

EXPOSURE DRAFT

2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Safeguard Mechanism (Crediting) Amendment Bill 2022

No. , 2022

(Climate Change, Energy, the Environment and Water)

**A Bill for an Act to amend legislation relating to
emissions reductions, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **emissions reductions, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Safeguard Mechanism (Crediting) Amendment Act*
6 *2022*.

7 **2 Commencement**

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

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

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Safeguard mechanism **Schedule 1**
Amendment of the National Greenhouse and Energy Reporting Act 2007 **Part 1**

Schedule 1—Safeguard mechanism

Part 1—Amendment of the National Greenhouse and Energy Reporting Act 2007

National Greenhouse and Energy Reporting Act 2007

1 Section 7

Insert:

associated provisions means the following provisions:

- (a) the provisions of a legislative instrument made under this Act;
- (b) the provisions of a legislative instrument made under the regulations;
- (c) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:
 - (i) this Act; or
 - (ii) a legislative instrument made under this Act; or
 - (iii) a legislative instrument made under the regulations.

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

issue, in relation to a safeguard mechanism credit unit, means issue under section 22XNA.

2 Section 7 (definition of *registered holder*)

After “carbon unit”, insert “or a relinquishable unit”.

3 Section 7

Insert:

relinquishable unit means an Australian carbon credit unit or a safeguard mechanism credit unit.

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1 **4 Section 7 (definition of *safeguard audit*)**

2 Before “subsection 22XQ(3)”, insert “paragraph 22XNA(4)(c) or”.

3 **5 Section 7 (definition of *safeguard audit report*)**

4 After “for the purposes of”, insert “paragraph 22XNA(4)(c) or”.

5 **6 Section 7**

6 Insert:

7 *safeguard mechanism credit unit* means a unit issued under
8 section 22XNA.

9 **7 Section 7 (after paragraph (c) of the definition of *safeguard***
10 ***provisions*)**

11 Insert:

12 (ca) paragraph 18B(3)(ba);

13 **8 At the end of section 10**

14 Add:

15 (4) A determination under subsection (3) may make provision in
16 relation to a matter by applying, adopting or incorporating, with or
17 without modification, a matter contained in an instrument or
18 writing:

19 (a) as in force or existing at a particular time; or

20 (b) as in force or existing from time to time.

21 (5) Subsection (4) has effect despite anything in subsection 14(2) of
22 the *Legislation Act 2003*.

23 (6) If a determination under subsection (3) makes provision in relation
24 to a matter by applying, adopting or incorporating, with or without
25 modification, a matter contained in an instrument or writing, the
26 Regulator must ensure that the text of the matter applied, adopted
27 or incorporated is published on its website.

28 (7) Subsection (6) does not apply if the publication would infringe
29 copyright.

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1 (8) A determination under subsection (3) may make provision in
2 relation to a matter by conferring a power to make a decision of an
3 administrative character on the Regulator.

4 **9 Subdivision B of Division 1 of Part 2 (heading)**

5 Omit “responsible emitter for a designated large facility etc.”,
6 substitute “person who is not a controlling corporation”.

7 **10 Section 15B (heading)**

8 Omit “responsible emitter for a designated large facility etc.”,
9 substitute “person who is not a controlling corporation”.

10 **11 After subsection 15B(3)**

11 Insert:

12 (3A) A person may apply, in accordance with this section, to be
13 registered under this Act if:

- 14 (a) the person has operational control of a facility that is
15 specified in the safeguard rules; and
16 (b) the person is not a controlling corporation.

17 **12 Subsection 15B(4)**

18 After “subsection (1)”, insert “or (3A)”.

19 **13 After paragraph 18B(3)(b)**

20 Insert:

- 21 (ba) if the person has been issued safeguard mechanism credit
22 units—the person has complied with any requirements
23 specified in the safeguard rules for the purposes of this
24 paragraph; and

25 **14 Paragraph 22XB(1)(b)**

26 Repeal the paragraph, substitute:

- 27 (b) either:
28 (i) at least one day in the relevant financial year is included
29 in a monitoring period for the facility in relation to the
30 person; or
31 (ii) the facility is specified in the safeguard rules; and

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1 **15 Subsection 22XB(1) (note)**

2 After “Note”, insert “1”.

3 **16 At the end of subsection 22XB(1)**

4 Add:

5 Note 2: For specification by class, see subsection 13(3) of the *Legislation Act*
6 *2003*.

7 **17 At the end of section 22XD**

8 Add:

- 9

<ul style="list-style-type: none">• This Part also sets up a scheme for issuing and relinquishing 10 safeguard mechanism credit units.
--

11 **18 Subsection 22XK(2)**

12 Omit “by the number of prescribed carbon units surrendered.”,
13 substitute:

14 by:

- 15 (c) if the safeguard rules provide that this paragraph applies to
16 the surrender of those units—the number worked out in
17 accordance with the safeguard rules for that surrender; or
18 (d) otherwise—the number of units surrendered.

19 **19 After subsection 22XK(2)**

20 Insert:

21 (2A) Safeguard rules made for the purposes of paragraph (2)(c) may
22 provide that if:

23 (a) a person:

24 (i) surrendered; or

25 (ii) because of safeguard rules made for the purposes of
26 paragraph (3)(d), is taken to have surrendered;

27 a number of prescribed carbon units for the purpose of
28 reducing the net emissions number for a facility for a period;
29 and

30 (b) some or all of those units:

31 (i) are prescribed carbon units of a specified kind; or

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1 (ii) satisfy specified conditions;
2 the *net emissions number* for the facility for the period is reduced
3 (but not below zero) by a number, worked out in accordance with
4 those rules, that is less than the number of prescribed carbon units
5 surrendered.

6 (2B) Subsection (2A) does not limit the safeguard rules that may be
7 made for the purposes of paragraph (2)(c).

8 **20 At the end of section 22XK**

9 Add:

10 (5) Subsection (4) does not apply in circumstances prescribed by the
11 safeguard rules.

12 **21 After paragraph 22XM(1)(a)**

13 Insert:

14 (aa) a safeguard mechanism credit unit; or

15 **22 Subsection 22XN(1)**

16 Omit “those units.”, substitute:

17 those units if:

18 (a) the person has complied with the requirements (if any)
19 specified in the safeguard rules; and

20 (b) the surrender meets the requirements (if any) specified in the
21 safeguard rules.

22 **23 After subsection 22XN(1)**

23 Insert:

24 (1A) Safeguard rules made for the purposes of paragraph (1)(b) may
25 provide that a surrender of prescribed carbon units under
26 subsection (1):

27 (a) must include a number of:

28 (i) prescribed carbon units of a specified kind; or

29 (ii) prescribed carbon units that satisfy specified conditions;
30 that is worked out in accordance with those rules; or

31 (b) must not include a number of:

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- 1 (i) prescribed carbon units of a specified kind; or
2 (ii) prescribed carbon units that satisfy specified conditions;
3 that exceeds a number worked out in accordance with those
4 rules.

- 5 (1B) Subsection (1A) does not limit the safeguard rules that may be
6 made for the purposes of paragraph (1)(b).

7 **24 At the end of section 22XN**

8 Add:

- 9 (7) Subsection (6) does not apply in circumstances prescribed by the
10 safeguard rules.

11 **25 After Division 4 of Part 3H**

12 Insert:

13 **Division 4A—Safeguard mechanism credit units**

14 **Subdivision A—Issuing safeguard mechanism credit units**

15 **22XNA Issuing safeguard mechanism credit units**

- 16 (1) The Regulator may, on behalf of the Commonwealth, issue units
17 (to be known as *safeguard mechanism credit units*) to one or more
18 persons in relation to a facility.

19 Note: Safeguard mechanism credit units may be issued under this section to
20 the Commonwealth in relation to a facility.

- 21 (2) The safeguard rules may make provision for, or in relation to, the
22 issuing of safeguard mechanism credit units by the Regulator.

- 23 (3) Without limiting subsection (2), the safeguard rules may make
24 provision in relation to one or more of the following:
25 (a) applying for safeguard mechanism credit units to be issued;
26 (b) the number of such units that may be issued to a person in
27 relation to a facility;
28 (c) how the Regulator is to determine the number of such units
29 to be issued to a person in relation to a facility;

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- 1 (d) any conditions that may be imposed by the Regulator on a
2 person issued with such units;
3 (e) the review or reconsideration of any decision under the
4 safeguard rules relating to the issuing of such units.
- 5 (4) Without limiting paragraph (3)(c), the safeguard rules may provide
6 for the following in relation to a determination by the Regulator
7 mentioned in that paragraph:
8 (a) the methodology to be used by the Regulator in making a
9 determination;
10 (b) how a person may apply for a determination;
11 (c) requiring an application for a determination to be
12 accompanied by an audit report that is:
13 (i) prescribed by the safeguard rules; and
14 (ii) prepared by a registered greenhouse and energy auditor
15 who has been appointed as an audit team leader for that
16 purpose.

17 **22XNB Entry in Registry account must be made if safeguard**
18 **mechanism credit units issued**

19 *Units issued to the Commonwealth*

- 20 (1) If the Regulator decides to issue a safeguard mechanism credit unit
21 to the Commonwealth in relation to a facility, the Regulator must
22 make an entry for the unit in a Commonwealth Registry account.

23 *Units issued to persons other than the Commonwealth*

- 24 (2) If the Regulator decides to issue a safeguard mechanism credit unit
25 to a person (other than the Commonwealth) in relation to a facility,
26 the Regulator must make an entry for the unit in a Registry account
27 kept by the person.
- 28 (3) The Regulator must not issue a safeguard mechanism credit unit to
29 a person (other than the Commonwealth) unless:
30 (a) the person is a registered person; and
31 (b) the person has a Registry account.

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1 **22XNC Safeguard mechanism credit units issued must be identified**
2 **with a financial year**

3 *Scope*

4 (1) This section applies if the Regulator decides to issue a safeguard
5 mechanism credit unit to a person in relation to a facility.

6 *Requirement*

7 (2) The Regulator must, in accordance with safeguard rules made for
8 the purposes of this subsection, identify the unit with a financial
9 year.

10 **22XND Safeguard mechanism credit units held in Commonwealth**
11 **Registry accounts**

12 (1) Without limiting subsection 22XNA(2), the safeguard rules may
13 provide for:

14 (a) the transfer, in specified circumstances, of safeguard
15 mechanism credit units held in a Commonwealth Registry
16 account because of subsection 22XNB(1) to another person's
17 Registry account; or

18 (b) the cancellation, in specified circumstances, of such units.

19 (2) If safeguard mechanism credit units held in a Commonwealth
20 Registry account are cancelled in accordance with safeguard rules
21 made for the purposes of paragraph (1)(b), the Regulator must
22 remove the entries for those units from that account.

23 **Subdivision B—Requirement to relinquish safeguard**
24 **mechanism credit units etc.**

25 **22XNE Regulator may require relinquishment of safeguard**
26 **mechanism credit units etc. issued on false or misleading**
27 **information**

28 *Scope*

29 (1) This section applies if:

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- 1 (a) a number of safeguard mechanism credit units have been
2 issued to a person (other than the Commonwealth) in relation
3 to a facility; and
4 (b) the units were issued to the person on the basis of
5 information given to the Regulator (whether or not by the
6 person); and
7 (c) the information was false or misleading in a material
8 particular; and
9 (d) the issue of any or all of the units was directly or indirectly
10 attributable to the false or misleading information.

11 Note: An example of false or misleading information would be a report
12 given under this Act that contained inaccurate information about
13 greenhouse gas emissions.

14 *Relinquishment*

- 15 (2) The Regulator may, by written notice given to the person, require
16 the person to relinquish a specified number of relinquishable units.
17 (3) The specified number must not exceed the number of safeguard
18 mechanism credit units the issue of which was directly or indirectly
19 attributable to the false or misleading information.
20 (4) The person must comply with the requirement within 90 days after
21 the notice was given.

22 Note: An administrative penalty is payable under section 22XNI for
23 non-compliance with a relinquishment requirement.

24 **22XNF Court may order relinquishment of safeguard mechanism** 25 **credit units etc. issued as a result of fraudulent conduct**

26 *Scope*

- 27 (1) This section applies if:
28 (a) one or more safeguard mechanism credit units were issued to
29 a person on a particular occasion; and
30 (b) the person has been convicted of an offence against:
31 (i) section 134.1 of the *Criminal Code*; or
32 (ii) section 134.2 of the *Criminal Code*; or
33 (iii) section 135.1 of the *Criminal Code*; or

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- 1 (iv) section 135.2 of the *Criminal Code*; or
2 (v) section 135.4 of the *Criminal Code*; or
3 (vi) section 136.1 of the *Criminal Code*; or
4 (vii) section 137.1 of the *Criminal Code*; or
5 (viii) section 137.2 of the *Criminal Code*; and
6 (c) an appropriate court is satisfied that the issue of any or all of
7 the units was directly or indirectly attributable to the
8 commission of the offence.

9 Note: For *appropriate court*, see subsection (7).

10 *Relinquishment*

- 11 (2) The court may, on application made by the Director of Public
12 Prosecutions or the Regulator, order the person:
13 (a) to relinquish a specified number of relinquishable units not
14 exceeding the number of safeguard mechanism credit units
15 issued as mentioned in paragraph (1)(a); and
16 (b) to do so by a specified time.

17 *Compliance*

- 18 (3) The person must comply with an order under subsection (2).

19 Note: An administrative penalty is payable under section 22XNI for
20 non-compliance with a relinquishment requirement.

- 21 (4) The person does not comply with an order under subsection (2)
22 unless the notice of relinquishment under section 22XNH specifies
23 the order.

- 24 (5) To avoid doubt, the person is required to comply with an order
25 under subsection (2) even if:
26 (a) the person is not the registered holder of any relinquishable
27 units; or
28 (b) the person is not the registered holder of the number of
29 relinquishable units required to be relinquished.

30 *Copy of order*

- 31 (6) A copy of an order under subsection (2) is to be given to the
32 Regulator.

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1

Appropriate court

2

- (7) For the purposes of this section, each of the following is an ***appropriate court***:

3

4

(a) the court that convicted the person of the offence;

5

(b) the Federal Court of Australia;

6

(c) the Supreme Court of a State or Territory.

7

Spent convictions

8

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

9

10

11

12

13

22XNG Information on Regulator’s website regarding relinquishment requirements

14

15

- (1) If a person is required under section 22XNE or 22XNF to relinquish a specified number of relinquishable units, the Regulator must publish the following information on the Regulator’s website:

16

17

18

(a) the person’s name;

19

(b) details of the requirement;

20

(c) if an amount payable by the person under section 22XNI in relation to non-compliance with the requirement remains unpaid after the time when the amount became due for payment—details of the unpaid amount;

21

22

23

24

(d) if the person relinquishes one or more units to comply with the requirement—the total number of units relinquished.

25

26

- (2) If a decision by the Regulator under section 22XNE is the subject of an application for review made to the Administrative Appeals Tribunal, the Regulator must publish an appropriate annotation on the Regulator’s website about:

27

28

29

30

(a) the application; and

31

(b) when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.

32

33

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1 **Subdivision C—Compliance with relinquishment requirement**

2 **22XNH Relinquishing safeguard mechanism credit units etc. to**
3 **comply with requirements**

- 4 (1) If:
- 5 (a) a person is required under section 22XNE or 22XNF to
- 6 relinquish a specified number of relinquishable units; and
- 7 (b) the person is the registered holder of one or more
- 8 relinquishable units;
- 9 the person may, by electronic notice transmitted to the Regulator,
- 10 relinquish any or all of the units held by the person.
- 11 (2) The notice must specify:
- 12 (a) the units that are being relinquished; and
- 13 (b) the requirement to which the relinquishment relates; and
- 14 (c) the account number or account numbers of the person's
- 15 Registry account, or the person's Registry accounts, in which
- 16 there is an entry or entries for the units that are being
- 17 relinquished.
- 18 (3) The units relinquished are cancelled and the Regulator must
- 19 remove the entries for those units from the person's Registry
- 20 account.
- 21 (4) The Registry must set out a record of each notice under
- 22 subsection (1).

23 **22XNI Administrative penalty if relinquishment requirements not**
24 **complied with**

25 *Scope*

- 26 (1) This section applies if:
- 27 (a) a person is required under section 22XNE or 22XNF to
- 28 relinquish a particular number of relinquishable units; and
- 29 (b) the person is required to do so by a particular time (the
- 30 *compliance deadline*).

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1 *No units relinquished*

2 (2) If, by the compliance deadline, the person has not relinquished any
3 units in order to comply with the requirement, the person is liable
4 to pay to the Commonwealth, by way of penalty, an amount
5 worked out using the formula:

6
$$\frac{\text{Number of units}}{\text{required to be relinquished}} \times \text{Prescribed amount}$$

7 where:

8 ***prescribed amount*** means the greater of the following amounts:

- 9 (a) \$20;
10 (b) 200% of the market value of a safeguard mechanism credit
11 unit as at the compliance deadline.

12 *Relinquishment of insufficient units*

13 (3) If, by the compliance deadline:

- 14 (a) the person has relinquished one or more units in order to
15 comply with the requirement; and
16 (b) the number of units is less than the number of units required
17 to be relinquished;

18 the person is liable to pay to the Commonwealth, by way of
19 penalty, an amount worked out using the formula:

20
$$\left(\frac{\text{Number of units}}{\text{required to be}} - \frac{\text{Number of}}{\text{relinquished}} \right) \times \text{Prescribed amount}$$

21 where:

22 ***prescribed amount*** means the greater of the following amounts:

- 23 (a) \$20;
24 (b) 200% of the market value of a safeguard mechanism credit
25 unit as at the compliance deadline.

26 *When penalty becomes due and payable*

27 (4) An amount payable under this section is due and payable at the end
28 of 30 days after the compliance deadline.

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1

Compliance

2

(5) To avoid doubt, a person may be liable to pay a penalty under this section even if:

3

4

(a) the person is not the registered holder of any relinquishable units; or

5

6

(b) the person is not the registered holder of the number of relinquishable units required to be relinquished.

7

8

Market value

9

(6) The safeguard rules may provide that, for the purposes of this section, the *market value* of a safeguard mechanism credit unit is to be ascertained in accordance with those rules.

10

11

12

22XNJ Late payment penalty

13

Penalty

14

(1) If an amount payable by a person under section 22XNI remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:

15

16

17

18

(a) 20% per annum; or

19

20

(b) if a lower rate per annum is specified in the safeguard rules—
that lower rate per annum;

21

on the amount unpaid, computed from that time.

22

Power to remit

23

(2) The Regulator may remit the whole or a part of an amount payable under subsection (1) if:

24

25

(a) the Regulator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or

26

27

28

(b) the Regulator is satisfied:

29

30

(i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and

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- 1 (ii) having regard to the nature of the reasons that caused
2 the delay, that it would be fair and reasonable to remit
3 some or all of the amount; or
4 (c) the Regulator is satisfied that there are special circumstances
5 that make it reasonable to remit some or all of the amount.
- 6 (3) The Regulator may exercise the power conferred by subsection (2):
7 (a) on written application being made to the Regulator by a
8 person; or
9 (b) on the Regulator's own initiative.

10 *Refusal*

- 11 (4) If:
12 (a) the Regulator decides to refuse to remit the whole or a part of
13 an amount payable under subsection (1); and
14 (b) the Regulator made the decision in response to an
15 application;
16 the Regulator must give written notice of the decision to the
17 applicant.

18 **22XNK Recovery of penalties**

- 19 An amount payable under section 22XNI or 22XNJ:
20 (a) is a debt due to the Commonwealth; and
21 (b) may be recovered by the Regulator, on behalf of the
22 Commonwealth, by action in a court of competent
23 jurisdiction.

24 **22XNL Set-off**

- 25 If:
26 (a) an amount (the *first amount*) is payable under section 22XNI
27 or 22XNJ by a person; and
28 (b) the following conditions are satisfied in relation to another
29 amount (the *second amount*):
30 (i) the amount is payable by the Commonwealth to the
31 person;
32 (ii) the amount is of a kind specified in the safeguard rules;

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

1 the Regulator may, on behalf of the Commonwealth, set off the
2 whole or a part of the first amount against the whole or a part of
3 the second amount.

4 **22XNM Refund of overpayments**

5 *Refund*

- 6 (1) If either of the following amounts has been overpaid by a person,
7 the amount overpaid must be refunded by the Commonwealth:
8 (a) an amount payable under section 22XNI;
9 (b) an amount payable under section 22XNJ.

10 Note: For the appropriation for the refund, see section 77 of the *Public*
11 *Governance, Performance and Accountability Act 2013*.

12 *Interest on overpayment*

- 13 (2) If:
14 (a) an amount overpaid by a person is refunded by the
15 Commonwealth under subsection (1); and
16 (b) the overpayment is attributable, in whole or in part, to an
17 error made by the Regulator;
18 interest calculated in accordance with subsection (3) is payable by
19 the Commonwealth to the person in respect of the amount
20 refunded.
- 21 (3) Interest payable to a person under subsection (2) in respect of an
22 amount refunded to the person is to be calculated:
23 (a) in respect of the period that:
24 (i) began when the overpaid amount was paid to the
25 Commonwealth; and
26 (ii) ended when the amount was refunded; and
27 (b) at the base interest rate (within the meaning of section 8AAD
28 of the *Taxation Administration Act 1953*).
- 29 (4) The Consolidated Revenue Fund is appropriated for the purposes
30 of making payments of interest under subsection (2).

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1 **22XNN Stay of proceedings for the recovery of an administrative**
2 **penalty**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a notice was given to a person under section 22XNE; and
 - 6 (b) the notice required the person to relinquish a particular
7 number of relinquishable units; and
 - 8 (c) the person did not comply with the requirement within 90
9 days after the notice was given; and
 - 10 (d) proceedings for the recovery of the penalty payable under
11 section 22XNI in respect of the non-compliance with the
12 requirement (including any late payment penalty payable
13 under section 22XNJ in relation to the section 22XNI
14 penalty) are before a court; and
 - 15 (e) the decision to require the person to relinquish a specified
16 number of relinquishable units is the subject of an application
17 for review by the Administrative Appeals Tribunal.

18 *Stay of proceedings*

- 19 (2) The court may stay the proceedings until the review by the
20 Administrative Appeals Tribunal (including any court proceedings
21 arising out of the review) has been finalised.
- 22 (3) This section does not limit the power of:
- 23 (a) a court; or
 - 24 (b) a Judge; or
 - 25 (c) a magistrate;
- 26 under any other law to order a stay of proceedings.

27 **26 After subparagraph 22XR(3)(b)(v)**

28 Insert:

29 ; and (va) section 22XNA;

30 **27 At the end of section 22XS**

31 Add:

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Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

- 1 (4) Safeguard rules may make provision in relation to a matter by
2 applying, adopting or incorporating, with or without modification,
3 a matter contained in an instrument or writing:
4 (a) as in force or existing at a particular time; or
5 (b) as in force or existing from time to time.
- 6 (5) Subsection (4) has effect despite anything in subsection 14(2) of
7 the *Legislation Act 2003*.
- 8 (6) If safeguard rules make provision in relation to a matter by
9 applying, adopting or incorporating, with or without modification,
10 a matter contained in an instrument or writing, the Regulator must
11 ensure that the text of the matter applied, adopted or incorporated
12 is published on its website.
- 13 (7) Subsection (6) does not apply if the publication would infringe
14 copyright.

28 Subsection 30(2A)

15 After “22X”, insert “, 74AA”.

29 After paragraph 56(dc)

17 Insert:

- 18 (dca) issue, or refuse to issue, safeguard mechanism credit units
19 under section 22XNA;
20 (dcb) require a relinquishment of relinquishable units under
21 section 22XNE;
22 (dcc) refuse to remit the whole or a part of an amount under
23 subsection 22XNJ(2);
24

30 Subsection 71(1)

25 After “this Act”, insert “or the associated provisions”.

31 Subsection 73(1)

27 Omit “regulations”, substitute “associated provisions”.

32 Paragraph 73(2)(b)

29 Omit “regulations”, substitute “associated provisions”.

EXPOSURE DRAFT

1 **33 Subsection 73A(1)**

2 Omit “regulations”, substitute “associated provisions”.

3 **34 Paragraph 73A(2)(b)**

4 Omit “regulations”, substitute “associated provisions”.

5 **35 Subsection 74(1)**

6 Omit “regulations”, substitute “associated provisions”.

7 **36 After section 74**

8 Insert:

9 **74AA Audit of persons providing reports under section 19, 22G or**
10 **22X**

11 *Scope*

12 (1) This section applies if:

- 13 (a) a person is required to provide a report (the *regulatory*
14 *report*) under section 19, 22G or 22X for a financial year in
15 relation to one or more facilities; and
16 (b) for that financial year, the facility, or at least one of those
17 facilities, was:
18 (i) a designated large facility; or
19 (ii) a facility of a kind specified by the safeguard rules for
20 the purposes of this subparagraph; and
21 (c) the conditions set out in the safeguard rules are satisfied.

22 *Audit*

23 (2) The person must:

- 24 (a) appoint as an audit team leader a registered greenhouse and
25 energy auditor of the person’s choice; and
26 (b) arrange for the audit team leader to carry out an audit of:
27 (i) the regulatory report; and
28 (ii) such other matters (if any) relating to the regulatory
29 report as are specified in the safeguard rules; and

EXPOSURE DRAFT

Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

- 1 (iii) if the regulatory report was under section 19—the
2 person’s compliance with section 22 (about
3 record-keeping) in relation to the financial year and so
4 much of the report as relates to facilities to which
5 paragraph (1)(b) of this section applies; and
6 (iv) if the regulatory report was under section 22G—the
7 person’s compliance with section 22H (about
8 record-keeping) in relation to the financial year; and
9 (v) if the regulatory report was under section 22X—the
10 person’s compliance with section 22XA (about
11 record-keeping) in relation to the financial year; and
12 (c) arrange for the audit team leader to give the person a written
13 report setting out the results of the audit; and
14 (d) give the Regulator a copy of the audit report:
15 (i) on the day on which the regulatory report is provided to
16 the Regulator; and
17 (ii) in the manner specified in the safeguard rules.

Civil penalty:

- 18 (a) for an individual—200 penalty units; or
19 (b) otherwise—1,000 penalty units.

(3) The safeguard rules may specify:

- 21 (a) the type of audit to be carried out; and
22 (b) the matters to be covered by the audit; and
23 (c) the form of the audit report and the kinds of details it is to
24 contain.
25

(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:

- 26 (a) for an individual—50 penalty units; or
27 (b) otherwise—250 penalty units.
28
29

37 Subsection 74A(1)

30 Omit “regulations”, substitute “associated provisions”.

EXPOSURE DRAFT

1 **38 Paragraph 74B(1)(a)**

2 Repeal the paragraph, substitute:

3 (a) either:

4 (i) the person is the responsible member mentioned in
5 subsection 22X(1); or

6 (ii) the person is the responsible emitter for a facility that is
7 or was a designated large facility in relation to a
8 financial year; and

9 **39 Paragraphs 74B(1)(c) and (2)(b)**

10 Omit “regulations”, substitute “associated provisions”.

11 **40 Paragraph 74C(1)(a)**

12 Repeal the paragraph, substitute:

13 (a) either:

14 (i) the person is the responsible member mentioned in
15 subsection 22X(1); or

16 (ii) the person is the responsible emitter for a facility that is
17 or was a designated large facility in relation to a
18 financial year; and

19 **41 Subsection 74C(2)**

20 Omit “regulations”, substitute “associated provisions”.

21 **42 After paragraph 75A(5)(i)**

22 Insert:

23 (ia) inspection of the performance of registered greenhouse and
24 energy auditors in carrying out ERF audits;

25 (ib) inspection of the performance of registered greenhouse and
26 energy auditors in carrying out safeguard audits;

27 **43 Section 77**

28 Before “The”, insert “(1)”.

29 **44 At the end of section 77**

30 Add:

EXPOSURE DRAFT

Schedule 1 Safeguard mechanism

Part 1 Amendment of the National Greenhouse and Energy Reporting Act 2007

- 1 (2) The regulations may make provision in relation to a matter by
2 applying, adopting or incorporating, with or without modification,
3 a matter contained in an instrument or writing:
4 (a) as in force or existing at a particular time; or
5 (b) as in force or existing from time to time.
- 6 (3) Subsection (2) has effect despite anything in subsection 14(2) of
7 the *Legislation Act 2003*.
- 8 (4) If the regulations make provision in relation to a matter by
9 applying, adopting or incorporating, with or without modification,
10 a matter contained in an instrument or writing, the Regulator must
11 ensure that the text of the matter applied, adopted or incorporated
12 is published on its website.
- 13 (5) Subsection (4) does not apply if the publication would infringe
14 copyright.
- 15 (6) The regulations may make provision in relation to a matter by
16 conferring a power to make a decision of an administrative
17 character on the Regulator.

EXPOSURE DRAFT

Safeguard mechanism **Schedule 1**
Amendment of the Income Tax Assessment Act 1997 **Part 2**

1 **Part 2—Amendment of the Income Tax Assessment**
2 **Act 1997**

3 *Income Tax Assessment Act 1997*

4 **45 After paragraph 420-10(d)**

5 Insert:

6 or (e) a *safeguard mechanism credit unit;

7 **46 After subparagraph 420-52(a)(iii)**

8 Insert:

9 or (iv) *safeguard mechanism credit units;

10 **47 Subsection 995-1(1)**

11 Insert:

12 *safeguard mechanism credit unit* has the same meaning as in the
13 *National Greenhouse and Energy Reporting Act 2007*.

EXPOSURE DRAFT

Schedule 1 Safeguard mechanism

Part 3 Application of amendments

1 **Part 3—Application of amendments**

2 **48 Application of amendments**

3 (1) The amendments of section 73 of the *National Greenhouse and Energy*
4 *Reporting Act 2007* made by Part 1 of this Schedule apply in relation to
5 a notice given to a registered corporation after the commencement of
6 this item.

7 (2) The amendments of section 73A of the *National Greenhouse and*
8 *Energy Reporting Act 2007* made by Part 1 of this Schedule apply in
9 relation to a notice given to a person after the commencement of this
10 item.

11 (3) The amendment of section 74 of the *National Greenhouse and Energy*
12 *Reporting Act 2007* made by Part 1 of this Schedule applies in relation
13 to an appointment made after the commencement of this item.

14 (4) Section 74AA of the *National Greenhouse and Energy Reporting Act*
15 *2007*, as inserted by Part 1 of this Schedule, applies in relation to the
16 financial year beginning on 1 July 2022 and later financial years.

17 (5) The amendment of section 74A of the *National Greenhouse and Energy*
18 *Reporting Act 2007* made by Part 1 of this Schedule applies in relation
19 to an appointment made after the commencement of this item.

20 (6) The amendments of section 74B of the *National Greenhouse and*
21 *Energy Reporting Act 2007* made by Part 1 of this Schedule apply in
22 relation to a notice given to a relevant person after the commencement
23 of this item.

24 (7) The amendments of section 74C of the *National Greenhouse and*
25 *Energy Reporting Act 2007* made by Part 1 of this Schedule apply in
26 relation to an appointment made after the commencement of this item.

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

1 **Schedule 2—Australian National Registry of**
2 **Emissions Units**
3

4 *Australian National Registry of Emissions Units Act 2011*

5 **1 Section 3**

6 Omit:

- 7
- Entries may be made in Registry accounts for:
 - 8 (a) Australian carbon credit units; and
 - 9 (b) Kyoto units.
 - This Act sets out rules about dealings with Kyoto units.
- 10

11 substitute:

- 12
- Entries may be made in Registry accounts for:
 - 13 (a) Australian carbon credit units; and
 - 14 (b) Kyoto units; and
 - 15 (c) safeguard mechanism credit units.
 - This Act sets out rules about dealings with:
 - 16 (a) Kyoto units; and
 - 17 (b) safeguard mechanism credit units.
- 18

19 **2 Section 4 (paragraph (d) of the definition of *eligible***
20 ***international emissions unit*)**

21 Omit “rules.”, substitute “rules; or”.

22 **3 Section 4 (after paragraph (d) of the definition of *eligible***
23 ***international emissions unit*)**

24 Insert:

- 25 (e) a safeguard mechanism credit unit if legislative rules made
26 for the purposes of this paragraph specify that kind of unit.

EXPOSURE DRAFT

Schedule 2 Australian National Registry of Emissions Units

1 **4 Section 4 (definition of *issue*)**

2 Repeal the definition, substitute:

3 *issue*:

4 (a) in relation to an Australian carbon credit unit—has the same
5 meaning as in the *Carbon Credits (Carbon Farming*
6 *Initiative) Act 2011*; or

7 (b) in relation to a safeguard mechanism credit unit—has the
8 same meaning as in the *National Greenhouse and Energy*
9 *Reporting Act 2007*.

10 **5 Section 4**

11 Insert:

12 *legislative rules* means rules made under section 94A.

13 *quarter* means a period of 3 months starting on 1 July, 1 October,
14 1 January or 1 April.

15 **6 Section 4 (definition of *registered holder*)**

16 Repeal the definition, substitute:

17 *registered holder*, in relation to:

18 (a) an Australian carbon credit unit; or

19 (b) a Kyoto unit; or

20 (c) a safeguard mechanism credit unit;

21 means the person in whose Registry account there is an entry for
22 the unit.

23 **7 Section 4**

24 Insert:

25 *safeguard mechanism credit unit* has the same meaning as in the
26 *National Greenhouse and Energy Reporting Act 2007*.

27 **8 Section 4 (definition of *transfer*)**

28 Repeal the definition, substitute:

29 *transfer*:

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

- 1 (a) in relation to a Kyoto unit—has the meaning given by
2 section 33; or
3 (b) in relation to a safeguard mechanism credit unit—has the
4 meaning given by section 48C.

5 **9 Paragraph 9(4)(a)**

- 6 Repeal the paragraph, substitute:
7 (a) to be a registry for:
8 (i) Australian carbon credit units; and
9 (ii) safeguard mechanism credit units;

10 **10 Paragraph 11(5)(a)**

- 11 Repeal the paragraph, substitute:
12 (a) issue to the account any:
13 (i) Australian carbon credit units; or
14 (ii) safeguard mechanism credit units; or

15 **11 At the end of subsection 15(2)**

- 16 Add:
17 ; and (d) there are no entries for any safeguard mechanism credit units
18 in the account.

19 **12 At the end of paragraph 16(2)(b)**

- 20 Add:
21 ; and (iii) setting out the effect of any legislative rules made for
22 the purposes of subsection (5).

23 **13 After subsection 16(4)**

- 24 Insert:
25 (5) The legislative rules may provide that if, immediately before the
26 Regulator closes a Registry account under regulations made for the
27 purposes of subsection (1), there is an entry for a safeguard
28 mechanism credit unit in the account, then the Regulator must take
29 such action in relation to the unit as is specified in the legislative
30 rules.

EXPOSURE DRAFT

Schedule 2 Australian National Registry of Emissions Units

1 **14 At the end of subsection 16(7)**

2 Add:
3 ; and (c) each action taken under legislative rules made for the
4 purposes of subsection (5).

5 **15 At the end of section 17**

6 Add:
7 *Safeguard mechanism credit units*
8 (3) An entry for a safeguard mechanism credit unit in a Registry
9 account may be made in accordance with this Act.

10 **16 After paragraph 19(3A)(a)**

11 Insert:
12 (aa) section 48A of this Act; or

13 **17 After paragraph 22(4A)(a)**

14 Insert:
15 (aa) section 48A of this Act; or

16 **18 Subsection 26(3) (heading)**

17 Repeal the heading, substitute:
18 *Exceptions*

19 **19 After subparagraph 26(3)(a)(ii)**

20 Insert:
21 or (iii) safeguard mechanism credit units;

22 **20 After paragraph 28A(1)(b)**

23 Insert:
24 or (c) safeguard mechanism credit units;

25 **21 After paragraph 28B(1)(b)**

26 Insert:
27 or (c) safeguard mechanism credit units;

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

1 **22 Subparagraph 28D(5)(a)(ii)**

2 After “Australian carbon credit units”, insert “or safeguard mechanism
3 credit units”.

4 **23 At the end of subsection 28D(5)**

5 Add:
6 ; and (c) a notice to relinquish Australian carbon credit units or
7 safeguard mechanism credit units under section 22XNE of
8 the *National Greenhouse and Energy Reporting Act 2007*
9 does not have effect.

10 **24 At the end of subsection 28D(16)**

11 Add:
12 ; or (c) anything in the *National Greenhouse and Energy Reporting*
13 *Act 2007*.

14 **25 After Part 3**

15 Insert:

16 **Part 4—Safeguard mechanism credit units**
17

18 **48 Simplified outline of this Part**

- 19

<ul style="list-style-type: none">• This Part sets out rules about the ownership, transfer and 20 transmission of safeguard mechanism credit units.

21 **48A A safeguard mechanism credit unit is personal property**

22 A safeguard mechanism credit unit is personal property and,
23 subject to sections 48D and 48E, is transmissible by assignment, by
24 will and by devolution by operation of law.

25 **48B Ownership of safeguard mechanism credit units**

- 26 (1) The registered holder of a safeguard mechanism credit unit:
27 (a) is the legal owner of the unit; and

EXPOSURE DRAFT

Schedule 2 Australian National Registry of Emissions Units

- 1 (b) may, subject to this Act and the *National Greenhouse and*
2 *Energy Reporting Act 2007*, deal with the unit as its legal
3 owner and give good discharges for any consideration for
4 any such dealing.
- 5 (2) Subsection (1) only protects a person who deals with the registered
6 holder of the unit as a purchaser:
7 (a) in good faith for value; and
8 (b) without notice of any defect in the title of the registered
9 holder.

10 **48C Transfer of safeguard mechanism credit units**

- 11 For the purposes of this Act, if there is an entry for a safeguard
12 mechanism credit unit in a Registry account (the *first Registry*
13 *account*) kept by a person (the *first person*):
14 (a) a *transfer* of the unit from the first Registry account to a
15 Registry account kept by another person consists of:
16 (i) the removal of the entry for the unit from the first
17 Registry account; and
18 (ii) the making of an entry for the unit in the Registry
19 account kept by the other person; and
20 (b) a *transfer* of the unit from the first Registry account to
21 another Registry account kept by the first person consists of:
22 (i) the removal of the entry for the unit from the first
23 Registry account; and
24 (ii) the making of an entry for the unit in the other Registry
25 account kept by the first person.

26 **48D Transmission of safeguard mechanism credit units by** 27 **assignment**

- 28 (1) A transmission by assignment of a safeguard mechanism credit
29 unit for which there is an entry in a Registry account is of no force
30 until:
31 (a) the transferor, by electronic notice transmitted to the
32 Regulator, instructs the Regulator to transfer the unit from
33 the relevant Registry account kept by the transferor to a
34 Registry account kept by the transferee; and

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Australian National Registry of Emissions Units **Schedule 2**

- 1 (b) the Regulator complies with that instruction.
- 2 (2) An instruction under paragraph (1)(a) must set out:
- 3 (a) the account number of the transferor's Registry account; and
- 4 (b) the account number of the transferee's Registry account.
- 5 (3) If the Regulator receives an instruction under paragraph (1)(a), the
- 6 Regulator must comply with the instruction as soon as practicable
- 7 after receiving it.
- 8 (4) The Registry must set out a record of each instruction under
- 9 paragraph (1)(a).
- 10 (5) If the transferor is the Commonwealth, the Minister may give an
- 11 instruction under paragraph (1)(a) on behalf of the transferor.

12 **48E Transmission of safeguard mechanism credit units by operation**

13 **of law etc.**

14 *Scope*

- 15 (1) This section applies if a safeguard mechanism credit unit for which
- 16 there is an entry in a Registry account is transmitted from a person
- 17 (the *transferor*) to another person (the *transferee*) by any lawful
- 18 means other than by a transfer under section 48D.

19 *Effect of transmission*

- 20 (2) The transmission is of no force until the Regulator transfers the
- 21 safeguard mechanism credit unit under subsection (8) or (9).

22 *Declaration of transmission*

- 23 (3) The transferee must, within 90 days after the transmission, give the
- 24 Regulator:
- 25 (a) a declaration of transmission; and
- 26 (b) such evidence of transmission as is specified in the
- 27 legislative rules.
- 28 (4) A declaration of transmission must be made in accordance with the
- 29 legislative rules.

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Schedule 2 Australian National Registry of Emissions Units

- 1 (5) If the transferee does not already have a Registry account, the
2 declaration of transmission must be accompanied by a request,
3 under regulations made for the purposes of subsection 10(1), for
4 the Regulator to open a Registry account in the name of the
5 transferee.
- 6 (6) If the Regulator is satisfied that special circumstances warrant the
7 extension of the 90-day period mentioned in subsection (3), the
8 Regulator may extend that period.
- 9 (7) The Regulator may exercise the power conferred by subsection (6):
10 (a) on written application being made to the Regulator by the
11 transferee; or
12 (b) on the Regulator's own initiative.

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

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

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

- 19 (9) If:
20 (a) the transferee does not already have a Registry account; and
21 (b) in accordance with the request under regulations made for the
22 purposes of subsection 10(1), the Regulator has opened a
23 Registry account in the name of the transferee;
24 the Regulator must, as soon as practicable after opening the
25 Registry account, transfer the unit from the relevant Registry
26 account kept by the transferor to the Registry account kept by the
27 transferee.

28 *Record*

- 29 (10) If the Regulator transfers the unit under subsection (8) or (9), the
30 Registry must set out a record of the declaration of transmission.

31 *When the transferee is the Commonwealth*

- 32 (11) If the transferee is the Commonwealth, the Minister may give:
-

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

- 1 (a) the declaration of transmission; and
2 (b) the evidence mentioned in paragraph (3)(b);
3 on behalf of the transferee.

4 *Notification*

- 5 (12) If:
6 (a) the Regulator decides to:
7 (i) extend the 90-day period mentioned in subsection (3);
8 or
9 (ii) refuse to extend the 90-day period mentioned in
10 subsection (3); and
11 (b) the Regulator made the decision in response to an
12 application;
13 the Regulator must give written notice of the decision to the
14 applicant.

15 **48F Transfer of safeguard mechanism credit units to another**
16 **Registry account held by the transferor**

17 *Scope*

- 18 (1) This section applies if:
19 (a) a person keeps a Registry account (the *first Registry*
20 *account*) in which there is an entry for a safeguard
21 mechanism credit unit; and
22 (b) the person, by electronic notice transmitted to the Regulator,
23 instructs the Regulator to transfer the unit from the first
24 Registry account to another Registry account kept by the
25 person; and
26 (c) the instruction sets out:
27 (i) the account number of the first Registry account; and
28 (ii) the account number of the other Registry account.

29 *Compliance with instruction*

- 30 (2) If a person gives the Regulator an instruction under
31 paragraph (1)(b), the Regulator must comply with the instruction as
32 soon as practicable after receiving it.

EXPOSURE DRAFT

Schedule 2 Australian National Registry of Emissions Units

- 1 (3) The Registry must set out a record of the instruction under
2 paragraph (1)(b).

3 **48G Registration of equitable interests in relation to a safeguard**
4 **mechanism credit unit**

- 5 (1) The legislative rules may make provision for or in relation to the
6 registration in the Registry of equitable interests in relation to
7 safeguard mechanism credit units.

- 8 (2) Subsection (1) does not apply to an equitable interest that is a
9 security interest within the meaning of the *Personal Property*
10 *Securities Act 2009*, and to which that Act applies.

11 **48H Equitable interests in relation to a safeguard mechanism credit**
12 **unit**

- 13 (1) This Act does not affect:
14 (a) the creation of; or
15 (b) any dealings with; or
16 (c) the enforcement of;
17 equitable interests in relation to a safeguard mechanism credit unit.

- 18 (2) Subsection (1) is enacted for the avoidance of doubt.

19 **48J Legislative rules about safeguard mechanism credit units**

20 The legislative rules may make further provision in relation to
21 safeguard mechanism credit units.

22 **26 Section 58**

23 Omit:

- 24 • The Regulator must publish certain information about:
25 (a) the holders of Registry accounts; and
26 (b) Kyoto units.

27 substitute:

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

-
- | | |
|---|---|
| 1 | • The Regulator must publish certain information about: |
| 2 | (a) the holders of Registry accounts; and |
| 3 | (b) Kyoto units; and |
| 4 | (c) Australian carbon credit units; and |
| 5 | (d) safeguard mechanism credit units. |

27 After section 60

Insert:

60A Information about Australian carbon credit units

- (1) The Regulator must:
- (a) publish on the Regulator’s website:
 - (i) for each Registry account—the total number of Australian carbon credit units for which there are entries in the account; and
 - (ii) such other information (if any) relating to the units, or to the registered holders of the units, as is specified in the legislative rules; and
 - (b) do so at least once each quarter.
- (2) The legislative rules may make provision for the exemption of Registry accounts from subsection (1) in specified circumstances.
- (3) The legislative rules may make provision for the exemption of Australian carbon credit units from subsection (1) in specified circumstances.

60B Information about safeguard mechanism credit units

- (1) The Regulator must:
- (a) publish on the Regulator’s website:
 - (i) for each Registry account—the total number of safeguard mechanism credit units for which there are entries in the account; and
 - (ii) such other information (if any) relating to the units, or to the registered holders of the units, as is specified in the legislative rules; and

EXPOSURE DRAFT

Schedule 2 Australian National Registry of Emissions Units

1 (b) do so at least once each quarter.

2 (2) The legislative rules may make provision for the exemption of
3 Registry accounts from subsection (1) in specified circumstances.

4 (3) The legislative rules may make provision for the exemption of
5 safeguard mechanism credit units from subsection (1) in specified
6 circumstances.

7 **28 At the end of Part 5**

8 Add:

9 **63 Information about number of voluntarily cancelled safeguard** 10 **mechanism credit units**

11 As soon as practicable after one or more safeguard mechanism
12 credit units held by a person are cancelled under section 66, the
13 Regulator must publish on the Regulator's website:

14 (a) the name of the person; and

15 (b) the total number of safeguard mechanism credit units
16 cancelled; and

17 (c) such other information (if any) as is specified in the
18 legislative rules.

19 **29 At the end of subsection 65(2)**

20 Add:

21 ; and (c) set out such other information (if any) as is specified in the
22 legislative rules.

23 **30 At the end of Part 6**

24 Add:

25 **66 Voluntary cancellation of safeguard mechanism credit units**

26 (1) If:

27 (a) a person is the registered holder of one or more safeguard
28 mechanism credit units; and

29 (b) a determination is in force under subsection (5);

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

- 1 the person may, by electronic notice transmitted to the Regulator,
2 request the Regulator to cancel any or all of those units.
- 3 (2) A notice under subsection (1) must:
- 4 (a) specify the safeguard mechanism credit unit or units that are
5 to be cancelled; and
- 6 (b) specify the account number or account numbers of the
7 person's Registry account, or the person's Registry accounts,
8 in which there is an entry or entries for the safeguard
9 mechanism credit unit or units that are to be cancelled; and
- 10 (c) set out such other information (if any) as is specified in the
11 legislative rules.
- 12 (3) If the Regulator receives a notice under subsection (1) in relation to
13 a safeguard mechanism credit unit:
- 14 (a) if the legislative rules require the Regulator to cancel the
15 unit—the Regulator must cancel the unit; and
- 16 (b) if the legislative rules require the Regulator to take specified
17 action in relation to the unit—the Regulator must take that
18 action; and
- 19 (c) the Regulator must remove the entry for the unit from the
20 person's Registry account in which there is an entry for the
21 unit.
- 22 (4) The Registry must set out a record of each notice under
23 subsection (1).
- 24 (5) The Minister may, by legislative instrument, determine that any
25 person who is the registered holder of one or more safeguard
26 mechanism credit units may request the Regulator to cancel any or
27 all of those units.

28 **31 Section 82 (table item 1)**

29 After "subsection 47(5)", insert "or 48E(6)".

30 **32 After section 94**

31 Insert:

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1 **94A Legislative rules**

- 2 (1) The Minister may, by legislative instrument, make rules
3 (*legislative rules*) prescribing matters:
4 (a) required or permitted by this Act to be prescribed by the
5 rules; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Act.
- 8 (2) To avoid doubt, the legislative rules may not do the following:
9 (a) create an offence or civil penalty;
10 (b) provide powers of:
11 (i) arrest or detention; or
12 (ii) entry, search or seizure;
13 (c) impose a tax;
14 (d) set an amount to be appropriated from the Consolidated
15 Revenue Fund under an appropriation in this Act;
16 (e) directly amend the text of this Act.
- 17 (3) Legislative rules that are inconsistent with the regulations have no
18 effect to the extent of the inconsistency, but legislative rules are
19 taken to be consistent with the regulations to the extent that
20 legislative rules are capable of operating concurrently with the
21 regulations.
- 22 (4) Legislative rules may make provision in relation to a matter by
23 applying, adopting or incorporating, with or without modification,
24 a matter contained in an instrument or writing:
25 (a) as in force or existing at a particular time; or
26 (b) as in force or existing from time to time.
- 27 (5) Subsection (4) has effect despite anything in subsection 14(2) of
28 the *Legislation Act 2003*.
- 29 (6) If legislative rules make provision in relation to a matter by
30 applying, adopting or incorporating, with or without modification,
31 a matter contained in an instrument or writing, the Regulator must
32 ensure that the text of the matter applied, adopted or incorporated
33 is published on its website.

EXPOSURE DRAFT

Australian National Registry of Emissions Units **Schedule 2**

1 (7) Subsection (6) does not apply if the publication would infringe
2 copyright.

3 **33 Section 95 (heading)**

4 Omit “Prescribing”, substitute “Regulations may prescribe”.

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

6 **34 Paragraph 51(1)(b)**

7 After “regulations”, insert “or legislative rules”.

EXPOSURE DRAFT

Schedule 3 Clean Energy Regulator

1 **Schedule 3—Clean Energy Regulator**
2

3 ***Clean Energy (Consequential Amendments) Act 2011***

4 **1 Items 219 to 220A of Schedule 1**

5 Repeal the items.

6 ***Clean Energy Regulator Act 2011***

7 **2 Section 4 (at the end of the definition of *climate change***
8 ***law*)**

9 Add:

10 ; (o) the *Regulatory Powers (Standard Provisions) Act 2014* as
11 applied by an Act mentioned in a preceding paragraph of this
12 definition.

13 **3 Section 4 (paragraph (a) of the definition of *protected***
14 ***information*)**

15 Omit “was obtained after the commencement of this section”, substitute
16 “is held”.

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

18 **4 Section 7**

19 Insert:

20 ***engage in conduct*** means:

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

23 **5 Section 7 (definition of *protected information*)**

24 Repeal the definition.

25 **6 Section 23 (at the end of the heading)**

26 Add “—audit information”.

1 **7 Paragraph 23(1)(a)**

2 Omit “greenhouse and energy information or”.

3 **8 Paragraph 23(1)(aa)**

4 Repeal the paragraph.

5 **9 Subparagraph 23(1)(b)(ii)**

6 Omit “Commonwealth; or”, substitute “Commonwealth.”.

7 **10 Subparagraphs 23(1)(b)(iii) to (v)**

8 Repeal the subparagraphs.

9 **11 Paragraph 23(2)(c)**

10 Repeal the paragraph.

11 **12 Paragraph 23(2)(da)**

12 Omit “member; or”, substitute “member.”.

13 **13 Paragraphs 23(2)(e) to (g)**

14 Repeal the paragraphs.

15 **14 Subsection 23(2) (note)**

16 Omit “See also”, substitute “For the protection of other information,
17 see”.

18 **15 Paragraph 27(1)(a)**

19 After “subsection 19(9)”, insert “, 22G(5) or 22X(6)”.

20 **16 At the end of section 27**

21 Add:

22 (3) A person commits an offence if:

23 (a) the person is subject to a condition mentioned in
24 paragraph (2)(a); and

25 (b) the person engages in conduct; and

26 (c) the person’s conduct breaches the condition.

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

EXPOSURE DRAFT

Schedule 3 Clean Energy Regulator

1 **17 Application provision**

2 Subsection 27(3) of the *National Greenhouse and Energy Reporting Act*
3 *2007*, as added by this Schedule, applies in relation to greenhouse and
4 energy information that is disclosed under subsection 27(1) of that Act
5 before, on or after the day this Schedule commences.

1 **Schedule 4—Other amendments**
2

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

4 **1 At the end of section 20C**

5 Add:

6 (3) The Regulator must not enter into a carbon abatement contract
7 under section 20B if any of the eligible carbon credit units to be
8 purchased under the contract:

9 (a) were issued; or

10 (b) at the time of purchase, would have been issued;
11 in respect of an eligible offsets project of a kind specified in the
12 legislative rules.

13 **2 Paragraph 20H(1)(a)**

14 After “units to”, insert “or from”.

15 **3 Subparagraph 27(4A)(b)(i)**

16 Omit “(other than the *National Greenhouse and Energy Reporting Act*
17 *2007*)”.