of trading in emission units. The company owns 10,000 emission reduction units (a type of international emissions unit) that are registered in Australia. 5,000 of those units are transferred from the company's Australian registry account to the company's New Zealand registry account.

The company is treated as having sold each unit to someone else at its market value just before it stopped being a registered emissions unit. As the unit was a registered emissions unit, the market value is included in the company's assessable income (section 420-25).

The company is also treated as having bought 5,000 emission reduction units for the same amount. As those units are trading stock, the company may be able to deduct that amount under section 8-1.

420-40 Disposal of registered emissions units for a purpose other than gaining assessable income

(1) If:

(a) an entity (the ***first entity***) incurs expenditure in:

(i) becoming the *holder of a *registered emissions unit; or

(ii) ceasing to hold a registered emissions unit; and

(b) the first entity has deducted or can deduct the expenditure under section 420-15 or 420-42; and

(c) the first entity ceases to hold the unit in a particular income year; and

(d) the cessation is neither:

(i) in gaining or producing the first entity's assessable income; nor

(ii) in carrying on a *business for the purpose of gaining or producing the first entity's assessable income; and

(e) section 420-30 (non-arm's length transactions and transactions with associates) did not apply to the first entity ceasing to hold the unit;

the first entity's assessable income for that income year includes an amount equal to the amount the first entity has deducted or can deduct.

Death

(2) If:

(a) the first entity is an individual; and

(b) the cessation is because of the first entity's death; and

(c) the *registered emissions unit devolves to the first entity's *legal personal representative;

then:

(d) the first entity's legal personal representative is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1); and

(e) if the unit *passes to a beneficiary in the first entity's estate:

(i) the first entity's legal personal representative is treated as having disposed of the unit for the amount included in the first entity's assessable income under subsection (1); and

(ii) the beneficiary is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

(3) If:

(a) the first entity is an individual; and

(b) the cessation is because of the first entity's death; and

(c) the *registered emissions unit *passes to a beneficiary in the first entity's estate without devolving to the first entity's *legal personal representative;

the beneficiary is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

Transfer—treatment of acquirer

(4) If:

(a) the cessation is because of the transfer of the unit to another entity; and

(b) neither subsection (2) nor (3) applies;

the other entity is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

(5) If subsection (4) applies to the transfer of the unit to another entity:

(a) the first entity must inform the other entity that, as a result of subsection (4) applying, the other entity is treated as having bought the unit for a particular amount; and

(b) the first entity must do so:

(i) at, or as soon as practicable after, the time of the transfer; or

(ii) by a later time allowed by the Commissioner.

Source

(6) An amount included in the first entity's assessable income under subsection (1) is taken, for the purposes of the *income tax laws, to have a source in Australia.

420-41 Ceasing to be taxable in Australia on the proceeds of sale of registered emissions units

If:

(a) you start to *hold a *registered emissions unit; and

(b) assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of sale would have been included in your assessable income under section 420-25; and

(c) you hold the unit until a later time (the ***taxable status cessation time***), where the following conditions are satisfied:

(i) assuming that you had sold the unit to someone else immediately before the taxable status cessation time, the proceeds of the sale would have been included in your assessable income under section 420-25;

(ii) assuming that you had sold the unit to someone else at the taxable status cessation time, the proceeds of sale would not have been included in your assessable income under section 420-25;

you are treated as if:

(d) just before the taxable status cessation time, you had sold the unit to someone else for its *market value; and

(e) you had, at the taxable status cessation time, bought it back for the same amount.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

420-42 Deduction for expenses incurred in ceasing to hold a registered emissions unit

(1) You can deduct expenditure to the extent that you incur it in ceasing to *hold a *registered emissions unit.

Timing

(2) You deduct the expenditure in the income year in which you cease to *hold the *registered emissions unit.

420-43 Deduction for charge imposed on the surrender of an eligible international emissions unit

(1) You can deduct an amount of charge imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* on the surrender by you of an eligible international emissions unit (within the meaning of the *Australian National Registry of Emissions Units Act 2011*).

Timing

(2) You deduct the amount in the income year in which you pay the amount.

Subdivision 420-D—Accounting for registered emissions units you hold at the start or end of the income year

Table of sections

420-45 You include the value of your registered emissions units in working out your assessable income and deductions
420-50 Value of registered emissions units at start of income year
420-51 Valuation methods

420-52 FIFO cost method of working out the value of units
420-53 Actual cost method of working out the value of units
420-54 Market value method of working out the value of units
420-55 Valuation method for first income year at the end of which you held registered emissions units
420-57 Valuation method for later income years at the end of which you held registered emissions units
420-58 Value of registered emissions units at end of income year—certain free carbon units
420-60 Cost of registered emissions units

420-45 You include the value of your registered emissions units in working out your assessable income and deductions

(1) You compare:

(a) the *value of all *registered emissions units you *held at the start of the income year; and

(b) the value of all registered emissions units you held at the end of the income year.

Increase in value is included in assessable income

(2) Your assessable income includes any excess of the *value at the end of the income year over the value at the start of the income year.

Decrease in value is a deduction

(3) On the other hand, you can deduct any excess of the *value at the start of the income year over the value at the end of the income year.

Source

(4) An amount included in your assessable income under subsection (2) is taken, for the purposes of the *income tax laws, to have a source in Australia.

Disregard value of unit if sale proceeds would not be assessable

(5) For the purposes of this Subdivision, disregard the *value of a *registered emissions unit you *held at the end of the income year if, assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of the

sale would not have been included in your assessable income under section 420-25.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

420-50 Value of registered emissions units at start of income year

(1) The ***value*** of a *registered emissions unit you *held at the start of an income year is the same amount at which it was taken into account under this Subdivision at the end of the last income year.

(2) The ***value*** of the unit is a nil amount if the unit was not taken into account under this Subdivision at the end of the last income year.

420-51 Valuation methods

(1) The ***value*** of a *registered emissions unit you *held at the end of an income year is worked out using one of the following methods:

(a) the *FIFO cost method;

(b) the *actual cost method;

(c) the *market value method.

Sections 420-55 and 420-57 tell you which method applies.

(2) This section has effect subject to section 420-58 (certain free carbon units).

420-52 FIFO cost method of working out the value of units

The ***FIFO cost method*** for working out the *value of the *registered emissions units you *held at the end of an income year means that the value of the units is the *cost of the registered emissions units, and, for the purposes of the application of this Subdivision to you for the income year:

(a) if any of the registered emissions units are:

(i) *carbon units that have a *vintage year that is the same as, or earlier than, the financial year to which the income year relates; or

(ii) eligible international emissions units (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); or

(iii) *Australian carbon credit units;

you must account for those units on a first-in first-out basis; and

(b) if:

(i) any of the registered emissions units are carbon units that have the same vintage year; and

(ii) that vintage year is later than the financial year to which the income year relates;

you must account for those units on a first-in first-out basis; and

(c) if any of the registered emissions units are *Kyoto units that are not eligible international emissions units (within the meaning of the *Australian National Registry of Emissions Units Act 2011*)—you must account for those units on a first-in first-out basis.

420-53 Actual cost method of working out the value of units

The ***actual cost method*** for working out the value of the *registered emissions units you *held at the end of the income year means that the value of the units is the *cost of the units, and, for the purposes of the application of this Subdivision to you for the income year, you must not account for any of those units on a first-in first-out basis.

420-54 Market value method of working out the value of units

The ***market value method*** for working out the value of the *registered emissions units you *held at the end of the income year means that the value of the units is the *market value of the units at the end of the income year.

420-55 Valuation method for first income year at the end of which you held registered emissions units

Scope

(1) This section applies if:

(a) you *held one or more *registered emissions units at the end of an income year; and

(b) the income year is the first income year at the end of which you held one or more registered emissions units.

Choice of method

(2) You may choose one of the following methods:
(a) the *FIFO cost method;
(b) the *actual cost method;
(c) the *market value method;
for working out the ***value*** of the *registered emissions units you *held at the end of the income year.

FIFO cost method applies if no choice made

(3) If you do not make a choice under subsection (2) for the income year, the ***value*** of the *registered emissions units you *held at the end of the income year is worked out using the *FIFO cost method.

Time for making choice

(4) You must make a choice under subsection (2) before you lodge your *income tax return for the income year for which you make the choice.

No revocation of choice

(5) A choice made under subsection (2) cannot be revoked.

Certain free carbon units

(6) This section has effect subject to section 420-58 (certain free carbon units).

420-57 Valuation method for later income years at the end of which you held registered emissions units

Scope

(1) This section applies if:
(a) you *held one or more *registered emissions units at the end of an income year (the ***current income year***); and
(b) the current income year is not the first income year at the end of which you held one or more registered emissions units.

Choice of method

(2) You may choose one of the following methods:

(a) the *FIFO cost method;

(b) the *actual cost method;

(c) the *market value method;

for working out the ***value*** of the *registered emissions units you *held at the end of the current income year.

Previous method applies if no choice made

(3) If you do not make a choice under subsection (2) for the current income year, the ***value*** of the *registered emissions units you *held at the end of the current income year is worked out using the method that applied to the most recent income year at the end of which you held one or more registered emissions units.

Limitation on choice—before 2015-16 income year

(4) If the current income year is before the 2015-16 income year, you must not make a choice under subsection (2) for the current income year if you have previously made a choice under that subsection for an earlier income year.

Limitation on choice—2015-16 income year or a later income year

(5) If the current income year is:

(a) the 2015-16 income year; or

(b) a later income year;

you must not make a choice under subsection (2) for the current income year unless:

(c) the same method applied for each of the 4 most recent income years at the end of which you *held one or more *registered emissions units; and

(d) the method mentioned in paragraph (c) is different from the method to which your choice for the current income year relates.

Limitation on choice—change from FIFO cost method to actual cost method

(6) You must not choose under subsection (2) the *actual cost method for the current income year if the *FIFO cost method applied for the most recent income year at the end of which you *held one or more *registered emissions units.

Time for making choice

(7) You must make a choice under subsection (2) before you lodge your *income tax return for the income year for which you make the choice.

No revocation of choice

(8) A choice made under subsection (2) cannot be revoked.

Certain free carbon units

(9) This section has effect subject to section 420-58 (certain free carbon units).

420-58 Value of registered emissions units at end of income year—certain free carbon units

Scope

(1) This section applies to a *carbon unit with a particular *vintage year if:

(a) it was issued to you in accordance with the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); and

(b) you *held it throughout the period:

(i) beginning when it was issued to you; and

(ii) ending at the end of an income year that ended before 1 February in the financial year next following the vintage year.

Value

(2) The ***value*** of the unit you *held at the end of an income year that ended during that period is a nil amount.

(3) For the purposes of:
(a) subsection 420-57(3); and
(b) paragraph 420-57(5)(c);
the method that applied to a previous income year mentioned in that subsection or paragraph, as the case may be, is the method that would have applied if this section had not been enacted.

420-60 Cost of registered emissions units

Free carbon units

(1) If a *carbon unit was issued to you free of charge under the *Clean Energy Act 2011*, the ***cost*** of the unit is its *market value immediately after you began to *hold the unit.

(2) Subsection (1) does not affect the operation of section 420-58.

Australian carbon credit units

(3) If an *Australian carbon credit unit was issued to you under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the ***cost*** of the unit is its *market value immediately after you began to *hold the unit.

Other registered emissions units

(4) If a *registered emissions unit (other than an *Australian carbon credit unit) was not issued to you free of charge under the *Clean Energy Act 2011*, the ***cost*** of the unit is the total of the expenditure that you:
(a) incurred in becoming the *holder of the unit; and
(b) can deduct under section 420-15.

Subdivision 420-E—Exclusivity of Division

Table of sections

420-65 Exclusivity of deductions etc.
420-70 Exclusivity of assessable income etc.

420-65 Exclusivity of deductions etc.

Expenditure incurred in becoming the holder of a registered emissions unit

(1) You cannot deduct under any provision of this Act outside this Division any expenditure to the extent that you incur it in becoming the *holder of a *registered emissions unit.

(2) To the extent you incur expenditure in becoming the *holder of a *registered emissions unit, the expenditure is not to be taken into account in working out:

(a) an amount you can deduct; or

(b) an amount included in your assessable income;

under any provision of this Act outside this Division.

Free carbon units

(3) Subsections (1) and (2) do not affect the application of a provision of this Act outside this Division to expenditure you incur in becoming the *holder of a *carbon unit issued to you in accordance with:

(a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or

(b) Part 8 (coal-fired electricity generation) of that Act.

Australian carbon credit units

(4) Subsections (1) and (2) do not affect the application of a provision of this Act outside this Division to expenditure you incur in becoming the *holder of an *Australian carbon credit unit issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* if you do not incur the expenditure in preparing or lodging:

(a) an application for a certificate of entitlement (within the meaning of that Act); or

(b) an offsets report (within the meaning of that Act).

(5) Subsections (1) and (2) do not affect the operation of Division 30 (deductions for gifts and contributions).

Note: If you make a gift or contribution, Division 30 applies in the normal way to determine whether you can deduct the amount of the gift or contribution.

Expenditure incurred in ceasing to hold a registered emissions unit

(6) You cannot deduct under any provision of this Act outside this Division any expenditure to the extent that you incur it in ceasing to *hold a *registered emissions unit.

420-70 Exclusivity of assessable income etc.

(1) An amount that you are entitled to receive because you ceased to *hold a *registered emissions unit is not to be:
  (a) included in your assessable income; or
  (b) taken into account in working out your assessable income; or
  (c) taken into account in working out an amount you can deduct;
under any provision of this Act outside this Division.

(2) Subsection (1) does not affect the operation of Division 6 so far as that Division provides for the significance of residence or source for the assessability of ordinary and statutory income.

Note: An amount included in your assessable income under this Division may be ordinary or statutory income for the purposes of Division 6.

Free carbon units

(3) An amount is not to be included in your assessable income under any provision of this Act outside this Division because a *carbon unit was issued to you in accordance with:
  (a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or
  (b) Part 8 (coal-fired electricity generation) of that Act.

Note 1: A capital gain or capital loss you make from a registered emissions unit is disregarded (subsection 118-15(1)).

Note 2: A capital gain or capital loss you make from a right to receive a free carbon unit is disregarded (subsection 118-15(2)).

Australian carbon credit units

(4) An amount is not to be included in your assessable income under any provision of this Act outside this Division because an

*Australian carbon credit unit was issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note 1: A capital gain or capital loss you make from a registered emissions unit is disregarded (subsection 118-15(1)).

Note 2: A capital gain or capital loss you make from a right to receive an Australian carbon credit unit is disregarded (subsection 118-15(3)).

29 Subsection 701-10(5) (heading)

Repeal the heading, substitute:

Multiple setting of tax cost for same trading stock or registered emissions unit

30 Paragraph 701-10(5)(a)

After "*trading stock", insert "or a *registered emissions unit".

31 Paragraph 701-25(2)(a)

Repeal the paragraph, substitute:

(a) either:

(i) the asset is *trading stock of the *head company; or

(ii) the asset is a *registered emissions unit and an asset of the head company; and

32 Subsection 701-25(3) (note)

After "trading stock", insert "or registered emissions units".

33 Subsection 701-25(4)

Omit "The asset is taken", substitute "If subparagraph (2)(a)(i) applies, the asset is taken".

34 At the end of section 701-25 (after the note)

Add:

Setting value of registered emissions unit at tax-neutral amount

(5) If subparagraph (2)(a)(ii) applies, the asset is taken to be an asset of the *head company at the end of the income year (but not at the start of the next income year) and the head company's *value for the asset at that time is taken to be equal to:

(a) if the asset was *held by the head company at the start of the income year—the value of the asset at the start of the income year; or

(b) otherwise—the expenditure incurred by the head company in becoming the holder of the asset.

35 Subsection 701-35(2)

Repeal the subsection, substitute:

Assets to which section applies

(2) This section applies in relation to an asset if:

(a) the asset is *trading stock of the entity just before it becomes a *subsidiary member of the group; or

(b) the asset is:

(i) a *registered emissions unit; and

(ii) an asset of the entity;

just before it becomes a subsidiary member of the group.

36 Subsection 701-35(3) (note)

After "trading stock", insert "or registered emissions units".

37 Subsection 701-35(4)

Omit "The *value of the", substitute "If paragraph (2)(a) applies, the *value of the".

38 At the end of section 701-35 (after the note)

Add:

Setting value of registered emissions unit at tax-neutral amount

(5) If paragraph (2)(b) applies, the *value of the *registered emissions unit at the end of the income year that ends, or, if section 701-30 applies, of the income year that is taken by subsection (3) of that section to end, when the entity becomes a *subsidiary member is taken to be equal to:

(a) if the unit was *held by the joining entity at the start of the income year—the value of the unit at the start of the income year; or

(b) otherwise—the expenditure incurred by the joining entity in becoming the holder of the unit.

Note: See also section 701A-7 of the *Income Tax (Transitional Provisions) Act 1997*.

39 After subsection 701-55(3)

Insert:

Registered emissions unit provisions

(3A) If Division 420 is to apply in relation to the asset, the expression means that the Division applies as if the asset were a *registered emissions unit at the start of the income year in which the particular time occurs, and its *value at that time were equal to the asset's *tax cost setting amount.

39A Subsection 701-58(2)

After "(3)", insert "(3A),".

40 After subsection 705-30(1)

Insert:

Registered emissions units

(1A) If an asset of the joining entity is a *registered emissions unit, the joining entity's ***terminating value*** for the unit is equal to:

(a) if the unit was *held by the joining entity at the start of the income year—the *value of the unit at the start of the income year; or

(b) otherwise—the expenditure incurred by the joining entity in becoming the holder of the unit.

41 Section 705-40 (heading)

Repeal the heading, substitute:

705-40 Tax cost setting amount for reset cost base assets held on revenue account etc.

42 Subsection 705-40(1)

After "*depreciating asset", insert ", a *registered emissions unit".

43 Subsection 705-40(2)

After "*depreciating assets", insert ", *registered emissions units".

44 Paragraph 705-40(3)(b)

After "*depreciating asset", insert ", to a *registered emissions unit".

45 Subsection 705-57(1)

After "*depreciating assets", insert ", *registered emissions units".

46 Paragraph 705-57(2)(c)

After "*depreciating asset", insert ", a *registered emissions unit".

47 Subsection 705-163(1)

After "*depreciating assets", insert ", *registered emissions units".

48 Subsection 705-240(1)

After "*depreciating assets", insert ", *registered emissions units".

49 Subsection 713-225(4) (heading)

Repeal the heading, substitute:

Special character of partnership cost setting interest in partnership asset that is trading stock, a depreciating asset or a registered emissions unit

50 Subsection 713-225(4)

Omit "or a *depreciating asset", substitute ", a *depreciating asset or a *registered emissions unit".

51 Subsection 715-660(1) (after table item 1)

Insert:

2	A provision of Subdivision 420-D that provides for a choice	Valuing *registered emissions units

51B At the end of paragraph 715-910(3)(b)

Add "and".

51C After paragraph 715-910(3)(b)

Insert:

(c) subsection 701-35(5) (setting value of registered emissions unit at tax-neutral amount);

51D At the end of paragraph 715-920(3)(b)

Add "and".

51E After paragraph 715-920(3)(b)

Insert:

(c) subsection 701-35(5) (setting value of registered emissions unit at tax-neutral amount);

52 Section 719-165 (heading)

Repeal the heading, substitute:

719-165 Trading stock value and registered emissions unit value not set for assets of eligible tier-1 companies

53 At the end of section 719-165

Add:

(3) Subsection 701-35(5) (setting value of registered emissions unit at tax-neutral amount) does not apply to the assets of the MEC joining entity if it is an *eligible tier-1 company at the MEC joining time.

54 Subsection 995-1(1)

Insert:

actual cost method of working out the *value of a *registered emissions unit has the meaning given by section 420-53.

55 Subsection 995-1(1)

Insert:

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

56 Subsection 995-1(1)

Insert:

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

57 Subsection 995-1(1) (paragraph (b) of the definition of *cost*)

Omit "section 70-55.", substitute "section 70-55; and".

58 Subsection 995-1(1) (at the end of the definition of *cost*, after the note)

Add:

(c) ***cost*** of a *registered emissions unit has the meaning given by section 420-60.

59 Subsection 995-1(1)

Insert:

eligible no-till seeder has the meaning given by section 385-235.

60 Subsection 995-1(1)

Insert:

FIFO cost method of working out the *value of a *registered emissions unit has the meaning given by section 420-52.

61 Subsection 995-1(1)

Insert:

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

62 Subsection 995-1(1) (at the end of the definition of *hold*)

Add:

; and (c) ***hold*** a *registered emissions unit has the meaning given by section 420-12.

63 Subsection 995-1(1)

Insert:

international emissions unit means:

(a) a *Kyoto unit; or

(b) a *prescribed international unit.

64 Subsection 995-1(1)

Insert:

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

65 Subsection 995-1(1)

Insert:

market value method of working out the *value of a *registered emissions unit has the meaning given by section 420-54.

66 Subsection 995-1(1)

Insert:

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

67 Subsection 995-1(1)

Insert:

registered emissions unit has the meaning given by section 420-10.

68 Subsection 995-1(1) (definition of *trading stock*)

After "modified by", insert "section 70-12 of this Act and".

69 Subsection 995-1(1) (paragraph (b) of the definition of *value*)

Omit "70-C.", substitute "70-C; and".

70 Subsection 995-1(1) (after paragraph (b) of the definition of *value*)

Insert:

(c) the ***value*** of a *registered emissions unit has the meaning given by Subdivision 420-D; and

71 Subsection 995-1(1)

Insert:

vintage year of a *carbon unit has the same meaning as in the *Clean Energy Act 2011*.

Income Tax (Transitional Provisions) Act 1997

72 After Part 3-45

Insert:

Part 3-50—Climate change

Division 420—Registered emissions units

Table of Subdivisions

420-A General application provision

420-B Units held before the commencement of Division 420 of the Income Tax Assessment Act 1997

Subdivision 420-A—General application provision

Table of sections

420-1 Application of Division 420 of the *Income Tax Assessment Act 1997*

420-1 Application of Division 420 of the *Income Tax Assessment Act 1997*

Division 420 of the *Income Tax Assessment Act 1997* does not apply to a registered emissions unit held by you unless you became the holder of the unit after the commencement of that Division.

Subdivision 420-B—Units held before the commencement of Division 420 of the Income Tax Assessment Act 1997

Table of sections

420-5 Transitional provision—units held before the commencement of Division 420 of the *Income Tax Assessment Act 1997*

420-5 Transitional provision—units held before the commencement of Division 420 of the *Income Tax Assessment Act 1997*

If, just before the commencement of Division 420 of the *Income Tax Assessment Act 1997*, you held:

(a) an Australian carbon credit unit; or

(b) a Kyoto unit; or

(c) a prescribed international unit;

for which there was an entry in the Australian National Registry of Emissions Units, you are treated as if:

(d) just before that commencement, you had sold the unit to someone else for its cost; and

(e) you had, immediately after that commencement, bought it back as a registered emissions unit for the same amount.

72A After section 701A-5

Insert:

701A-7 Modified application of Part 3-90 of *Income Tax Assessment Act 1997* to registered emissions units of continuing majority-owned entity

(1) The operation of Part 3-90 of the *Income Tax Assessment Act 1997* is modified in accordance with this section in relation to each asset of a continuing majority-owned entity that is a registered emissions unit just before the entity becomes a subsidiary member of the entity's designated group.

Continuing majority-owned entity to revalue its registered emissions units under normal provisions

(2) For the entity core purposes:

(a) subsection 701-35(5) of the *Income Tax Assessment Act 1997* does not apply in relation to the asset; and

(b) instead, the value of the asset at the end of the income year that ends, or, if section 701-30 of that Act applies, of the income year that is taken by subsection (3) of that section to end, is the value determined in accordance with sections 420-51 to 420-58 of that Act.

For head company, registered emissions units to be retained cost base asset with tax cost setting amount equal to entity's year-end valuation

(3) For the head company core purposes when the continuing majority-owned entity becomes a subsidiary member of the designated group, the asset is a retained cost base asset whose tax cost setting amount is equal to the value applicable in accordance with paragraph (2)(b).

Taxation Administration Act 1953

73 After subsection 45-120(5) in Schedule 1

Insert:

Gross proceeds on disposal of registered emissions units included in instalment income

(5A) Your ***instalment income*** for a period also includes an amount that section 420-25 of the *Income Tax Assessment Act 1997* includes in your assessable income, for the income year that is or includes that period, because you cease to *hold a *registered emissions unit during that period.

Part 3—Amendments commencing on 1 July 2015

Income Tax Assessment Act 1997

74 Section 67-23 (table item 24)

Repeal the item.

75 Subdivision 385-J

Repeal the Subdivision.

76 Subsection 995-1(1) (definition of *eligible no-till seeder*)

Repeal the definition.

77 Application

The amendments made by this Part apply to assessments for the 2015-16 income year and later income years.

Schedule 3—Amendments relating to renewable energy certificates

Renewable Energy (Electricity) Act 2000

1 Section 11

Repeal the section, substitute:

11 Regulator to refuse or approve application

(1) If the Regulator receives an application that is properly made under section 10, the Regulator must:

(a) approve the application; or

(b) refuse the application.

(2) The Regulator may refuse the application if the Regulator is satisfied that the applicant is not a fit and proper person.

(2A) For the purposes of subsection (2), in determining whether the applicant is a fit and proper person, the Regulator:

(a) must have regard to the matters specified in regulations made for the purposes of this subsection; and

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

(3) The Regulator must refuse the application if the Regulator is satisfied that the applicant has previously been a registered person.

2 At the end of section 23AAA

Add:

(3) A report of an inspection carried out in accordance with regulations made under subsection (1) may set out:

(a) conclusions; or

(b) recommendations; or

(c) other material;

that is or are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by section 26.

(4) Subsection (3) does not limit the matters that may be set out in a report.

Note: Inspections carried out in accordance with regulations made under subsection (1):

(a) may be relevant in determining whether a certificate is eligible for registration under section 26 (see subsection 26(3AA)); and

(b) provide an indication of the effectiveness of the process for the registration of certificates.

3 After subsection 26(3)

Insert:

(3AA) In determining whether a certificate is eligible for registration, the Regulator must have regard to any relevant:

(a) conclusions; or

(b) recommendations; or

(c) other material;

set out in a report of an inspection carried out in accordance with regulations made under subsection 23AAA(1).

Note: Subsection 23AAA(1) deals with the inspection of the installation of small generation units.

(3AB) Subsection (3AA) does not limit the matters to which regard may be had.

4 After subsection 26(3A)

Insert:

(3B) The amount of a fee prescribed under subsection (3A) must be reasonably related to the expenses incurred, or to be incurred, by the Commonwealth in connection with:

(a) the performance of the Regulator's functions, or the exercise of the Regulator's powers, under this section; and

(b) the carrying out of inspections in accordance with regulations made under subsection 23AAA(1), to the extent to which the inspections are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by this section; and

(c) the preparation of reports of inspections carried out in accordance with regulations made under subsection 23AAA(1), to the extent to which such reports set out:

(i) conclusions; or

(ii) recommendations; or

(iii) other material;

that is or are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by this section.

(3C) A fee prescribed under subsection (3A) must not be such as to amount to taxation.

5 At the end of section 30A

Add:

Prescribed ground

(5) The Regulator may, by written notice, suspend the registration of a registered person if the Regulator is satisfied that the registered person is not a fit and proper person.

(5A) For the purposes of subsection (5), in determining whether the registered person is a fit and proper person, the Regulator:

(a) must have regard to the matters specified in regulations made for the purposes of this subsection; and

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

(6) The registration is suspended for such period (including permanently) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

6 Application—registration under the *Renewable Energy (Electricity) Act 2000*

The amendment of Division 2 of Part 2 of the *Renewable Energy (Electricity) Act 2000* made by this Schedule applies in relation to applications for registration made after the commencement of this item.

Schedule 4—Amendments relating to the Australian National Registry of Emissions Units

Australian National Registry of Emissions Units Act 2011

1 Section 3

Omit "non-Kyoto international emissions units" (wherever occurring), substitute "prescribed international units".

2 Section 4 (paragraph (e) of the definition of *eligible international emissions unit*)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

3 Section 4 (paragraph (b) of the definition of *foreign account*)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

4 Section 4 (paragraph (b) of the definition of *foreign account*)

Omit "foreign non-Kyoto registry", substitute "foreign registry".

5 Section 4 (definition of *foreign non-Kyoto registry*)

Repeal the definition.

6 Section 4

Insert:

foreign registry means a registry that:

(a) is located in a foreign country; and

(b) is specified in the regulations.

7 Section 4 (definition of *non-Kyoto international emissions unit*)

Repeal the definition.

8 Section 4

Insert:

prescribed international unit means:

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

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

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

9 Section 4 (paragraph (c) of the definition of *registered holder*)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

10 Section 4 (paragraph (b) of the definition of *transfer*)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

11 Subsection 5(6)

Omit "subsections 14(3) and (4)", substitute "section 14A".

12 Paragraph 15(2)(d)

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

13 Subsection 16(5)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

14 Subsection 17(3) (heading)

Repeal the heading, substitute:

Prescribed international units

15 Subsection 17(3)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

16 After subsection 19(3)

Insert:

(3A) The Administrator must not exercise the power conferred by subsection (1) of this section in a manner contrary to:

(a) regulations made for the purposes of section 32A or 49A of this Act; or

(b) section 150A of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

17 Section 21 (heading)

Repeal the heading, substitute:

21 General power of correction of Registry—prescribed international units

18 Subsection 21(1)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

19 After subsection 22(4)

Insert:

(4A) The court must not make an order that is contrary to:

(a) regulations made for the purposes of section 32A or 49A of this Act; or

(b) section 150A of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

20 At the end of subsection 25(1)

Add:

Note: See also section 155 of the *Evidence Act 1995*.

21 Subsection 25(2)

Repeal the subsection.

22 Subparagraph 26(3)(a)(iii)

Repeal the subparagraph, substitute:

(iii) prescribed international units;

23 At the end of Division 7 of Part 2

Add:

28A Administrator may defer giving effect to a transfer instruction

Scope

(1) This section applies if the Administrator receives an instruction to transfer one or more:

(a) Australian carbon credit units; or

(b) Kyoto units; or

(c) prescribed international units;

to or from a Registry account kept in the name of a person.

Administrator may defer giving effect to the instruction

(2) The Administrator may defer giving effect to the instruction, for a period not exceeding 48 hours, if the Administrator is satisfied that it is prudent to do so in order to:

(a) ensure the integrity of the Registry; or

(b) prevent, mitigate or minimise abuse of the Registry; or

(c) prevent, mitigate or minimise criminal activity involving the Registry.

Prior notice not required

(3) The Administrator is not required to give any prior notice of a deferral under subsection (2).

Other provisions

(4) This section has effect despite:

(a) any other provision of this Act; or

(b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

28B Administrator may refuse to give effect to a transfer instruction

Scope

(1) This section applies if the Administrator receives an instruction to transfer one or more:

(a) Australian carbon credit units; or

(b) Kyoto units; or

(c) prescribed international units;

to or from a Registry account kept in the name of a person.

Administrator may refuse to give effect to instruction

(2) The Administrator may refuse to give effect to the instruction if the Administrator is satisfied that it is prudent to do so in order to:

(a) ensure the integrity of the Registry; or

(b) prevent, mitigate or minimise abuse of the Registry; or

(c) prevent, mitigate or minimise criminal activity involving the Registry.

Notification

(3) As soon as practicable after the Administrator refuses, under subsection (2), to give effect to the instruction, the Administrator must give written notice of the refusal to:

(a) in any case—the person; or

(b) if the instruction was given by another person—that other person.

(4) A notice given to a person under subsection (3) must invite the person to request the Administrator to cease to refuse to give effect to the instruction.

(5) A request under subsection (4) must:

(a) be in writing; and

(b) be in a form approved, in writing, by the Administrator; and

(c) set out the reason for the request.

(6) If the person makes a request under subsection (4), the Administrator may, by written notice given to the person, require the person to give the Administrator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

(7) The Administrator is not required to give any prior notice of a refusal under subsection (2).

Decision on request

(8) If the Administrator receives a request under subsection (4), the Administrator must:

(a) cease to refuse to give effect to the instruction; or

(b) decide to continue to refuse to give effect to the instruction.

(9) The Administrator must take all reasonable steps to ensure that a decision is made under subsection (8):

(a) if the Administrator requires the person to give further information under subsection (6) in relation to the request—within 7 days after the person gave the Administrator the information; or

(b) otherwise—within 7 days after the request was made.

(10) As soon as practicable after the Administrator makes a decision under subsection (8), the Administrator must notify the person, in writing, of the decision.

Other provisions

(11) This section has effect despite:

(a) any other provision of this Act; or

(b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note: For additional powers of refusal, see:

(a) paragraph 34(3)(a) of this Act; and

(b) paragraph 35(3)(a) of this Act; and

(c) subsection 36(2) of this Act; and

(d) subsection 53(2) of this Act.

28C Conditions restricting or limiting the operation of Registry accounts

Scope

(1) This section applies to a Registry account kept in the name of a person.

Imposition of conditions

(2) The Administrator may, by written instrument, impose conditions restricting or limiting the operation of the Registry account for a specified period.

(3) The Administrator may exercise the power conferred by subsection (2):
  (a) on the Administrator's own initiative; or
  (b) on written request made to the Administrator by the person.

(4) The Administrator must not make an instrument under subsection (2) unless the Administrator is satisfied that it is prudent to do so in order to:
  (a) ensure the integrity of the Registry; or
  (b) prevent, mitigate or minimise abuse of the Registry; or
  (c) prevent, mitigate or minimise criminal activity involving the Registry.

(5) A condition under subsection (2) may:
  (a) prohibit, restrict or limit the transfer of units from the Registry account; or
  (b) prohibit, restrict or limit the transfer of units to the Registry account.

(6) Subsection (5) does not limit subsection (2).

Notification

(7) As soon as practicable after making an instrument under subsection (2), the Administrator must give the person a copy of the instrument.

(8) If an instrument under subsection (2) is made on the Administrator's own initiative, the copy of the instrument must be

accompanied by a notice inviting the person to request the Administrator to:

(a) revoke the instrument; or

(b) vary the instrument in the manner specified in the request.

Request

(9) A request under paragraph (3)(b) or subsection (8) must:

(a) be in writing; and

(b) be in a form approved, in writing, by the Administrator; and

(c) set out the reason for the request.

Further information

(10) If the person makes a request under subsection (8), the Administrator may, by written notice given to the person, require the person to give the Administrator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

(11) The Administrator is not required to give any prior notice of a decision to make an instrument under subsection (2).

Decision in relation to instrument made on own initiative

(12) If the Administrator receives a request under subsection (8), the Administrator must:

(a) if the request is to revoke the instrument:

(i) revoke the instrument; or

(ii) decide not to revoke the instrument; or

(b) if the request is to vary the instrument:

(i) vary the instrument as requested; or

(ii) decide not to vary the instrument.

(13) The Administrator must take all reasonable steps to ensure that a decision is made under subsection (12):

(a) if the Administrator requires the person to give further information under subsection (10) in relation to the request—within 7 days after the person gave the Administrator the information; or

(b) otherwise—within 7 days after the request was made.

(14) As soon as practicable after the Administrator makes a decision under subsection (12), the Administrator must notify the person, in writing, of the decision.

Revocation of instrument made in response to a request

(15) If:

(a) an instrument is in force under subsection (2); and

(b) the instrument was made in response to a request under paragraph (3)(b);

the Administrator must, at the written request of the person, revoke the instrument.

Acts Interpretation Act

(16) Subsections (12) and (15) do not, by implication, limit subsection 33(3) of the *Acts Interpretation Act 1901*.

Other provisions

(17) This section has effect despite:

(a) any other provision of this Act; or

(b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

28D Suspension of Registry accounts

Scope

(1) This section applies to a Registry account kept in the name of a person.

Suspension

(2) The Administrator may, by written instrument, suspend the Registry account for a specified period.

(3) The Administrator may exercise the power conferred by subsection (2):

(a) on the Administrator's own initiative; or

(b) on written request made to the Administrator by the person.

(4) The Administrator must not make an instrument under subsection (2) unless the Administrator is satisfied that it is prudent to do so in order to:

(a) ensure the integrity of the Registry; or

(b) prevent, mitigate or minimise abuse of the Registry; or

(c) prevent, mitigate or minimise criminal activity involving the Registry.

(5) If an account is suspended under subsection (2):

(a) the Administrator must not:

(i) give effect to any instruction to transfer units to or from the Registry account; or

(ii) issue any Australian carbon credit units to the Registry account; and

(b) a notice to relinquish Australian carbon credit units under section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* does not have effect.

Notification

(6) As soon as practicable after making an instrument under subsection (2), the Administrator must give the person a copy of the instrument.

(7) If an instrument under subsection (2) is made on the Administrator's own initiative, the copy of the instrument must be accompanied by a notice inviting the person to request the Administrator to:

(a) revoke the instrument; or

(b) vary the instrument in the manner specified in the request.

Request

(8) A request under paragraph (3)(b) or subsection (7) must:

(a) be in writing; and

(b) be in a form approved, in writing, by the Administrator; and

(c) set out the reason for the request.

Further information

(9) If the person makes a request under subsection (7), the Administrator may, by written notice given to the person, require

the person to give the Administrator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

(10) The Administrator is not required to give any prior notice in relation to the decision to make an instrument under subsection (2).

Decision in relation to instrument made on own initiative

(11) If the Administrator receives a request under subsection (7), the Administrator must:

(a) if the request is to revoke the instrument:

(i) revoke the instrument; or

(ii) decide not to revoke the instrument; or

(b) if the request is to vary the instrument:

(i) vary the instrument as requested; or

(ii) decide not to vary the instrument.

(12) The Administrator must take all reasonable steps to ensure that a decision is made under subsection (11):

(a) if the Administrator requires the person to give further information under subsection (9) in relation to the request—within 7 days after the person gave the Administrator the information; or

(b) otherwise—within 7 days after the request was made.

(13) As soon as practicable after the Administrator makes a decision under subsection (11), the Administrator must notify the person, in writing, of the decision.

Revocation of instrument made in response to a request

(14) If:

(a) an instrument is in force under subsection (2); and

(b) the instrument was made in response to a request under paragraph (3)(b);

the Administrator must, at the written request of the person, revoke the instrument.

Acts Interpretation Act

(15) Subsections (11) and (14) do not, by implication, limit subsection 33(3) of the *Acts Interpretation Act 1901*.

Other provisions

(16) This section has effect despite:

(a) any other provision of this Act; or

(b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

24 After section 32

Insert:

32A Ownership of Kyoto unit

(1) The regulations may provide that the registered holder of a Kyoto unit:

(a) is the legal owner of the unit; and

(b) may, subject to this Act, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

(2) Regulations made for the purposes of subsection (1) only protect a person who deals with the registered holder of the unit as a purchaser:

(a) in good faith for value; and

(b) without notice of any defect in the title of the registered holder.

25 After section 45

Insert:

45A Registration of equitable interests in relation to Kyoto units

(1) The regulations may make provision for or in relation to the registration in the Registry of equitable interests in relation to Kyoto units.

(2) Subsection (1) does not apply to an equitable interest that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

25A After subsection 47(1)

Insert:

Effect of transmission

(1A) The transmission is of no force until the Administrator transfers the unit under subsection (7) or (8).

26 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Prescribed international units

27 Section 48

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

28 Section 49 (heading)

Repeal the heading, substitute:

49 Entries for prescribed international units

29 Section 49

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

30 After section 49

Insert:

49A Ownership of prescribed international unit

(1) The regulations may provide that the registered holder of a prescribed international unit:

(a) is the legal owner of the unit; and

(b) may, subject to this Act, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

(2) Regulations made for the purposes of subsection (1) only protect a person who deals with the registered holder of the unit as a purchaser:

(a) in good faith for value; and

(b) without notice of any defect in the title of the registered holder.

31 Section 50 (heading)

Repeal the heading, substitute:

50 Transfer of prescribed international units

32 Subsections 50(1) and (2)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

33 Section 51 (heading)

Repeal the heading, substitute:

51 Domestic transfers of prescribed international units

34 Subsection 51(1)

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

35 Section 52 (heading)

Repeal the heading, substitute:

52 Outgoing international transfers of prescribed international units

36 Subsection 52(1)

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

37 Section 53 (heading)

Repeal the heading, substitute:

53 Incoming international transfers of prescribed international units

38 Subsection 53(1)

Omit "non-Kyoto international emissions unit" (wherever occurring), substitute "prescribed international unit".

39 Subsections 53(2) and (3)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

40 Section 54 (heading)

Repeal the heading, substitute:

54 A registered prescribed international unit is personal property for certain purposes

41 Subsection 54(1)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

42 After section 54

Insert:

54A Registration of equitable interests in relation to prescribed international units

(1) The regulations may make provision for or in relation to the registration in the Registry of equitable interests in relation to prescribed international units.

(2) Subsection (1) does not apply to an equitable interest that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

43 Section 55 (heading)

Repeal the heading, substitute:

55 Equitable interests in relation to a prescribed international unit

44 Subsection 55(1)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

45 Section 56 (heading)

Repeal the heading, substitute:

56 Transmission of registered prescribed international units by operation of law etc.

46 Paragraph 56(1)(a)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

47 After subsection 56(1)

Insert:

Effect of transmission

(1A) The transmission is of no force until the Administrator transfers the prescribed international unit under subsection (7) or (8).

48 Section 57 (heading)

Repeal the heading, substitute:

57 Regulations about prescribed international units

49 Section 57

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

50 Section 58

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

51 Subsection 61(3) (heading)

Repeal the heading, substitute:

Prescribed international units

52 Paragraphs 61(3)(a) and (4)(a)

Omit "***non-Kyoto international emissions unit***", substitute "***prescribed international unit***".

53 Section 63 (heading)

Repeal the heading, substitute:

63 Information about number of voluntarily cancelled prescribed international units

54 Section 63

Omit "non-Kyoto international emissions units" (wherever occurring), substitute "prescribed international units".

55 Section 64

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

56 Section 66 (heading)

Repeal the heading, substitute:

66 Voluntary cancellation of prescribed international units

57 Subsection 66(1)

Omit "non-Kyoto international emissions units", substitute "prescribed international units".

58 Paragraph 66(2)(a)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

59 Paragraph 66(2)(b)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

60 Subsection 66(3)

Omit "non-Kyoto international emissions unit", substitute "prescribed international unit".

61 Section 82 (at the end of the table)

Add:

10	A decision under subsection 28B(8) to continue to refuse to give effect to a transfer instruction.
11	A decision under subsection 28C(12) not to revoke an instrument imposing conditions restricting or limiting the operation of a Registry account.
12	A decision under subsection 28C(12) not to vary an instrument imposing conditions restricting or limiting the operation of a Registry account.
13	A decision under subsection 28D(11) not to revoke an instrument suspending a Registry account.
14	A decision under subsection 28D(11) not to vary an instrument suspending a Registry account.

Schedule 5—Amendments relating to the Carbon Farming Initiative

Carbon Credits (Carbon Farming Initiative) Act 2011

1 Section 5 (definition of *foreign account*)

Omit "foreign non-Kyoto registry", substitute "foreign registry".

2 Section 5 (definition of *foreign non-Kyoto registry*)

Repeal the definition.

3 Section 5

Insert:

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

4 Subsection 7(6)

Omit "subsections 14(3) and (4)", substitute "section 14A".

5 After subsection 16(2)

Insert:

Prescribed non-CFI offsets scheme

(2A) If the project area for the project is or was, or the project areas for the project are or were, wholly or partly covered by a prescribed non-CFI offsets scheme, the number worked out using the formula in subsection (2) is to be reduced by the number ascertained in accordance with the regulations.

6 Before subsection 16(3)

Insert:

Rounding down

7 After subsection 17(3)

Insert:

Prescribed non-CFI offsets scheme

(3A) If the project area for the project is or was, or the project areas for the project are or were, wholly or partly covered by a prescribed non-CFI offsets scheme, the number worked out using the formula in subsection (2) or (3) is to be reduced by the number ascertained in accordance with the regulations.

8 At the end of section 18

Add:

Prescribed non-CFI offsets scheme

(3) If the project area for the project is or was, or the project areas for the project are or were, wholly or partly covered by a prescribed non-CFI offsets scheme, the number of tonnes referred to in subsection (2) is to be reduced by the number ascertained in accordance with the regulations.

9 Subparagraph 23(1)(e)(i)

Omit "was, or the project areas for the project were", substitute "is or was, or the project areas for the project are or were".

10 After subparagraph 23(1)(e)(i)

Insert:

(ia) the prescribed non-CFI offsets scheme is specified in regulations made for the purposes of this subparagraph; and

11 Paragraph 27(4)(m)

Omit "project; and", substitute "project.".

12 Paragraph 27(4)(n)

Repeal the paragraph.

13 After subsection 41(4)

Insert:

(4A) Paragraph (1)(b) does not apply to a requirement of a kind specified in the regulations.

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

14 At the end of section 41

Add:

Regulations

(6) If:

(a) regulations specifying a particular kind of project were made for the purposes of paragraph (1)(a), in accordance with section 4 of the *Acts Interpretation Act 1901*, during the period:

(i) beginning at the commencement of section 1; and

(ii) ending at the commencement of section 3; and

(b) before recommending to the Governor-General that those regulations should be made, the Minister requested the Interim Domestic Offsets Integrity Committee to advise the Minister about whether such a project should, or should not, be specified in those regulations; and

(c) the Minister had regard to any such advice;

this Act has effect, and is taken always to have had effect, as if the Minister had, before recommending to the Governor-General that those regulations should be made:

(d) requested the Domestic Offsets Integrity Committee to advise the Minister about whether such a project should, or should not, be specified in those regulations; and

(e) complied with paragraph (3)(c); and

(f) complied with subsection (5).

15 At the end of subsection 95(2)

Add:

; and (c) if the project is a landfill legacy emissions avoidance project—paragraph 41(1)(b) had not been enacted.

16 Subsection 95(3)

Omit "was, or the project areas were", substitute "is or was, or the project areas are or were".

17 At the end of subsection 95(3)

Add "that is specified in regulations made for the purposes of subparagraph 23(1)(e)(ia)".

18 Subsection 131(3) (heading)

Repeal the heading, substitute:

Effect

19 At the end of section 131

Add:

(4) If:

(a) before the commencement of this section, the Interim Domestic Offsets Integrity Committee published on the Department's website:

(i) the proposal; and

(ii) a notice inviting the public to make a submission to the Committee on the proposal by a specified time limit; and

(b) the time limit was not shorter than 30 days;

this Act has effect, and is taken always to have had effect, as if the Domestic Offsets Integrity Committee had complied with paragraph 112(5)(a) and subsection 112(6) in relation to the proposal.

(5) If:

(a) before the commencement of this section, the Interim Domestic Offsets Integrity Committee received any submissions in accordance with a notice referred to in subsection (4) in relation to the proposal; and

(b) before the commencement of this section, the Interim Domestic Offsets Integrity Committee:

(i) considered the submissions; and

(ii) published the submissions on the Department's website;

this Act has effect, and is taken always to have had effect, as if the Domestic Offsets Integrity Committee had complied with paragraph 112(5)(b) and subsection 112(11) in relation to the proposal.

(6) Subparagraph (5)(b)(ii) does not apply in relation to a particular submission made by a person if the person has requested the Interim Domestic Offsets Integrity Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice the commercial interests of the person or another person.

(7) If:

(a) before the commencement of this section, the Interim Domestic Offsets Integrity Committee received any submissions in accordance with a notice referred to in subsection (4) in relation to a proposal; and

(b) paragraph (5)(b) does not apply in relation to the submissions;

this Act has effect, and is taken always to have had effect, as if the Domestic Offsets Integrity Committee had received the submissions under subsection 112(5) within the time limit referred to in subparagraph 112(5)(a)(ii).

20 After section 150

Insert:

150A Ownership of Australian carbon credit unit

(1) The registered holder of an Australian carbon credit unit:

(a) is the legal owner of the unit; and

(b) may, subject to this Act and the *Australian National Registry of Emissions Units Act 2011*, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

(2) Subsection (1) only protects a person who deals with the registered holder of the unit as a purchaser:

(a) in good faith for value; and

(b) without notice of any defect in the title of the registered holder.

21 Subsection 152(1)

After "Australian carbon credit unit", insert "for which there is an entry in a Registry account".

22 Subsection 153(1)

After "Australian carbon credit unit", insert "for which there is an entry in a Registry account".

22A After subsection 153(1)

Insert:

Effect of transmission

(1A) The transmission is of no force until the Administrator transfers the Australian carbon credit unit under subsection (7) or (8).

23 After section 157

Insert:

157A Registration of equitable interests in relation to an Australian carbon credit unit

(1) The regulations may make provision for or in relation to the registration in the Registry of equitable interests in relation to Australian carbon credit units.

(2) Subsection (1) does not apply to an equitable interest that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

24 Paragraph 162(a)

Omit "before 31 December 2011", substitute "within 6 months after the commencement of this section".

25 Subsection 257(3)

Repeal the subsection, substitute:

(3) The Minister must ensure that the Chair of the Domestic Offsets Integrity Committee is not a person covered by subsection (4).

26 Subsection 257(6)

Omit "one Domestic Offsets Integrity Committee member is an officer", substitute "at least one, and not more than 2, Domestic Offsets Integrity Committee members are officers".

27 Paragraph 276(1)(b)

Repeal the paragraph, substitute:

(b) Low Carbon Australia Limited (ACN 141 478 748);

(ba) the Australian Transaction Reports and Analysis Centre;

28 Section 280

Omit "is already publicly available", substitute "has already been lawfully made available to the public".

[*Minister's second reading speech made in—*
House of Representatives on 13 September 2011
Senate on 12 October 2011]

(171/11)