

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Nature Repair Market Bill 2023

No. , 2023

(Climate Change, Energy, the Environment and Water)

**A Bill for an Act to establish a national voluntary
framework for projects to enhance or protect
biodiversity, and for other purposes**

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1 **A Bill for an Act to establish a national voluntary**
2 **framework for projects to enhance or protect**
3 **biodiversity, and for other purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Nature Repair Market Act 2023*.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

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

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

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

13 **3 Objects of this Act**

14 The objects of this Act are:

- 15 (a) to facilitate the enhancement or protection of biodiversity in
16 native species in Australia; and
17 (b) to contribute to meeting Australia's international obligations
18 in relation to biodiversity; and
19 (c) to promote engagement and co-operation of market
20 participants (including First Nations people, governments,
21 the community, landholders and private enterprise) in the
22 enhancement or protection of biodiversity in native species in
23 Australia; and
24 (d) to contribute to the reporting and dissemination of
25 information related to the enhancement or protection of
26 biodiversity in native species in Australia.

1 **4 Simplified outline of this Act**

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A biodiversity project is a project to enhance or protect biodiversity in native species.

An eligible person may apply for a biodiversity project to be registered on the Biodiversity Market Register. To be registered, a biodiversity project must meet various requirements, including requirements:

- (a) to be carried out by one or more project proponents (including the applicant) who are fit and proper persons; and
- (b) to be covered by a methodology determination.

Methodology determinations are legislative instruments that cover particular kinds of biodiversity projects, and set out how a project is to be carried out and the circumstances in which a biodiversity certificate will be issued for a project.

A biodiversity certificate represents the biodiversity outcome that a registered biodiversity project is designed to achieve. Biodiversity certificates are the property of their registered holders, and may be transferred.

This Act imposes certain obligations on project proponents. These obligations include:

- (a) obligations to comply with requirements in the methodology determination that covers a project; and
- (b) reporting and notification obligations; and
- (c) record-keeping and monitoring obligations.

This Act is administered by the Minister and the Clean Energy Regulator. The Regulator has a range of powers available to enforce the obligations of a project proponent, including the following:

- (a) civil penalties (some of which apply only after a biodiversity certificate has been issued for a project);

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Part 1 Preliminary

Section 5

- 1 (b) other powers under the Regulatory Powers Act;
2 (c) powers to require projects to be audited;
3 (d) powers to require project proponents to relinquish
4 biodiversity certificates;
5 (e) the power to make a biodiversity maintenance
6 declaration that prohibits certain activities in a project
7 area.

8 This Act also contains provisions for:

- 9 (a) the establishment of the Nature Repair Market
10 Committee to advise the Minister in relation to the
11 Minister's functions under this Act; and
12 (b) biodiversity integrity standards which a methodology
13 determination must meet; and
14 (c) the Regulator to maintain an online platform to facilitate
15 trading in biodiversity certificates and for other
16 purposes, in accordance with the rules; and
17 (d) internal review of decisions under the Act, and review
18 by the Administrative Appeals Tribunal.

19 **5 Crown to be bound**

- 20 (1) This Act binds the Crown in each of its capacities.
21 (2) This Act does not make the Crown liable to a pecuniary penalty or
22 to be prosecuted for an offence.
23 (3) The protection in subsection (2) does not apply to an authority of
24 the Crown.

25 **6 Extension to external Territories**

26 This Act extends to every external Territory.

27 **7 Definitions**

28 In this Act:

- 1 **Aboriginal land council**, for an area of land, means a body
2 corporate that:
- 3 (a) is established under an Act of the Commonwealth, a State or
4 a Territory for the purpose of holding, for the benefit of
5 Aboriginal persons or Torres Strait Islanders:
6 (i) title to land vested in it by or under that Act; or
7 (ii) an estate or interest in land granted under that Act; and
8 (b) has functions relating to land that under a law of the
9 Commonwealth, a State or a Territory is land rights land; and
10 (c) consists of Aboriginal persons or Torres Strait Islanders who:
11 (i) live in an area to which one or more of the body's
12 functions relate; or
13 (ii) are registered as traditional owners of land in an area to
14 which one or more of the body's functions relate; or
15 (iii) have an association with an area to which one or more
16 of the body's functions relate if the Aboriginal persons
17 or Torres Strait Islanders are accepted as members of
18 the land council on the basis of that association.

19 **Aboriginal person** has the same meaning as in the *Aboriginal and*
20 *Torres Strait Islander Act 2005*.

21 **activity period** of a registered biodiversity project means the
22 activity period identified in the notice of approval of registration
23 under paragraph 15(7)(e), subject to any variation under rules made
24 for the purposes of paragraph 20(1)(c).

25 **area** means:

- 26 (a) an area of land; or
27 (b) an area of Australian waters; or
28 (c) an area that is a combination of land and Australian waters.

29 **associated provisions** means the following provisions:

- 30 (a) the provisions of the rules;
31 (b) the provisions of a methodology determination;

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Part 1 Preliminary

Section 7

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

- 4 (i) this Act; or
5 (ii) the rules; or
6 (iii) a methodology determination.

7 ***audit information*** has the meaning given by section 124.

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

- 10 (a) paragraph 12(3)(a);
11 (b) paragraph 68(1)(f);
12 (c) paragraph 103(1)(d);
13 (d) paragraph 103(1)(e);
14 (e) paragraph 121(2)(a);
15 (f) subsection 122(1).

16 ***Australia***, when used in a geographical sense, includes the external
17 Territories.

18 ***Australian waters*** means:

- 19 (a) the territorial sea of Australia; or
20 (b) the waters of the sea on the landward side of the territorial
21 sea of Australia; or
22 (c) the territorial sea of each external Territory; or
23 (d) the waters of the sea on the landward side of the territorial
24 sea of each external Territory; or
25 (e) inland waters.

26 ***biodiversity*** means the variability among living organisms from all
27 sources (including terrestrial, marine and other aquatic ecosystems
28 and the ecological complexes of which they are part) and includes:

- 29 (a) diversity within species and between species; and
30 (b) diversity of ecosystems.

31 ***biodiversity assessment instrument*** means an instrument under
32 section 58.

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biodiversity audit means:

- (a) an audit under section 121 or 122; or
- (b) an audit carried out for the purposes of preparing an audit report prescribed by the rules for the purposes of any of the following provisions:
 - (i) paragraph 12(3)(a);
 - (ii) paragraph 68(1)(f);
 - (iii) paragraph 103(1)(d);
 - (iv) paragraph 103(1)(e).

biodiversity audit report means:

- (a) an audit report under section 121 or 122; or
- (b) an audit report prescribed by the rules for the purposes of any of the following provisions:
 - (i) paragraph 12(3)(a);
 - (ii) paragraph 68(1)(f);
 - (iii) paragraph 103(1)(d);
 - (iv) paragraph 103(1)(e).

biodiversity certificate means a certificate issued under section 70.

biodiversity conservation contract: see section 79.

biodiversity conservation contractor: see section 79.

biodiversity conservation purchasing process: see section 83.

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

Note: The Convention is in Australian Treaty Series 1993 No. 32 ([1993] ATS 32) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

biodiversity integrity standards: see section 57.

biodiversity maintenance area, in relation to a biodiversity maintenance declaration: see subsection 154(1).

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Part 1 Preliminary

Section 7

- 1 ***biodiversity maintenance declaration*** means a declaration made
2 by the Regulator under subsection 154(1).
- 3 ***biodiversity outcome***, in relation to a biodiversity project, means
4 the enhancement or protection of biodiversity that the project is
5 designed to achieve.
- 6 ***biodiversity project*** means a project, carried out in a particular
7 area, that is designed to enhance or protect biodiversity in native
8 species (whether the effect on biodiversity occurs within or outside
9 the area).
- 10 ***biodiversity project report*** means:
11 (a) a category A biodiversity project report; or
12 (b) a category B biodiversity project report.
- 13 ***body corporate under external administration*** means:
14 (a) a Chapter 5 body corporate; or
15 (b) a body corporate that has a corresponding status under a law
16 of a foreign country.
- 17 ***category A biodiversity project report***: see sections 101 and 102.
- 18 ***category B biodiversity project report***: see section 104.
- 19 ***Chapter 5 body corporate*** has the same meaning as in the
20 *Corporations Act 2001*.
- 21 ***civil penalty order*** has the same meaning as in the Regulatory
22 Powers Act.
- 23 ***civil penalty provision*** has the same meaning as in the Regulatory
24 Powers Act.
- 25 ***Commonwealth Register account*** means a Register account kept
26 in the name of the Commonwealth.
- 27 ***corporation*** means:
28 (a) a body corporate; or
29 (b) a corporation sole.

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1 **covers**: a methodology determination **covers** a registered
2 biodiversity project if the entry for the project in the Register states
3 that the methodology determination covers the project.

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

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

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

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

21 **Crown lands Minister**:

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

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1 ***declared prohibited activity***, in relation to a biodiversity
2 maintenance area, means an activity specified under
3 subsection 154(4) in relation to the biodiversity maintenance area.

4 ***deposited with the Regulator***, when used in relation to a
5 biodiversity certificate, has the meaning given by section 142.

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

9 ***electronic notice transmitted to the Regulator*** has the meaning
10 given by section 9.

11 ***eligible interest***, in relation to an area of land, has the meaning
12 given by section 89, 90, 91 or 92.

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

- 14 (a) an individual;
- 15 (b) a body corporate;
- 16 (c) a trust;
- 17 (d) a corporation sole.

18 ***eligible voluntary action*** means:

- 19 (a) making an application; or
 - 20 (b) giving information in connection with an application; or
 - 21 (c) withdrawing an application; or
 - 22 (d) giving a notice (including an electronic notice); or
 - 23 (e) making a submission; or
 - 24 (f) making a request; or
 - 25 (g) giving information in connection with a request;
- 26 to the Regulator, where the application, information, notice,
27 submission or request is permitted, but not required, to be made,
28 given or withdrawn, as the case may be, under this Act or an
29 instrument made under this Act.

30 ***engage in conduct*** means:

- 31 (a) do an act; or

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1 (b) omit to perform an act.

2 ***excluded biodiversity project***: see section 33.

3 ***exclusive possession native title area*** means a native title area,
4 where the native title confers a right of exclusive possession over
5 the area.

6 ***executive officer*** of a corporation means:

- 7 (a) a director of the corporation; or
8 (b) the chief executive officer (however described) of the
9 corporation; or
10 (c) the chief financial officer (however described) of the
11 corporation; or
12 (d) the secretary of the corporation.

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

14 ***First Nations people*** means:

- 15 (a) Aboriginal persons; or
16 (b) Torres Strait Islanders.

17 ***fit and proper person*** has a meaning affected by sections 97, 98
18 and 99.

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

- 20 (a) a freehold estate exists over the land, and the grant of the
21 freehold estate took place under a law of a State or a
22 Territory that makes provision for the grant of such things
23 only to, or for the benefit of, Aboriginal persons or Torres
24 Strait Islanders; or
25 (b) a freehold estate exists over the land, and the grant of the
26 freehold estate took place under a law of the Commonwealth
27 that makes provision for the grant of such things only to, or
28 for the benefit of, Aboriginal persons or Torres Strait
29 Islanders; or
30 (c) the land is vested in a person, and the vesting took place
31 under a law of the Commonwealth that makes provision for

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1 the vesting of land only in, or for the benefit of, Aboriginal
2 persons or Torres Strait Islanders.

3 **holder** of a biodiversity certificate means the person recorded in
4 the Register as the holder of the certificate.

5 **indigenous-held land** has the same meaning as in the *Aboriginal*
6 *and Torres Strait Islander Act 2005*.

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

9 **inland waters** means waters within Australia other than waters of
10 the sea.

11 **inspector** means a person appointed as an inspector under
12 section 184.

13 **land rights land** means land where:

- 14 (a) a freehold estate exists, or a lease is in force, over the land,
15 where the grant of the freehold estate or lease took place
16 under legislation that makes provision for the grant of such
17 things only to, or for the benefit of, Aboriginal persons or
18 Torres Strait Islanders; or
19 (b) the land is vested in a person, where the vesting took place
20 under legislation that makes provision for the vesting of land
21 only in, or for the benefit of, Aboriginal persons or Torres
22 Strait Islanders; or
23 (c) neither paragraph (a) nor (b) applies, and the land is held
24 expressly for the benefit of, or is held in trust expressly for
25 the benefit of, Aboriginal persons or Torres Strait Islanders;
26 or
27 (d) the land is reserved expressly for the benefit of Aboriginal
28 persons or Torres Strait Islanders; or
29 (e) the land is specified in the rules.

30 This definition does not apply to the definition of **Aboriginal land**
31 **council** or to section 92.

32 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
33 *2003*.

- 1 **lease**, in relation to land rights land, includes:
- 2 (a) a lease enforceable in equity; and
- 3 (b) a contract that contains a statement to the effect that it is a
- 4 lease; and
- 5 (c) anything that, at or before the time of its creation, is, for any
- 6 purpose, by a law of the Commonwealth, a State or a
- 7 Territory, declared to be or described as a lease.
- 8 **maintained project**, in relation to a biodiversity maintenance
- 9 declaration: see paragraph 154(1)(a).
- 10 **methodology determination** means a determination under
- 11 subsection 45(1).
- 12 **National Native Title Register** has the same meaning as in the
- 13 *Native Title Act 1993*.
- 14 **native title** has the same meaning as in the *Native Title Act 1993*.
- 15 **native title area**: an area is a **native title area** if there is an entry on
- 16 the National Native Title Register specifying that native title exists
- 17 in relation to the area.
- 18 **natural disturbance**, in relation to a registered biodiversity project,
- 19 means any of the following events, where the event could not
- 20 reasonably be prevented by the project proponent for the project:
- 21 (a) flood;
- 22 (b) bushfire;
- 23 (c) drought;
- 24 (d) pest attack;
- 25 (e) disease;
- 26 (f) an event specified in the rules.
- 27 **Nature Repair Market Committee** means the committee
- 28 established by section 194.
- 29 **Nature Repair Market Committee member** means a member of the
- 30 Nature Repair Market Committee, and includes the Chair of the
- 31 Nature Repair Market Committee.

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1 ***paid work*** means work for financial gain or reward (whether as an
2 employee, a self-employed person or otherwise).

3 ***permanence period*** of a registered biodiversity project means the
4 permanence period that:

- 5 (a) is identified in the notice of approval of registration under
6 paragraph 15(7)(e), subject to any variation under rules made
7 for the purposes of paragraph 20(1)(d); and
8 (b) complies with section 34.

9 ***prescribed law***, when used in a provision of this Act, means a law
10 prescribed by the rules for the purposes of that provision.

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

12 ***project area***, in relation to:

- 13 (a) a biodiversity project; or
14 (b) a registered project under a related scheme;
15 means the area, or areas, on or in which the project has been, is
16 being, or is to be carried out.

17 ***project plan***, in relation to a biodiversity project, means a plan that:

- 18 (a) sets out how the project is intended to be carried out; and
19 (b) sets out how the project is intended to achieve the
20 biodiversity outcome for the project; and
21 (c) is consistent with the methodology determination that covers,
22 or is proposed to cover, the project; and
23 (d) includes such information (if any) as is specified in the rules;
24 and
25 (e) complies with such requirements (if any) as are specified in
26 the rules.

27 ***project proponent***, in relation to a registered biodiversity project,
28 means the eligible person who is recorded in the Register as the
29 project proponent for the project.

30 Note: For projects with multiple project proponents, see Part 3.

31 ***protected audit information*** has the meaning given by section 125.

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1 **Register** means the Biodiversity Market Register kept by the
2 Regulator under subsection 161(1).

3 **registered biodiversity project** means a biodiversity project that is
4 registered on the Register (other than a former registered
5 biodiversity project in relation to which information is set out in
6 the Register under rules made for the purposes of
7 subsection 162(5)).

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

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

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

15 **registered project under a related scheme** means a project that is:

- 16 (a) registered under the *Carbon Credits (Carbon Farming*
17 *Initiative) Act 2011*; or
18 (b) registered (however described) under a prescribed law of the
19 Commonwealth, a State or a Territory.

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

22 **Regulator** means the Clean Energy Regulator.

23 Note: The Clean Energy Regulator is established by the *Clean Energy*
24 *Regulator Act 2011*.

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

- 27 (a) relates to the project or to an element of the project; and
28 (b) is required under a law of the Commonwealth (other than this
29 Act), a State or a Territory that relates to:
30 (i) land use or development; or
31 (ii) the environment; or
32 (iii) water.

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1 **Regulatory Powers Act** means the *Regulatory Powers (Standard*
2 *Provisions) Act 2014*.

3 **relevant land registration official:**

4 (a) in relation to a biodiversity project that:

5 (i) is or was a registered biodiversity project; and

6 (ii) is wholly or partly land-based;

7 means the Registrar of Titles or other proper officer of the

8 State or Territory in which the project area is wholly or partly

9 situated; or

10 (b) in relation to an area of land that is or was a biodiversity

11 maintenance area—means the Registrar of Titles or other

12 proper officer of the State or Territory in which the area of

13 land is wholly or partly situated.

14 **relinquishment equivalence requirements:** see subsection 151(2).

15 **relinquishment notice** means a notice given by the Regulator

16 under any of the following provisions:

17 (a) subsection 144(2) (false or misleading information);

18 (b) subsection 145(2) (cancellation of registration of biodiversity
19 project);

20 (c) subsection 146(2) (reversal of biodiversity outcome other
21 than due to natural disturbance or conduct etc.);

22 (d) subsection 147(2) (reversal of biodiversity outcome due to
23 natural disturbance or conduct and no mitigation happens).

24 **reviewable decision** has the meaning given by section 212.

25 **rules** means rules made under section 237.

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

27 **statutory authority** of the Commonwealth, a State or a Territory,

28 means an authority or body (including a corporation sole)

29 established by or under a law of the Commonwealth, the State or

30 the Territory (other than a general law allowing incorporation as a

31 company or body corporate), but does not include:

- 1 (a) an Aboriginal Land Trust established under the *Aboriginal*
2 *Land Rights (Northern Territory) Act 1976*; or
3 (b) the Wreck Bay Aboriginal Community Council established
4 by the *Aboriginal Land Grant (Jervis Bay Territory) Act*
5 *1986*; or
6 (c) a corporation registered under the *Corporations (Aboriginal*
7 *and Torres Strait Islander) Act 2006*; or
8 (d) an authority or body that is:
9 (i) established by or under a law of the Commonwealth, a
10 State or a Territory; and
11 (ii) specified in the rules.

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

14 ***Torres Strait Islander*** has the same meaning as in the *Aboriginal*
15 *and Torres Strait Islander Act 2005*.

16 ***vacancy***, in relation to the office of a Nature Repair Market
17 Committee member, has a meaning affected by section 8.

18 **8 Vacancy in the office of a Nature Repair Market Committee** 19 **member**

20 For the purposes of a reference in:

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

25 there are taken to be 4 offices of Nature Repair Market Committee
26 member in addition to the Chair of the Committee.

27 **9 Electronic notice transmitted to the Regulator**

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

- 30 (a) the notice is transmitted to the Regulator by means of an
31 electronic communication; and

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Part 1 Preliminary

Section 9

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

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Registered biodiversity projects **Part 2**

Introduction **Division 1**

Section 10

1 **Part 2—Registered biodiversity projects**

2 **Division 1—Introduction**

3 **10 Simplified outline of this Part**

4 The Regulator may, if certain criteria are satisfied, register a
5 biodiversity project on application by an eligible person who is to
6 be the project proponent, or one of the project proponents, of the
7 project.

8 Division 3 provides for the registration of a registered biodiversity
9 project to be varied.

10 Division 4 provides for the registration of a registered biodiversity
11 project to be cancelled, either:

- 12 (a) voluntarily, with different procedures applying
13 depending on whether a biodiversity certificate has been
14 issued; or
15 (b) unilaterally by the Regulator, if the project or the project
16 proponent does not satisfy certain conditions and
17 requirements.

18 Division 5 provides for the rules to prescribe certain kinds of
19 biodiversity projects as excluded biodiversity projects, which may
20 not be registered.

21 Division 6 provides for the duration of a permanence period for a
22 registered biodiversity project.

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Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

Section 11

1 **Division 2—Registration of biodiversity project**

2 **11 Application for approval of registration of biodiversity project**

3 (1) An eligible person may apply to the Regulator for the Regulator to
4 approve the registration of a biodiversity project on the Register.

5 Note 1: The applicant will be registered as the project proponent, or one of the
6 project proponents, for the project.

7 Note 2: The Regulator has a function of providing advice and assistance in
8 relation to the making of applications: see section 219.

9 (2) However, applications under subsection (1) may be made only on
10 or after a day determined by the Minister by legislative instrument.

11 **12 Form of application**

12 (1) An application must:

13 (a) be in writing; and

14 (b) be in a form approved, in writing, by the Regulator.

15 (2) An application must:

16 (a) specify the proposed project area; and

17 (b) if the project is to have more than one project proponent—
18 specify the eligible persons who are proposed to be the
19 project proponents along with the applicant; and

20 (c) specify the methodology determination (the *applicable*
21 *methodology determination*) that is proposed to cover the
22 project; and

23 (d) specify the proposed activity period, which must be worked
24 out in accordance with the applicable methodology
25 determination; and

26 (e) specify the proposed permanence period, which must comply
27 with section 34; and

28 (f) include such other information as is specified in the rules;
29 and

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- 1 (g) include such other information as is specified in the
2 applicable methodology determination.
- 3 (3) An application must be accompanied by:
- 4 (a) if the rules or the applicable methodology determination
5 provides that this paragraph applies to the proposed project—
6 a prescribed audit report prepared by a registered greenhouse
7 and energy auditor who has been appointed as an audit team
8 leader for the purpose; and
- 9 (b) if there are to be project proponents other than the
10 applicant—evidence that each other project proponent
11 consents to being a project proponent for the project; and
- 12 (c) if an indigenous land use agreement is relevant to the
13 Regulator’s decision on the application—a copy of relevant
14 parts of the agreement; and
- 15 (d) if the applicable methodology determination provides that
16 there must be a project plan for a project covered by the
17 methodology determination—a project plan for the project;
18 and
- 19 (e) such other documents (if any) as are specified in the rules;
20 and
- 21 (f) such other documents (if any) as are specified in the
22 applicable methodology determination; and
- 23 (g) the fee (if any) specified in the rules.
- 24 (4) The approved form of application may provide for verification by
25 statutory declaration of statements in applications.
- 26 (5) A fee specified under paragraph (3)(g) must not be such as to
27 amount to taxation.
- 28 *Registered native title body corporate*
- 29 (6) If:
- 30 (a) the applicant is a native title holder for an exclusive
31 possession native title area; and
- 32 (b) the proposed project area consists of, or includes, the
33 exclusive possession native title area; and
-

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Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

Section 13

- 1 (c) there is a registered native title body corporate for the
2 exclusive possession native title area; and
3 (d) the applicant is not the registered native title body corporate;
4 the application must specify the registered native title body
5 corporate as an eligible person who is proposed to be a project
6 proponent along with the applicant.
- 7 (7) However, subsection (6) does not apply if the registered native title
8 body corporate declares, by written notice given to the applicant,
9 that the registered native title body corporate does not consent to
10 being specified as a project proponent along with the applicant.
- 11 (8) Subsection (6) does not prevent a person (other than the registered
12 native title body corporate) from being specified as an eligible
13 person who is proposed to be a project proponent along with the
14 applicant.

15 **13 Further information**

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

24 **14 Withdrawal of application**

- 25 (1) An applicant may withdraw the application at any time before the
26 Regulator makes a decision on the application.
- 27 (2) If the applicant does so, this Act does not prevent the applicant
28 from making a fresh application.
- 29 (3) If:
30 (a) the applicant withdraws the application; and

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

4 **15 Approval of registration of biodiversity project**

5 *Scope*

- 6 (1) This section applies if an application under section 11 has been
7 made for the Regulator to approve the registration of a biodiversity
8 project.

9 *Approval*

- 10 (2) After considering the application, the Regulator may decide to:
11 (a) approve the registration of the biodiversity project, and
12 register the project on the Register; or
13 (b) refuse to approve the registration of the biodiversity project.

14 Note: For review of decisions, see Part 20.

- 15 (3) The Regulator must give written notice of a decision under
16 subsection (2) to:
17 (a) the applicant; and
18 (b) if:
19 (i) the decision is a decision to approve the registration of
20 the biodiversity project; and
21 (ii) the biodiversity project is wholly or partly land-based;
22 the relevant land registration official.

23 *Criteria for approval*

- 24 (4) The Regulator must not approve the registration of the biodiversity
25 project unless the Regulator is satisfied that:
26 (a) the project is being, or is to be, carried on in Australia; and
27 (b) the project is of a kind specified, for the purposes of
28 paragraph 45(1)(a), in the methodology determination (the
29 ***applicable methodology determination***) that is specified in
30 the application under paragraph 12(2)(c); and

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Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

Section 15

- 1 (c) the activity period for the project has been worked out in
2 accordance with the applicable methodology determination;
3 and
4 (d) the permanence period for the project complies with section
5 34; and
6 (e) the project meets any conditions set out in the applicable
7 methodology determination under paragraph 45(1)(b); and
8 (f) if the applicable methodology determination requires that
9 there must be a project plan for the project:
10 (i) there is a project plan for the project; and
11 (ii) implementation of the project plan is likely to result in a
12 biodiversity certificate being issued in respect of the
13 project; and
14 (g) if the applicable methodology determination does not require
15 that there must be a project plan for the project—carrying out
16 the project is likely to result in a biodiversity certificate being
17 issued in respect of the project; and
18 (h) the applicant is to be registered as the project proponent, or
19 one of the project proponents, for the project; and
20 (i) the proposed project proponent, or each of the proposed
21 project proponents, is an eligible person; and
22 (j) the proposed project proponent, or each of the proposed
23 project proponents, is a fit and proper person; and
24 (k) the project area meets the requirements set out in
25 subsection (5); and
26 (l) the requirements set out in subsection (6) have been met in
27 relation to the project; and
28 (m) the project meets the eligibility requirements (if any)
29 specified in the rules; and
30 (n) the project is not an excluded biodiversity project.

31 Note 1: Methodology determinations are made under section 45.

32 Note 2: For *excluded biodiversity project*, see section 33.

33 Note 3: For *fit and proper person*, see sections 97, 98 and 99.

- 34 (5) The requirements mentioned in paragraph (4)(k) are:
35 (a) the project area is, or is a combination of:
-

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Registered biodiversity projects **Part 2**
Registration of biodiversity project **Division 2**

Section 15

- 1 (i) Torrens system land; or
2 (ii) Crown land; or
3 (iii) Australian waters; and
4 (b) the project area is not specified in the rules.
- 5 (6) The requirements mentioned in paragraph (4)(1) are:
6 (a) if the project area consists of, or includes, Torrens system
7 land:
8 (i) the proposed project proponent, or a proposed project
9 proponent, holds an estate in fee simple in the Torrens
10 system land that is covered by subsection 89(2); or
11 (ii) the proposed project proponent, or a proposed project
12 proponent, holds a legal estate or interest (other than an
13 estate in fee simple) in the Torrens system land that is
14 covered by subsection 89(2) and that is prescribed by
15 the rules; or
16 (iii) the proposed project proponent, or a proposed project
17 proponent, holds a lease of the Torrens system land and
18 the terms of the lease are consistent with the project
19 being carried out on the land; or
20 (iv) a person who holds an estate in fee simple in the
21 Torrens system land that is covered by subsection 89(2)
22 has consented to the carrying out of the project on the
23 land; or
24 (v) a person who holds a legal estate or interest (other than
25 an estate in fee simple) in the Torrens system land that
26 is covered by subsection 89(2) and that is prescribed by
27 the rules has consented to the carrying out of the project
28 on the land; and
29 (b) if:
30 (i) the project area is, or includes, a native title area; and
31 (ii) there is a registered native title body corporate for the
32 native title area;
33 then:
34 (iii) the proposed project proponent, or a proposed project
35 proponent, is the registered native title body corporate;
36 or
-

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Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

Section 15

- 1 (iv) the registered native title body corporate has consented
2 to the carrying out of the project on or in the native title
3 area.

4 *Matters to be included in notice*

- 5 (7) If the Regulator approves the registration of the biodiversity
6 project, the notice must:
7 (a) identify the name of the project; and
8 (b) identify, in accordance with the rules, the project area; and
9 (c) identify the project proponent or project proponents for the
10 project; and
11 (d) identify the applicable methodology determination; and
12 (e) identify the activity period and the permanence period for the
13 project; and
14 (f) if the registration is subject to a condition under section 17 or
15 18—set out the condition; and
16 (g) identify such attributes of the project as are specified in the
17 rules.

18 *Timing*

- 19 (8) The Regulator must take all reasonable steps to ensure that a
20 decision is made on the application:
21 (a) if the Regulator requires the applicant to give further
22 information under subsection 13(1) in relation to the
23 application—within 90 days after the applicant gave the
24 Regulator the information; or
25 (b) otherwise—within 90 days after the application was made.

26 *When approval takes effect*

- 27 (9) If the Regulator approves the registration of the biodiversity
28 project, the approval takes effect when the Regulator registers the
29 project on the Register.

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1 **16 Suspension of processing of applications for registrations of**
2 **biodiversity projects**

3 *Order*

- 4 (1) The Minister may, by legislative instrument, order that, if:
5 (a) an application is made under section 11 during a specified
6 period; and
7 (b) the application relates to a biodiversity project that is
8 proposed to be covered by a methodology determination
9 specified in the order;
10 the Regulator must not:
11 (c) consider the application during that period; or
12 (d) make a decision on the application during that period.
- 13 (2) A period specified in an order under subsection (1):
14 (a) must start at the commencement of the order; and
15 (b) must not be longer than 12 months.
- 16 (3) The Minister may make an order under subsection (1) that relates
17 to a particular methodology determination only if the Nature
18 Repair Market Committee has advised the Minister that the
19 Committee is satisfied that there is reasonable evidence that the
20 methodology determination does not comply with one or more of
21 the biodiversity integrity standards.
- 22 (4) The Nature Repair Market Committee may give the Minister
23 advice for the purposes of subsection (3):
24 (a) on the Committee's own initiative; or
25 (b) on request by the Minister.
- 26 (5) If the Nature Repair Market Committee gives the Minister advice
27 for the purposes of subsection (3), the Department must publish the
28 advice on the Department's website (whether or not the Minister
29 follows the advice).
- 30 (6) To avoid doubt, Subdivisions D (advice about making, varying or
31 revoking methodology determinations) and E (consultation by the
32 Nature Repair Market Committee) of Division 2 of Part 4 do not

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Part 2 Registered biodiversity projects

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Section 17

1 apply to advice given by the Committee under subsection (4) of
2 this section.

3 *Compliance with order*

4 (7) The Regulator must comply with an order under subsection (1).

5 *Timing of decision on application*

6 (8) If an application made under section 11 is or was covered by an
7 order under subsection (1) of this section, subsection 15(8) (timing
8 of decision on application) does not apply to the application.

9 **17 Registration may be subject to condition about obtaining**
10 **regulatory approvals**

11 *Scope*

- 12 (1) This section applies if:
- 13 (a) an application under section 11 has been made for the
14 Regulator to approve the registration of a biodiversity
15 project; and
 - 16 (b) the Regulator decides to approve the registration of the
17 biodiversity project under section 15; and
 - 18 (c) the Regulator is not satisfied that all regulatory approvals
19 have been obtained for the project.

20 *Condition*

- 21 (2) The Regulator must set out in the notice under subsection 15(3)
22 that the registration is subject to the condition that a biodiversity
23 certificate is not to be issued in respect of the project until all
24 regulatory approvals are obtained for the project.

EXPOSURE DRAFT

1 **18 Registration may be subject to condition about obtaining**
2 **consents from eligible interest holders**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) an application under section 11 has been made for the
6 Regulator to approve the registration of a biodiversity
7 project; and
 - 8 (b) the Regulator decides under section 15 to approve the
9 registration of the biodiversity project; and
 - 10 (c) the Regulator is satisfied that there are one or more persons
11 (the *relevant interest-holders*) who:
 - 12 (i) hold an eligible interest in the project area, or any part
13 of the project area, for the project; and
 - 14 (ii) have not consented, in writing, to the making of the
15 application.

16 *Condition*

- 17 (2) The Regulator must set out in the notice under subsection 15(3)
18 that the registration is subject to the condition that a biodiversity
19 certificate is not to be issued in respect of the project until the
20 written consent of each relevant interest-holder to the registration
21 is obtained.

22 *Consents*

- 23 (3) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2)
24 must be in a form approved, in writing, by the Regulator.
- 25 (4) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2)
26 may be set out in a registered indigenous land use agreement.
- 27 (5) Subsection (3) does not apply to a consent mentioned in
28 subparagraph (1)(c)(ii) or subsection (2) if the consent is set out in
29 a registered indigenous land use agreement.

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 3 Variation of registration

Section 19

1 **Division 3—Variation of registration**

2 **19 Voluntary variation of registration of biodiversity project—**
3 **change in identity of project proponent**

- 4 (1) The rules may make provision for and in relation to empowering
5 the Regulator to vary the registration of a registered biodiversity
6 project to:
7 (a) add an eligible person as a project proponent of the project;
8 or
9 (b) remove a project proponent from the project (so long as this
10 would not result in there not being any project proponents for
11 the project).

12 Note 1: See also section 22 (procedures for voluntary variation of registration
13 of biodiversity project).

14 Note 2: For review of decisions, see Part 20.

- 15 (2) Rules made for the purposes of subsection (1) must not empower
16 the Regulator to vary a registration unless:
17 (a) if there is a project proponent for the project—the project
18 proponent applies to the Regulator for the variation; and
19 (b) any eligible person that is to be added as a project proponent
20 for the project consents, in writing, to the variation; and
21 (c) the Regulator is satisfied that any eligible person that is to be
22 added as a project proponent for the project is a fit and proper
23 person; and
24 (d) if a biodiversity certificate is in effect in relation to the
25 project, and the project proponent (if any) is not the holder of
26 the certificate—the holder of the certificate has been notified
27 of the proposed variation, and has been given the opportunity
28 to make submissions in relation to the proposed variation.

29 Note: For *fit and proper person*, see sections 97, 98 and 99.

- 30 (3) Rules made for the purposes of subsection (1) may empower the
31 Regulator to require the Commonwealth to be given security in
32 relation to the fulfilment of any requirements to relinquish

EXPOSURE DRAFT

1 biodiversity certificates that may be imposed under Part 13 in
2 relation to the project (whether or not the circumstances that may
3 result in a relinquishment notice being given exist at the time the
4 variation is made).

5 (4) Rules made for the purposes of subsection (1) may empower the
6 Regulator to refuse an application to remove a project proponent
7 from a registered biodiversity project unless the Regulator is
8 satisfied that the remaining project proponents would have the
9 capability and resources to carry out the project.

10 **20 Voluntary variation of registration of biodiversity project—** 11 **changes in project area etc.**

12 (1) The rules may make provision for and in relation to empowering
13 the Regulator to vary the registration of a registered biodiversity
14 project in respect of any of the following:

- 15 (a) the project area;
- 16 (b) the methodology determination that covers the project;
- 17 (c) the project's activity period;
- 18 (d) the project's permanence period.

19 Note 1: See also section 22 (procedures for voluntary variation of registration
20 of biodiversity project).

21 Note 2: For review of decisions, see Part 20.

22 (2) The methodology determination that is to cover a registered
23 biodiversity project as a result of a variation under rules made for
24 the purposes of paragraph (1)(b) of this section:
25 (a) must be in force at the time the variation of the project's
26 registration takes effect; and
27 (b) applies to the project subject to any variations under
28 section 48 that take effect before the variation of the project's
29 registration takes effect.

30 This subsection has effect despite rules made for the purposes of
31 subsection 49(2), (3) or (4) (when variation of a methodology
32 determination takes effect) and rules made for the purposes of
33 section 52 (consequences of methodology determination ceasing to
34 have effect).

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 3 Variation of registration

Section 21

- 1 (3) Rules made for the purposes of subsection (1) must not empower
2 the Regulator to vary a registration unless:
3 (a) the project proponent for the project applies to the Regulator
4 for the variation; and
5 (b) if a biodiversity certificate is in effect for the project, and the
6 project proponent is not the holder of the certificate—either:
7 (i) the holder of the certificate has consented, in writing, to
8 the variation; or
9 (ii) the variation would not result in a material change to the
10 certificate.

21 Voluntary variation of conditional registration of biodiversity project—condition of registration has been met

- 13 (1) The rules may make provision for and in relation to empowering
14 the Regulator to vary the registration of a registered biodiversity
15 project to remove any of the following conditions to which the
16 registration is subject:
17 (a) a condition mentioned in subsection 17(2) (conditions about
18 obtaining regulatory approvals);
19 (b) a condition mentioned in subsection 18(2) (conditions about
20 obtaining consents from eligible interest holders).
- 21 Note 1: See also section 22 (procedures for voluntary variation of registration
22 of biodiversity project).
- 23 Note 2: For review of decisions, see Part 20.
- 24 (2) Rules made for the purposes of subsection (1) must not empower
25 the Regulator to vary a registration unless:
26 (a) the project proponent for the project applies to the Regulator
27 for the variation; and
28 (b) the Regulator is satisfied that the condition has been met.

EXPOSURE DRAFT

1 **22 Procedures for voluntary variation of registration of biodiversity**
2 **project**

- 3 (1) Rules made for the purposes of subsection 19(1), 20(1) or 21(1)
4 may make provision for or in relation to any or all of the following
5 matters:
- 6 (a) applications for variations under those rules;
 - 7 (b) the approval by the Regulator of a form for such an
8 application;
 - 9 (c) information that must accompany such an application;
 - 10 (d) documents that must accompany such an application;
 - 11 (e) verification by statutory declaration of statements in such an
12 application;
 - 13 (f) consents that must be obtained for the making of such an
14 application;
 - 15 (g) authorising a person to issue a certificate to certify a matter in
16 relation to such an application;
 - 17 (h) the fee (if any) that must accompany such an application;
 - 18 (i) the withdrawal of such an application;
 - 19 (j) empowering the Regulator:
 - 20 (i) to require an applicant to give the Regulator further
21 information in connection with such an application; and
 - 22 (ii) if the applicant breaches the requirement—to refuse to
23 consider the application, or to refuse to take any action,
24 or any further action, in relation to the application;
 - 25 (k) varying a biodiversity certificate issued in respect of a
26 registered biodiversity project (including such a certificate
27 that is held by a person other than the project proponent for
28 the project).
- 29 (2) Subsection (1) does not limit subsection 19(1), 20(1) or 21(1).
- 30 (3) A fee mentioned in paragraph (1)(h) must not be such as to amount
31 to taxation.
- 32 (4) Rules made for the purposes of subsection 19(1), 20(1) or 21(1)
33 must provide that, if the registration of a registered biodiversity

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 3 Variation of registration

Section 22

- 1 project is varied in accordance with those rules, the Regulator must
2 give a copy of the variation to:
- 3 (a) the applicant for the variation; and
 - 4 (b) if the project is wholly or partly land-based—the relevant
5 land registration official.
- 6 (5) Rules made for the purposes of subsection 19(1), 20(1) or 21(1)
7 must provide that, if the Regulator decides to refuse to vary the
8 registration of a registered biodiversity project in accordance with
9 an application for variation under those rules, the Regulator must
10 give written notice of the decision to the applicant for the variation.

EXPOSURE DRAFT

Registered biodiversity projects **Part 2**
Cancellation of registration of biodiversity project **Division 4**

Section 23

1 **Division 4—Cancellation of registration of biodiversity**
2 **project**

3 **Subdivision A—Voluntary cancellation of registration of**
4 **biodiversity project**

5 **23 Voluntary cancellation of registration of biodiversity project—**
6 **certificate in effect**

- 7 (1) The rules may make provision for and in relation to empowering
8 the Regulator to cancel the registration of a registered biodiversity
9 project.

10 Note: For review of decisions, see Part 20.

- 11 (2) Rules made for the purposes of subsection (1) must not empower
12 the Regulator to cancel a registration unless:
13 (a) a biodiversity certificate (the *original certificate*) has been
14 issued in respect of the registered biodiversity project
15 (whether or not the original certificate remains in effect); and
16 (b) the project proponent for the project applies to the Regulator
17 for the cancellation of the registration; and
18 (c) either:
19 (i) the original certificate is relinquished in accordance
20 with section 152 in relation to the project, as mentioned
21 in paragraph 152(2)(c); or
22 (ii) one or more other biodiversity certificates are
23 relinquished in accordance with section 152 in relation
24 to the project, as mentioned in paragraph 152(2)(c), and
25 the relinquished certificate or certificates meet the
26 relinquishment equivalence requirements in relation to
27 the original certificate.

28 Note: See paragraph 151(1)(b) (compliance with relinquishment requirement
29 by relinquishing equivalent biodiversity certificate or certificates).

- 30 (3) Rules made for the purposes of subsection (1) may make provision
31 for or in relation to any of the following matters:
-

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 4 Cancellation of registration of biodiversity project

Section 24

- 1 (a) applications for cancellation under those rules;
2 (b) the approval by the Regulator of a form for such an
3 application;
4 (c) other conditions that must be satisfied for the Regulator to
5 cancel the registration in accordance with those rules.
- 6 (4) Subsection (3) does not limit subsection (1).

24 Voluntary cancellation of registration of biodiversity project—no certificate in effect

- 9 (1) The rules may make provision for and in relation to empowering
10 the Regulator to cancel the registration of a registered biodiversity
11 project.
- 12 Note: For review of decisions, see Part 20.
- 13 (2) Rules made for the purposes of subsection (1) must not empower
14 the Regulator to cancel a registration unless:
15 (a) no biodiversity certificate has been issued in relation to the
16 registered biodiversity project; and
17 (b) the project proponent for the project applies to the Regulator
18 for the cancellation of the registration.
- 19 (3) Rules made for the purposes of subsection (1) may make provision
20 for or in relation to either or both of the following matters:
21 (a) applications for cancellation under those rules;
22 (b) the approval by the Regulator of a form for such an
23 application.
- 24 (4) Subsection (3) does not limit subsection (1).

25 Procedures for voluntary cancellation of registration of biodiversity project

- 27 (1) Rules made for the purposes of subsection 23(1) or 24(1) may
28 make provision for or in relation to any or all of the following
29 matters:
30 (a) applications for cancellation under those rules;
-

EXPOSURE DRAFT

Registered biodiversity projects **Part 2**
Cancellation of registration of biodiversity project **Division 4**

Section 25

- 1 (b) the approval by the Regulator of a form for such an
2 application;
- 3 (c) information that must accompany such an application;
- 4 (d) documents that must accompany such an application;
- 5 (e) verification by statutory declaration of statements in such an
6 application;
- 7 (f) consents that must be obtained for the making of such an
8 application;
- 9 (g) authorising a person to issue a certificate to certify a matter in
10 relation to such an application;
- 11 (h) the fee (if any) that must accompany such an application;
- 12 (i) the withdrawal of such an application;
- 13 (j) empowering the Regulator:
- 14 (i) to require an applicant to give the Regulator further
15 information in connection with such an application; and
- 16 (ii) if the applicant breaches the requirement—to refuse to
17 consider the application, or to refuse to take any action,
18 or any further action, in relation to the application;
- 19 (k) varying a biodiversity certificate issued in respect of a
20 registered biodiversity project (including such a certificate
21 that is held by a person other than the project proponent for
22 the project).
- 23 (2) Subsection (1) does not limit subsection 23(1) or 24(1).
- 24 (3) A fee mentioned in paragraph (1)(h) must not be such as to amount
25 to taxation.
- 26 (4) Rules made for the purposes of subsection 23(1) or 24(1):
- 27 (a) must provide that, if the registration of a registered
28 biodiversity project is cancelled in accordance with those
29 rules, the Regulator must give notice of the cancellation to:
- 30 (i) the applicant for the cancellation; and
- 31 (ii) if the project is wholly or partly land-based—the
32 relevant land registration official; and
- 33 (iii) in a case where the registration was cancelled under
34 rules made for the purposes of subsection 23(1), and the
-

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 4 Cancellation of registration of biodiversity project

Section 26

1 biodiversity certificate mentioned in paragraph 23(2)(a)
2 is held by a person other than the applicant—the holder
3 of the certificate; and

4 (b) may require the Regulator to give notice of the cancellation
5 to other people.

6 (5) Rules made for the purposes of subsection 23(1) or 24(1) must
7 provide that, if the Regulator decides to refuse to cancel the
8 registration of a registered biodiversity project in accordance with
9 an application for cancellation under those rules, the Regulator
10 must give written notice of the decision to the applicant for the
11 cancellation.

12 **Subdivision B—Unilateral cancellation of registration of** 13 **biodiversity project**

14 **26 Unilateral cancellation of registration of biodiversity project—** 15 **condition of registration has not been met**

16 (1) The rules may make provision for and in relation to empowering
17 the Regulator to cancel the registration of a registered biodiversity
18 project.

19 Note: For review of decisions, see Part 20.

20 (2) Rules made for the purposes of subsection (1) must not empower
21 the Regulator to cancel a registration unless:
22 (a) the registration is subject to a condition mentioned in
23 subsection 17(2) or 18(2); and
24 (b) the Regulator is satisfied that the condition has not been met;
25 and
26 (c) at least 5 years have passed since the project was first
27 registered.

28 (3) Rules made for the purposes of subsection (1) must require the
29 Regulator to consult the project proponent for the project before
30 deciding to cancel the registration.

EXPOSURE DRAFT

1 **27 Unilateral cancellation of registration of biodiversity project—**
2 **project not commenced, or unlikely to result in issuing of**
3 **biodiversity certificate**

- 4 (1) The rules may make provision for and in relation to empowering
5 the Regulator to cancel the registration of a registered biodiversity
6 project.

7 Note: For review of decisions, see Part 20.

- 8 (2) Rules made for the purposes of subsection (1) must not empower
9 the Regulator to cancel a registration unless:

10 (a) a certificate has not yet been issued in respect of the
11 registered biodiversity project; and

12 (b) either:

13 (i) 5 years have passed since the project was first
14 registered, and the Regulator is not satisfied that the
15 project has begun to be carried out; or

16 (ii) the Regulator is satisfied that the project is not being
17 carried out, and is unlikely to be carried out in a way
18 that would result in a biodiversity certificate being
19 issued in respect of the project.

- 20 (3) Rules made for the purposes of subsection (1) must require the
21 Regulator to consult the project proponent for the project before
22 deciding to cancel the registration.

23 **28 Unilateral cancellation of registration of biodiversity project—**
24 **eligibility requirements not met etc.**

- 25 (1) The rules may make provision for and in relation to empowering
26 the Regulator to cancel the registration of a registered biodiversity
27 project.

28 Note: For review of decisions, see Part 20.

- 29 (2) Rules made for the purposes of subsection (1) must not empower
30 the Regulator to cancel a registration unless the Regulator is
31 satisfied that the project does not meet a requirement that is:

32 (a) set out in subsection 15(4); and

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 4 Cancellation of registration of biodiversity project

Section 29

1 (b) specified in rules made for the purposes of this paragraph.

2 (3) Rules made for the purposes of subsection (1) must require the
3 Regulator to consult the project proponent for the project before
4 deciding to cancel the registration.

5 **29 Unilateral cancellation of registration of biodiversity project—** 6 **project proponent ceases to be a fit and proper person**

7 (1) The rules may make provision for and in relation to empowering
8 the Regulator to cancel the registration of a registered biodiversity
9 project.

10 Note: For review of decisions, see Part 20.

11 (2) Rules made for the purposes of subsection (1) must not empower
12 the Regulator to cancel a registration unless:

13 (a) the Regulator is satisfied that either:

14 (i) if there is one project proponent for the project—the
15 project proponent for the project is not a fit and proper
16 person; or

17 (ii) if there are multiple project proponents for the project—
18 any of those project proponents is not a fit and proper
19 person; and

20 (b) 90 days pass after the Regulator becomes so satisfied, and, at
21 the end of that 90-day period, the Regulator is not satisfied
22 that each project proponent for the project is a fit and proper
23 person.

24 Note: For *fit and proper person*, see sections 97, 98 and 99.

25 (3) Rules made for the purposes of subsection (1) must require the
26 Regulator to consult the project proponent for the project before
27 deciding to cancel the registration.

28 **30 Unilateral cancellation of registration of biodiversity project—** 29 **project proponent ceases to exist etc.**

30 Note: For review of decisions, see Part 20.

EXPOSURE DRAFT

- 1 (1) The rules may make provision for and in relation to empowering
2 the Regulator to cancel the registration of a registered biodiversity
3 project.
- 4 (2) Rules made for the purposes of subsection (1) must not empower
5 the Regulator to cancel a registration unless:
6 (a) the Regulator is satisfied that any of the following
7 circumstances exist:
8 (i) the project proponent has died or ceased to exist, and
9 there are no other project proponents for the project;
10 (ii) the project is not being carried out (except to the extent
11 that this is in accordance with the methodology
12 determination that covers the project); and
13 (b) 90 days pass after the circumstances began to exist, and the
14 Regulator is not satisfied, at the end of that 90-day period,
15 that the circumstances have ceased to exist.
- 16 (3) Rules made for the purposes of subsection (1) must require the
17 Regulator to make reasonable efforts to consult the project
18 proponent for the project before deciding to cancel the registration.

31 Unilateral cancellation of registration of biodiversity project— false or misleading information

- 19 (1) The rules may make provision for and in relation to empowering
20 the Regulator to cancel the registration of a registered biodiversity
21 project.
22
23 Note: For review of decisions, see Part 20.
- 24 (2) Rules made for the purposes of subsection (1) must not empower
25 the Regulator to cancel a registration unless:
26 (a) information was given by a person to the Regulator in
27 connection with the project; and
28 (b) the information was:
29 (i) contained in an application under this Act or the rules;
30 or
31 (ii) given in connection with an application under this Act
32 or the rules; or
33

EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 4 Cancellation of registration of biodiversity project

Section 32

- 1 (iii) contained in a biodiversity project report; or
2 (iv) contained in a notification under Division 3 of Part 9;
3 and
4 (c) the information was false or misleading in a material
5 particular.
- 6 (3) Rules made for the purposes of subsection (1) must require the
7 Regulator to consult the project proponent for the project before
8 deciding to cancel the registration.

9 **32 Notice of unilateral cancellation of registration of biodiversity** 10 **project**

- 11 Rules made for the purposes of subsection 26(1), 27(1), 28(1),
12 29(1), 30(1) or 31(1):
- 13 (a) must provide that, if the registration of a registered
14 biodiversity project is cancelled in accordance with those
15 rules, the Regulator must give notice of the cancellation to:
16 (i) if the project is wholly or partly land-based—the
17 relevant land registration official; and
18 (ii) if a biodiversity certificate is in effect in relation to the
19 project, and is held by a person other than the project
20 proponent—the holder of the certificate; and
21 (b) may require the Regulator to give notice of the cancellation
22 to other people.

EXPOSURE DRAFT

Registered biodiversity projects **Part 2**
Excluded biodiversity projects **Division 5**

Section 33

1 **Division 5—Excluded biodiversity projects**

2 **33 Excluded biodiversity projects**

3 (1) For the purposes of this Act, a biodiversity project is an *excluded*
4 *biodiversity project* if it is a project of a kind specified in the rules.

5 (2) In deciding whether to make rules for the purposes of
6 subsection (1) specifying a particular kind of project, the Minister
7 must have regard to whether there is a material risk that that kind
8 of project will have a material adverse impact on one or more of
9 the following:

- 10 (a) the availability of water;
- 11 (b) biodiversity (other than the kinds of biodiversity to be
12 addressed by the project);
- 13 (c) employment;
- 14 (d) the local community;
- 15 (e) if there is a local community of Aboriginal persons, or Torres
16 Strait Islanders, who have a connection to the project area—
17 that community;
- 18 (f) land access for agricultural production.

EXPOSURE DRAFT

Part 2 Registered biodiversity projects
Division 6 Duration of permanence period

Section 34

1 **Division 6—Duration of permanence period**

2 **34 Duration of permanence period**

3 The permanence period for a registered biodiversity project:

4 (a) begins on the day after the Regulator registers the project on
5 the Register; and

6 (b) ends at:

7 (i) the end of the 25-year period that began on the day after
8 the Regulator registers the project on the Register; or

9 (ii) if another period is ascertained in accordance with the
10 methodology determination that covers the project—the
11 end of that other period.

EXPOSURE DRAFT

Multiple project proponents **Part 3**

Introduction **Division 1**

Section 35

1 **Part 3—Multiple project proponents**

2 **Division 1—Introduction**

3 **35 Simplified outline of this Part**

4 If there are multiple project proponents for a registered biodiversity
5 project, a reference in this Act to the project proponent is to be read
6 as a reference to each of the project proponents.

7 Multiple project proponents for a registered biodiversity project
8 may nominate a nominee for the purposes of:

- 9 (a) the service of documents; and
10 (b) the taking of eligible voluntary actions (for example, the
11 making of an application).

12 If they do not do so, the Regulator may cancel the project's
13 registration.

14 If there are multiple project proponents for a registered biodiversity
15 project, obligations are imposed on each of the proponents, but
16 may be discharged by any of the proponents.

EXPOSURE DRAFT

Part 3 Multiple project proponents

Division 2 References to project proponents

Section 36

1 **Division 2—References to project proponents**

2 **36 References to project proponents**

3 If there are 2 or more eligible persons (the *multiple project*
4 *proponents*) who are registered as the project proponents for a
5 registered biodiversity project, then:

6 (a) for the purposes of this Act, each of the multiple project
7 proponents is a project proponent for the registered
8 biodiversity project; and

9 (b) a reference in:

10 (i) this Act; or

11 (ii) the rules; or

12 (iii) any other instrument under this Act;

13 to the project proponent for the registered biodiversity project
14 is to be read as a reference to each of the multiple project
15 proponents.

EXPOSURE DRAFT

Multiple project proponents **Part 3**
Nominee of multiple project proponents **Division 3**

Section 37

1 **Division 3—Nominee of multiple project proponents**

2 **37 Nomination of nominee by multiple project proponents—**
3 **nomination accompanying application**

4 *Scope*

- 5 (1) This section applies to:
- 6 (a) an application under section 11 for the Regulator to approve
7 the registration of a biodiversity project if the application
8 specifies 2 or more eligible persons who are to be project
9 proponents for the biodiversity project; or
- 10 (b) an application under rules made for the purposes of
11 section 19 (change in identity of project proponent) that
12 would, if granted, result in there being multiple project
13 proponents for a registered biodiversity project (whether or
14 not there would otherwise be multiple project proponents).

15 *Nomination*

- 16 (2) The application must be accompanied by a notice, made jointly in
17 writing by all of the eligible persons who would, if the application
18 were granted, be project proponents for the biodiversity project,
19 nominating one of those eligible persons as the *nominee* in relation
20 to the biodiversity project.
- 21 (3) The joint written notice must be in a form approved, in writing, by
22 the Regulator.
- 23 (4) If the Regulator grants the application, the nomination takes effect:
- 24 (a) if paragraph (1)(a) applies—at the time the biodiversity
25 project is registered as a registered biodiversity project; or
- 26 (b) if paragraph (1)(b) applies—at the time the variation under
27 rules made for the purposes of section 19 takes effect.
- 28 (5) If the application is not granted, the nomination does not take
29 effect.

EXPOSURE DRAFT

Part 3 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 38

1 **38 Nomination of nominee by multiple project proponents—other**
2 **nominations**

3 *Scope*

4 (1) This section applies to a registered biodiversity project that has
5 multiple project proponents.

6 *Nomination*

7 (2) The project proponents may give the Regulator a notice, made
8 jointly in writing by all of the project proponents, nominating one
9 of the project proponents as the *nominee* in relation to the
10 registered biodiversity project.

11 Note: If a registered biodiversity project that has multiple project proponents
12 ceases to have a nominee, and no new nominee is nominated, the
13 Regulator may cancel the project's registration from 90 days after the
14 cessation (see section 42).

15 (3) The joint written notice must be in a form approved, in writing, by
16 the Regulator.

17 (4) The nomination takes effect at the time it is given to the Regulator.

18 (5) If a nomination under subsection (2) takes effect in relation to a
19 particular registered biodiversity project, any other nomination
20 under this Part that was in force in relation to that registered
21 biodiversity project ceases to be in force.

22 **39 Revocation and cessation of nomination**

23 (1) If:

24 (a) a nomination under subsection 37(2) or 38(2) is in force in
25 relation to a registered biodiversity project; and

26 (b) one of the project proponents for the registered biodiversity
27 project, by written notice given to the Regulator, revokes the
28 nomination;

29 the nomination ceases to be in force.

30 (2) If:

EXPOSURE DRAFT

Multiple project proponents **Part 3**
Nominee of multiple project proponents **Division 3**

Section 40

- 1 (a) a nomination under subsection 37(2) or 38(2) is in force in
2 relation to a registered biodiversity project; and
3 (b) the nominee ceases to be one of the project proponents for
4 the registered biodiversity project;
5 the nomination ceases to be in force.

6 Note: If a registered biodiversity project that has multiple project proponents
7 ceases to have a nominee, and no new nominee is nominated, the
8 Regulator may cancel the project's registration from 90 days after the
9 cessation (see section 42).

10 **40 Service of documents on nominee**

11 *Scope*

- 12 (1) This section applies if there are 2 or more project proponents (the
13 ***multiple project proponents***) for a registered biodiversity project.

14 *Service of documents*

- 15 (2) For the purposes of this Act, if:
16 (a) the multiple project proponents have nominated a nominee
17 under subsection 37(2) or 38(2) in relation to the project; and
18 (b) the nomination is in force; and
19 (c) a document relating to the registered biodiversity project is
20 required or permitted by this Act to be given to the project
21 proponent; and
22 (d) the document is given to the nominee;
23 the document is taken to have been given to each of the multiple
24 project proponents.

25 **41 Eligible voluntary action taken by nominee**

26 *Scope*

- 27 (1) This section applies if there are 2 or more project proponents (the
28 ***multiple project proponents***) for a registered biodiversity project.

EXPOSURE DRAFT

Part 3 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 42

1

Eligible voluntary action to be taken by nominee

2

(2) If:

3

(a) the multiple project proponents have nominated a nominee under subsection 37(2) or 38(2) in relation to the project; and

4

5

(b) the nomination is in force; and

6

(c) the nominee takes an eligible voluntary action; and

7

(d) the application, nomination, request or notice to which the

8

eligible voluntary action relates is expressed to be made,

9

withdrawn or given, as the case may be, on behalf of the

10

multiple project proponents;

11

this Act and any instrument made under this Act have effect as if:

12

(e) the application, nomination, request or notice to which the

13

eligible voluntary action relates were made, withdrawn or

14

given, as the case may be, by the multiple project proponents

15

jointly; and

16

(f) if the eligible voluntary action is the making of an

17

application—a reference in this Act or the instrument to the

18

applicant were a reference to each of the multiple project

19

proponents.

20

(3) The multiple project proponents are not entitled to take an eligible voluntary action except in accordance with subsection (2).

21

22

42 Unilateral cancellation of registration of biodiversity project— failure of multiple project proponents to nominate a nominee

23

24

25

(1) The rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project.

26

27

28

Note: For review of decisions, see Part 20.

29

(2) Rules made for the purposes of subsection (1) must not empower the Regulator to cancel a registration unless:

30

31

(a) there are 2 or more project proponents (the *multiple project proponents*) for the registered biodiversity project; and

32

EXPOSURE DRAFT

Multiple project proponents **Part 3**
Nominee of multiple project proponents **Division 3**

Section 42

- 1 (b) the multiple project proponents have nominated an eligible
2 person under subsection 37(2) or 38(2); and
3 (c) the nomination ceases to be in force; and
4 (d) 90 days pass, and no new nomination under subsection 37(2)
5 or 38(2) is made by the multiple project proponents.
- 6 (3) Rules made for the purposes of subsection (1) must require the
7 Regulator to consult the multiple project proponents before
8 deciding to cancel the registration.
- 9 (4) Rules made for the purposes of subsection (1):
10 (a) must provide that, if the registration of a registered
11 biodiversity project is cancelled in accordance with those
12 rules, the Regulator must give notice of the cancellation to:
13 (i) if the project is wholly or partly land-based—the
14 relevant land registration official; and
15 (ii) if a biodiversity certificate is in effect in relation to the
16 project, and is held by a person other than the project
17 proponent—the holder of the certificate; and
18 (b) may require the Regulator to give notice of the cancellation
19 to other people.

EXPOSURE DRAFT

Part 3 Multiple project proponents

Division 4 Obligations of multiple project proponents

Section 43

1 **Division 4—Obligations of multiple project proponents**

2 **43 Obligations of multiple project proponents**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) there are 2 or more project proponents (the *multiple project*
- 6 *proponents*) for a registered biodiversity project; and
- 7 (b) any of the following:
- 8 (i) this Act;
- 9 (ii) the rules;
- 10 (iii) another instrument made under this Act;
- 11 imposes an obligation on the project proponent for the
- 12 project.

13 *Obligations of project proponent*

- 14 (2) The obligation is imposed on each of the multiple project
- 15 proponents, but may be discharged by any of the multiple project
- 16 proponents.
- 17 (3) The rules may exempt a specified obligation from the scope of
- 18 subsection (2).

1 **Part 4—Methodology determinations**

2 **Division 1—Introduction**

3 **44 Simplified outline of this Part**

4 Methodology determinations are legislative instruments, made by
5 the Minister, that set out how a registered biodiversity project is to
6 be carried out, and other matters. Each registered biodiversity
7 project must be covered by a methodology determination.

8 Methodology determinations may include requirements that a
9 project proponent must comply with. If a biodiversity certificate
10 has been issued in respect of a project, there is a civil penalty for
11 failing to comply with a requirement in the methodology
12 determination that covers the project.

13 In making or varying a methodology determination, the Minister
14 must have regard to:

- 15 (a) the biodiversity integrity standards; and
16 (b) advice given by the Nature Repair Market Committee.

17 The Minister may also have regard to adverse environmental and
18 other impacts, and any other matters the Minister considers
19 relevant.

20 The Minister may make a biodiversity assessment instrument that
21 prescribes requirements to be complied with by methodology
22 determinations.

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 2 Methodology determinations

Section 45

1 **Division 2—Methodology determinations**

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

3 **45 Methodology determinations**

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

6 (a) is expressed to cover a specified kind of biodiversity project;
7 and

8 (b) sets out conditions that must be met for such a project to be
9 registered as a registered biodiversity project; and

10 (c) provides, for the purposes of paragraph 162(1)(j), for
11 information that is to be included in the entry in the Register
12 for such a project; and

13 (d) sets out:

14 (i) for the purposes of paragraph 67(2)(b), conditions that
15 must be met for an application to be made for a
16 biodiversity certificate to be issued in respect of such a
17 project; and

18 (ii) for the purposes of paragraph 67(2)(c), a method of
19 working out the time after which such applications may
20 be made; and

21 (e) sets out, for the purposes of paragraph 70(2)(g), conditions
22 that must be met for a biodiversity certificate to be issued in
23 respect of such a project; and

24 (f) requires, for the purposes of paragraph 108(1)(b), the project
25 proponent for such a project to notify the Regulator of
26 specified matters relating to the project; and

27 (g) provides, for the purposes of paragraphs 164(1)(d) and (2)(c),
28 for information that is to be included in the entry in the
29 Register for a biodiversity certificate issued in relation to
30 such a project; and

31 (h) sets out the activities that are to be carried out for the
32 purposes of such a project; and

EXPOSURE DRAFT

- 1 (i) provides for the activity period of such a project to be
2 worked out.
- 3 (2) A determination made under subsection (1) is a *methodology*
4 *determination*.
- 5 Note: For the duration of a methodology determination, see section 50.
- 6 (3) A methodology determination may impose any of the following on
7 the project proponent of a registered biodiversity project that is
8 covered by the methodology determination:
- 9 (a) specified requirements to carry out activities in the project
10 area for the purposes of the project;
- 11 (b) specified requirements to ensure that specified activities are
12 not carried out, by the project proponent or any other person,
13 in the project area;
- 14 (c) specified requirements to include information relating to the
15 project in each biodiversity project report about the project;
- 16 (d) specified requirements to notify one or more matters relating
17 to the project to the Regulator;
- 18 (e) specified record-keeping requirements relating to the project;
- 19 (f) specified requirements to monitor the project.
- 20 Note: See section 46 (civil penalties—requirements in methodology
21 determination).
- 22 (4) Conditions set out under paragraph (1)(b), (d) or (e) must include:
- 23 (a) in a case where the methodology determination covers a kind
24 of biodiversity project that involves enhancement of
25 biodiversity—conditions relating to the measurement or
26 assessment of the enhancement of biodiversity; and
- 27 (b) in a case where the methodology determination covers a kind
28 of biodiversity project that involves protection of
29 biodiversity—conditions relating to the measurement or
30 assessment of the protection of biodiversity.
- 31 (5) Requirements imposed under paragraph (1)(f) or (3)(c), (d) or (f)
32 must include:
- 33 (a) in a case where the methodology determination covers a kind
34 of biodiversity project that involves enhancement of

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 45

- 1 biodiversity—requirements relating to the measurement or
2 assessment of the enhancement of biodiversity; and
3 (b) in a case where the methodology determination covers a kind
4 of biodiversity project that involves protection of
5 biodiversity—requirements relating to the measurement or
6 assessment of the protection of biodiversity.
- 7 (6) A methodology determination may require that:
8 (a) there must be a project plan for a registered biodiversity
9 project that is covered by the methodology determination;
10 and
11 (b) the project plan must remain in force until the time
12 ascertained in accordance with the methodology
13 determination.
- 14 (7) A methodology determination may prescribe matters required or
15 permitted by this Act to be prescribed by a methodology
16 determination.
- 17 (8) Without limiting subsection 33(3A) of the *Acts Interpretation Act*
18 *1901*, a methodology determination may make different provision
19 in relation to different kinds of biodiversity projects covered by the
20 determination.
- 21 Note: For example, a methodology determination may set out requirements
22 under paragraph (1)(b) that differ depending on which region the
23 project area of a biodiversity project is in.
- 24 (9) Despite subsection 14(2) of the *Legislation Act 2003*, a
25 methodology determination may make provision in relation to a
26 matter by applying, adopting or incorporating, with or without
27 modification, any matter contained in an instrument or other
28 writing as in force or existing from time to time.
- 29 (10) A methodology determination may make provision in relation to a
30 matter by conferring a power to make a decision of an
31 administrative character on the Regulator.

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1 *Biodiversity assessment instruments*

2 (11) The Minister must not make a methodology determination unless
3 there is a biodiversity assessment instrument that applies to the
4 determination.

5 (12) A methodology determination must comply with any requirements
6 prescribed by a biodiversity assessment instrument that applies to
7 the determination.

8 **46 Civil penalties—requirements in methodology determination**

9 (1) An eligible person is liable to a civil penalty if:

10 (a) the eligible person is a project proponent of a registered
11 biodiversity project; and

12 (b) a biodiversity certificate has been issued in respect of the
13 project (whether or not the certificate remains in force); and

14 (c) the methodology determination that covers the project
15 imposes a requirement on the project proponent of the project
16 for the purposes of paragraphs 45(3)(a) and (b); and

17 (d) the eligible person, or any other project proponent for the
18 project, fails to comply with the requirement.

19 Civil penalty: 2,000 penalty units.

20 (2) An eligible person is liable to a civil penalty if:

21 (a) the eligible person is a project proponent of a registered
22 biodiversity project; and

23 (b) a biodiversity certificate has been issued in respect of the
24 project (whether or not the certificate remains in force); and

25 (c) the methodology determination that covers the project
26 requires, for the purposes of paragraph 45(3)(b), the project
27 proponent for the project to ensure that an activity is not
28 carried out in the project area; and

29 (d) the activity is carried out in the project area (by the project
30 proponent or any other person).

31 Civil penalty: 2,000 penalty units.

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 47

- 1 (3) Subsection (2) does not apply if the eligible person takes all
2 reasonable steps to ensure that the activity is not carried out in the
3 project area.

4 Note: A person who wishes to rely on subsection (3) in proceedings for a
5 civil penalty order bears an evidential burden in relation to the matter
6 in that subsection: see section 96 of the Regulatory Powers Act.

7 **47 Procedure for making a methodology determination**

- 8 (1) In deciding whether to make a methodology determination, the
9 Minister:

- 10 (a) must have regard to the following:
11 (i) whether the determination complies with the
12 biodiversity integrity standards;
13 (ii) any advice that the Nature Repair Market Committee
14 has given to the Minister under subsection 54(2) in
15 relation to the making of the determination; and
16 (b) may have regard to the following:
17 (i) whether significant adverse environmental, agricultural,
18 economic or social impacts are likely to arise from the
19 carrying out of the kind of project that the determination
20 covers;
21 (ii) such other matters (if any) as the Minister considers
22 relevant.

23 *Advice given by the Nature Repair Market Committee*

- 24 (2) Before making a methodology determination, the Minister must
25 request the Nature Repair Market Committee to advise the Minister
26 about whether the Minister should make the determination.

27 Note: The Nature Repair Market Committee must have regard to certain
28 matters in giving advice to the Minister (see section 54).

- 29 (3) The Minister must not make a methodology determination unless:
30 (a) the Nature Repair Market Committee has given the Minister
31 advice under subsection 54(2) in relation to the making of the
32 determination; and

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1 (b) that advice includes a statement to the effect that the
2 Committee is satisfied that the determination complies with
3 the biodiversity integrity standards.

4 (4) If the Minister decides:

5 (a) to make a methodology determination; or
6 (b) not to make a methodology determination;

7 the Minister must:

8 (c) cause a copy of any advice given by the Nature Repair
9 Market Committee under subsection 54(2) in relation to the
10 determination to be published on the Department's website;
11 and

12 (d) do so as soon as practicable after making the decision.

13 *Variation and amendment etc. of methodology determination*

14 (5) Subsection 33(3) of the *Acts Interpretation Act 1901* does not
15 apply to a methodology determination.

16 Note: For variation and revocation of a methodology determination, see
17 Subdivisions B and C of this Division.

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

19 **48 Variation of methodology determinations**

20 (1) The Minister may, by legislative instrument, vary a methodology
21 determination.

22 (2) In deciding whether to vary a methodology determination, the
23 Minister:

24 (a) must have regard to the following:

25 (i) whether the varied determination complies with the
26 biodiversity integrity standards;

27 (ii) any advice that the Nature Repair Market Committee
28 has given to the Minister under subsection 54(2) in
29 relation to the varying of the determination; and

30 (b) may have regard to the following:

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 48

- 1 (i) whether significant adverse environmental, agricultural,
2 economic or social impacts are likely to arise from the
3 carrying out of the kind of project that the varied
4 determination covers;
5 (ii) such other matters (if any) as the Minister considers
6 relevant.

7 *Advice given by the Nature Repair Market Committee*

- 8 (3) Before varying a methodology determination, the Minister must
9 request the Nature Repair Market Committee to advise the Minister
10 about whether the Minister should vary the determination.

11 Note 1: The Nature Repair Market Committee must have regard to certain
12 matters in giving advice to the Minister (see section 54).

13 Note 2: For variations of a minor nature, see subsection (6) of this section.

- 14 (4) The Minister must not vary a methodology determination unless:
15 (a) the Nature Repair Market Committee has given the Minister
16 advice under subsection 54(2) in relation to the variation of
17 the determination; and
18 (b) that advice includes a statement to the effect that the
19 Committee is satisfied that the varied determination complies
20 with the biodiversity integrity standards.

- 21 (5) If the Minister decides:
22 (a) to vary a methodology determination; or
23 (b) not to vary a methodology determination;
24 the Minister must:
25 (c) cause a copy of any advice given by the Nature Repair
26 Market Committee under subsection 54(2) in relation to the
27 variation of the determination to be published on the
28 Department's website; and
29 (d) do so as soon as practicable after making the decision.

- 30 (6) Subsections (3), (4) and (5) do not apply to a variation if the
31 variation is of a minor nature.

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1 **49 When variation takes effect**

- 2 (1) A variation of a methodology determination takes effect:
3 (a) on the day after the instrument varying the methodology
4 determination is registered on the Federal Register of
5 Legislation; or
6 (b) if a later day is specified in the instrument—on that later day.

7 *Consequences of variation on existing registered biodiversity*
8 *projects*

- 9 (2) The rules may provide that if:
10 (a) a methodology determination covers a registered biodiversity
11 project; and
12 (b) the methodology determination is varied; and
13 (c) the project's registration is in effect at the time the variation
14 takes effect; and
15 (d) the conditions specified in the rules are satisfied;
16 the variation of the methodology determination applies to the
17 registered biodiversity project.

- 18 (3) The rules may provide that if:
19 (a) a methodology determination covers a registered biodiversity
20 project; and
21 (b) the methodology determination is varied; and
22 (c) the project's registration is in effect at the time the variation
23 takes effect; and
24 (d) the conditions specified in the rules are satisfied;
25 the variation of the methodology determination does not apply to
26 the registered biodiversity project.

27 Note: However, a variation of a methodology determination will apply to an
28 existing registered biodiversity project if the project's registration is
29 varied under rules made for the purposes of section 20 to change the
30 methodology determination that covers the project.

- 31 (4) The rules may empower the Regulator to determine, on application
32 by the project proponent for a registered biodiversity project, that
33 if:

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 49

- 1 (a) a methodology determination covers the registered
2 biodiversity project; and
3 (b) the methodology determination is varied; and
4 (c) the project's registration is in effect at the time the variation
5 takes effect; and
6 (d) the conditions specified in the rules are satisfied;
7 the variation of the methodology determination does not apply to
8 the registered biodiversity project.

9 Note: However, a variation of a methodology determination will apply to an
10 existing registered biodiversity project if the project's registration is
11 varied under rules made for the purposes of section 20 to change the
12 methodology determination that covers the project.

- 13 (5) The rules may make provision for and in relation to any of the
14 following matters in relation to an application under rules made for
15 the purposes of subsection (4):
16 (a) the approval by the Regulator of a form for such an
17 application;
18 (b) information that must accompany such an application;
19 (c) documents that must accompany such an application;
20 (d) verification by statutory declaration of statements in such an
21 application;
22 (e) the fee (if any) that must accompany such an application;
23 (f) the withdrawal of such an application;
24 (g) empowering the Regulator:
25 (i) to require an applicant to give the Regulator further
26 information in connection with such an application; and
27 (ii) if the applicant breaches the requirements—to refuse to
28 consider the application, or to refuse to take any action,
29 or any further action, in relation to the application.
30 (6) A fee mentioned in paragraph (5)(e) must not be such as to amount
31 to taxation.

32 *Effect of variation on application for approval of registration*

- 33 (7) If:
-

EXPOSURE DRAFT

- 1 (a) a variation of a methodology determination takes effect; and
2 (b) at the time the variation takes effect, an application under
3 section 11 for the Regulator to approve the registration of a
4 biodiversity project has been made, and the Regulator has not
5 decided to:
6 (i) approve the registration; or
7 (ii) refuse to approve the registration; and
8 (c) the application proposes that the project is to be covered by
9 the methodology determination;
10 then:
11 (d) the methodology determination as varied applies to the
12 application; and
13 (e) if the biodiversity project is registered, the project is covered
14 by the methodology determination as varied.
- 15 (8) The rules may provide for any of the following:
16 (a) the Regulator to notify an eligible person that an application
17 made by the eligible person, under this Act or an instrument
18 made under this Act, is affected by a variation of a
19 methodology determination, as mentioned in subsection (7);
20 (b) the Regulator to give the eligible person an opportunity to
21 withdraw or vary the application before the Regulator
22 considers the application.

Refund of fee

- 23
24 (9) If:
25 (a) an application is withdrawn under rules made for the
26 purposes of subsection (5) or (8); and
27 (b) the applicant has paid a fee in relation to the application;
28 the Regulator must, on behalf of the Commonwealth, refund the
29 application fee.

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 2 Methodology determinations

Section 50

1 **Subdivision C—Duration, expiry and revocation of**
2 **methodology determinations**

3 **50 Duration of methodology determinations**

- 4 (1) A methodology determination:
- 5 (a) comes into force:
- 6 (i) the day after it is registered on the Federal Register of
- 7 Legislation; or
- 8 (ii) if a later time is specified in the determination—at that
- 9 later time; and
- 10 (b) unless sooner revoked, remains in force until the earliest of
- 11 the following:
- 12 (i) if a period is specified in the determination—the end of
- 13 that period;
- 14 (ii) if a longer period is specified in relation to the
- 15 determination in a legislative instrument made by the
- 16 Minister for the purposes of this subparagraph—the end
- 17 of that longer period;
- 18 (iii) the determination is repealed by section 42
- 19 (disallowance) of the *Legislation Act 2003*;
- 20 (iv) the determination is repealed by Part 4 of Chapter 3
- 21 (sunsetting) of the *Legislation Act 2003*.
- 22 (2) If a methodology determination ceases to be in force, this Act does
- 23 not prevent the Minister from making a fresh methodology
- 24 determination in the same terms as the determination that has
- 25 ceased to be in force.

26 **51 Revocation of methodology determinations**

- 27 (1) The Minister may, by legislative instrument, revoke a methodology
- 28 determination.
- 29 (2) Before revoking a methodology determination, the Minister must
- 30 request the Nature Repair Market Committee to advise the Minister
- 31 about whether the Minister should revoke the determination.

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 2 Methodology determinations

Section 52

- 1 (b) the conditions specified in the rules are satisfied;
2 then, despite the cessation, the methodology determination
3 continues to cover the project as if the methodology determination
4 had not ceased.
- 5 (3) The rules may make provision for and in relation to any of the
6 following matters in relation to an application under rules made for
7 the purposes of subsection (2):
8 (a) the approval by the Regulator of a form for such an
9 application;
10 (b) information that must accompany such an application;
11 (c) documents that must accompany such an application;
12 (d) verification by statutory declaration of statements in such an
13 application;
14 (e) the fee (if any) that must accompany such an application;
15 (f) the withdrawal of such an application;
16 (g) empowering the Regulator:
17 (i) to require an applicant to give the Regulator further
18 information in connection with such an application; and
19 (ii) if the applicant breaches the requirements—to refuse to
20 consider the application, or to refuse to take any action,
21 or any further action, in relation to the application.
- 22 (4) A fee mentioned in paragraph (3)(e) must not be such as to amount
23 to taxation.
- 24 (5) If:
25 (a) an application is withdrawn under rules made for the
26 purposes of subsection (3); and
27 (b) the applicant has paid a fee in relation to the application;
28 the Regulator must, on behalf of the Commonwealth, refund the
29 application fee.
- 30 *Variation of registration of biodiversity project*
- 31 (6) The rules may make provision for and in relation to empowering
32 the Regulator to vary the registration of a registered biodiversity

EXPOSURE DRAFT

- 1 project in respect of the methodology determination that covers the
2 project if:
- 3 (a) the methodology determination that covers the project ceases
4 to have effect (whether under this Subdivision or otherwise);
5 and
 - 6 (b) the conditions specified in the rules are satisfied.

7 **53 Effect of methodology determination ceasing to have effect—**
8 **applications for registration**

- 9 (1) This section applies to an application under section 11 for the
10 Regulator to approve the registration of a biodiversity project if the
11 methodology determination specified in the application under
12 paragraph 12(2)(c) ceases to have effect (whether under this
13 Subdivision or otherwise).
- 14 (2) The Regulator must refuse the application.
- 15 (3) The rules may provide for any of the following:
- 16 (a) the Regulator to notify the applicant that the Regulator
17 proposes to refuse the application under subsection (2);
 - 18 (b) the Regulator to give the applicant an opportunity to
19 withdraw or vary the application before the Regulator refuses
20 the application.
- 21 (4) If:
- 22 (a) an application is withdrawn under rules made for the
23 purposes of subsection (3); and
 - 24 (b) the applicant has paid a fee in relation to the application;
- 25 the Regulator must, on behalf of the Commonwealth, refund the
26 application fee.

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 2 Methodology determinations

Section 54

1 **Subdivision D—Advice about making, varying or revoking**
2 **methodology determinations**

3 **54 Advice by the Nature Repair Market Committee**

4 *Scope*

5 (1) This section applies if the Minister requests the Nature Repair
6 Market Committee:

- 7 (a) under subsection 47(2), to give advice about whether the
8 Minister should make a methodology determination; or
9 (b) under subsection 48(3), to give advice about whether the
10 Minister should vary a methodology determination; or
11 (c) under subsection 51(2), to give advice about whether the
12 Minister should revoke a methodology determination.

13 *Committee to give advice*

14 (2) The Nature Repair Market Committee must give the requested
15 advice to the Minister.

16 Note: The Committee must undertake public consultation before giving
17 advice about making or varying a methodology determination (see
18 section 56).

19 (3) If the requested advice relates to whether the Minister should make
20 a methodology determination, the Nature Repair Market
21 Committee must include the following in the advice:

- 22 (a) if the Committee is satisfied that the proposed determination
23 complies with the biodiversity integrity standards:
24 (i) a statement to that effect; and
25 (ii) the Committee's reasons why it is satisfied that the
26 proposed determination complies with the biodiversity
27 integrity standards; and
28 (iii) in a case where a Committee member is not satisfied
29 that the proposed determination complies with the
30 biodiversity integrity standards—the Committee
31 member's reasons why the Committee member is not so
32 satisfied;

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- 1 (b) if the Committee is not satisfied that the proposed
2 determination complies with the biodiversity integrity
3 standards:
4 (i) a statement to that effect; and
5 (ii) the Committee’s reasons why it is not satisfied that the
6 proposed determination complies with the biodiversity
7 integrity standards;
8 (c) such other information (if any) as is specified in the rules.
- 9 (4) If the requested advice relates to whether the Minister should vary
10 a methodology determination, the Nature Repair Market
11 Committee must include the following in the advice:
12 (a) if the Committee is satisfied that the determination as
13 proposed to be varied complies with the biodiversity integrity
14 standards:
15 (i) a statement to that effect; and
16 (ii) the Committee’s reasons why it is satisfied that the
17 determination as proposed to be varied complies with
18 the biodiversity integrity standards; and
19 (iii) in a case where a Committee member is not satisfied
20 that the determination as proposed to be varied complies
21 with the biodiversity integrity standards—the
22 Committee member’s reasons why the Committee
23 member is not so satisfied;
24 (b) if the Committee is not satisfied that the determination as
25 proposed to be varied complies with the biodiversity integrity
26 standards:
27 (i) a statement to that effect; and
28 (ii) the Committee’s reasons why it is not satisfied that the
29 determination as proposed to be varied complies with
30 the biodiversity integrity standards;
31 (c) such other information (if any) as is specified in the rules.
- 32 (5) If the requested advice relates to whether the Minister should
33 revoke a methodology determination, the Nature Repair Market
34 Committee must include in the advice:

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 55

- 1 (a) a statement setting out the Committee’s opinion about
2 whether the determination should be revoked; and
3 (b) the Committee’s reasons for the opinion; and
4 (c) such other information (if any) as is specified in the rules.

5 *Committee must have regard to certain matters*

- 6 (6) In giving the requested advice to the Minister, the Nature Repair
7 Market Committee must have regard to the following:
8 (a) the biodiversity integrity standards;
9 (b) any relevant matters specified in a direction in force under
10 section 55;
11 (c) any relevant advice given by the Regulator to the Committee;
12 (d) such other matters (if any) as are specified in the rules.
- 13 (7) Subsection (6) does not, by implication, limit the matters to which
14 the Nature Repair Market Committee may have regard.

15 **55 Additional matters for the Nature Repair Market Committee to** 16 **take into account**

17 The Minister may, by legislative instrument, direct the Nature
18 Repair Market Committee to do any or all of the following:

- 19 (a) have regard to one or more specified matters in giving advice
20 about the making of a methodology determination;
21 (b) have regard to one or more specified matters in giving advice
22 about the variation of a methodology determination;
23 (c) have regard to one or more specified matters in giving advice
24 about the revocation of a methodology determination.

25 Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the
26 *Legislation Act 2003* do not apply to the direction (see regulations
27 made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that
28 Act).

1 **Subdivision E—Consultation by the Nature Repair Market**
2 **Committee**

3 **56 Consultation by the Nature Repair Market Committee**

- 4 (1) The Nature Repair Market Committee must not advise the Minister
5 to make or vary a methodology determination unless the
6 Committee has first:
- 7 (a) published on the Department’s website:
 - 8 (i) a detailed outline of the proposed determination or
9 variation, as the case may be; and
 - 10 (ii) a notice inviting the public to make a submission to the
11 Committee on the detailed outline by a specified time
12 limit; and
 - 13 (b) considered any submissions that were received within that
14 time limit.
- 15 (2) The time limit must be 28 days after the notice is published.
- 16 (3) However, the time limit may be shorter than 28 days after the
17 notice is published, so long as:
- 18 (a) the Nature Repair Market Committee considers that the time
19 limit is appropriate in the circumstances; and
 - 20 (b) the time limit is not shorter than 14 days after the notice is
21 published.

22 *Publication of submissions*

- 23 (4) The Nature Repair Market Committee must publish on the
24 Department’s website any submissions under subsection (1)
25 received within the time limit referred to in subparagraph (1)(a)(ii).
- 26 (5) However, the Nature Repair Market Committee must not publish a
27 particular submission made by a person if the person has requested
28 the Committee not to publish the submission on the ground that
29 publication of the submission could reasonably be expected to
30 substantially prejudice:
- 31 (a) the commercial interests of the person or another person; or

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 56

- 1 (b) a biodiversity outcome.
- 2 (6) A request under subsection (5) must:
- 3 (a) be in writing; and
- 4 (b) be in a form approved, in writing, by the Committee.

1 **Division 3—Biodiversity integrity standards**

2 **57 Biodiversity integrity standards**

3 (1) For the purposes of this Act, a methodology determination
4 complies with the *biodiversity integrity standards* if:

- 5 (a) a biodiversity project carried out in accordance with the
6 methodology determination should result in enhancement or
7 protection of biodiversity in native species (whether the
8 effect on biodiversity occurs within or outside the project
9 area) that would be unlikely to occur if the project was not
10 carried out; and
- 11 (b) a biodiversity project carried out in accordance with the
12 methodology determination should be designed to prevent
13 the project from having a significant adverse impact on
14 biodiversity in a native species that is protected under:
15 (i) a law of the Commonwealth; or
16 (ii) a law of a State or a Territory in which the project area
17 is wholly or partly situated; and
- 18 (c) a biodiversity project carried out in accordance with the
19 methodology determination should be designed to achieve
20 enhancement or protection of biodiversity in native species
21 that is appropriate to the project area; and
- 22 (d) a biodiversity project carried out in accordance with the
23 methodology determination should be designed to achieve
24 enhancement or protection:
25 (i) that is of biodiversity in native species; and
26 (ii) that can be measured, assessed and verified; and
- 27 (e) any condition set out in, or requirement imposed by, the
28 methodology determination in accordance with subsection
29 45(4) or (5):
30 (i) is supported by clear and convincing evidence; and
31 (ii) is, so far as is reasonably practicable, consistent with
32 relevant Indigenous knowledge and values; and

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Part 4 Methodology determinations

Division 3 Biodiversity integrity standards

Section 57

- 1 (iii) is consistent with enhancement or protection of
2 biodiversity in native species that is appropriate to the
3 project area; and
4 (iv) in the case of a condition or requirement that relates to
5 the measurement or assessment of the enhancement of
6 biodiversity of native species—requires a clear
7 indication of the level of certainty of achievement of the
8 enhancement; and
9 (v) in the case of a condition or requirement that relates to
10 the measurement of the protection of biodiversity of
11 native species—requires a clear indication of the level
12 of certainty of achievement of the protection; and
13 (f) if any condition set out in, or requirement imposed by, the
14 methodology determination in accordance with subsection
15 45(4) or (5) involves an estimate or projection—the condition
16 or requirement must require disclosure of:
17 (i) the assumptions and methods used to make the estimate
18 or projection; and
19 (ii) the level of certainty of the estimate or projection; and
20 (g) any statements or information that could be included in:
21 (i) an entry in the Register for a biodiversity project
22 covered by the methodology determination; or
23 (ii) a biodiversity certificate issued in relation to a
24 biodiversity project covered by the methodology
25 determination;
26 would be supported by clear and convincing evidence; and
27 (h) to the extent to which any statements or information referred
28 to in paragraph (g) would involve an estimate, projection or
29 assumption—the estimate, projection or assumption would
30 be reasonably certain; and
31 (i) the methodology determination meets such other standards
32 (if any) as are prescribed by the rules.
33 (2) Paragraph (1)(i) is not limited by the other paragraphs in
34 subsection (1).

EXPOSURE DRAFT

1 **Division 4—Biodiversity assessment instruments**

2 **Subdivision A—Making of biodiversity assessment instruments**

3 **58 Biodiversity assessment instruments**

- 4 (1) The Minister may, by legislative instrument, prescribe
5 requirements to be complied with by methodology determinations.
- 6 (2) An instrument under subsection (1) is to be known as a *biodiversity*
7 *assessment instrument*.
- 8 (3) The following are examples of requirements that may be
9 prescribed by a biodiversity assessment instrument:
- 10 (a) requirements relating to the measurement or assessment of
11 biodiversity;
- 12 (b) requirements relating to the measurement or assessment of
13 the enhancement of biodiversity;
- 14 (c) requirements relating to the measurement or assessment of
15 the protection of biodiversity.
- 16 (4) A biodiversity assessment instrument may be of general
17 application or may be limited as provided in the instrument.
- 18 (5) Subsection (4) does not, by implication, limit subsection 33(3A) of
19 the *Acts Interpretation Act 1901*.

20 **59 Procedure for making a biodiversity assessment instrument**

- 21 (1) In deciding whether to make a biodiversity assessment instrument,
22 the Minister:
- 23 (a) must have regard to any advice that the Nature Repair Market
24 Committee has given to the Minister under subsection 64(2)
25 in relation to the making of the instrument; and
- 26 (b) may have regard to such other matters (if any) as the Minister
27 considers relevant.

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Part 4 Methodology determinations

Division 4 Biodiversity assessment instruments

Section 59

- 1 *Advice given by the Nature Repair Market Committee*
- 2 (2) Before making a biodiversity assessment instrument, the Minister
- 3 must request the Nature Repair Market Committee to advise the
- 4 Minister about whether the Minister should make the instrument.
- 5 (3) The Minister must not make a biodiversity assessment instrument
- 6 unless:
- 7 (a) the Nature Repair Market Committee has given the Minister
- 8 advice in relation to the making of the instrument; and
- 9 (b) if the instrument applies generally—that advice includes a
- 10 statement to the effect that the Nature Repair Market
- 11 Committee is satisfied that the instrument:
- 12 (i) is an appropriate means of achieving consistency of
- 13 methodology determinations; and
- 14 (ii) would assist in ensuring that methodology
- 15 determinations comply with the biodiversity integrity
- 16 standards; and
- 17 (c) if the instrument applies to a class of methodology
- 18 determinations—that advice includes a statement to the effect
- 19 that the Nature Repair Market Committee is satisfied that the
- 20 instrument:
- 21 (i) is an appropriate means of achieving consistency of
- 22 methodology determinations in that class; and
- 23 (ii) would assist in ensuring that methodology
- 24 determinations in that class comply with the
- 25 biodiversity integrity standards.
- 26 (4) If the Minister decides:
- 27 (a) to make a biodiversity assessment instrument; or
- 28 (b) not to make a biodiversity assessment instrument;
- 29 the Minister must:
- 30 (c) cause a copy of any advice given by the Nature Repair
- 31 Market Committee under subsection 64(2) in relation to the
- 32 making of the instrument to be published on the
- 33 Department’s website; and
- 34 (d) do so as soon as practicable after making the decision.

EXPOSURE DRAFT

1 *Variation and amendment etc. of biodiversity assessment*
2 *instrument*

- 3 (5) Subsection 33(3) of the *Acts Interpretation Act 1901* does not
4 apply to a biodiversity assessment instrument.

5 Note: For variation and revocation of a biodiversity assessment instrument,
6 see Subdivisions B and C of this Division.

7 **Subdivision B—Variation of biodiversity assessment** 8 **instruments**

9 **60 Variation of biodiversity assessment instruments**

10 The Minister may, by legislative instrument, vary a biodiversity
11 assessment instrument.

12 **61 Procedure for varying a biodiversity assessment instrument**

- 13 (1) In deciding whether to vary a biodiversity assessment instrument,
14 the Minister:
15 (a) must have regard to any advice that the Nature Repair Market
16 Committee has given to the Minister under subsection 64(2)
17 in relation to the varying of the instrument; and
18 (b) may have regard to such other matters (if any) as the Minister
19 considers relevant.

20 *Advice given by the Nature Repair Market Committee*

- 21 (2) Before varying a biodiversity assessment instrument, the Minister
22 must request the Nature Repair Market Committee to advise the
23 Minister about whether the Minister should vary the instrument.
- 24 (3) The Minister must not vary a biodiversity assessment instrument
25 unless:
26 (a) the Nature Repair Market Committee has given the Minister
27 advice in relation to the varying of the instrument; and
28 (b) if the biodiversity assessment instrument applies generally—
29 that advice includes a statement to the effect that the Nature

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 4 Biodiversity assessment instruments

Section 62

- 1 Repair Market Committee is satisfied that the varied
2 instrument:
- 3 (i) is an appropriate means of achieving consistency of
4 methodology determinations; and
- 5 (ii) would assist in ensuring that methodology
6 determinations comply with the biodiversity integrity
7 standards; and
- 8 (c) if the instrument applies to a specified class of methodology
9 determinations—that advice includes a statement to the effect
10 that the Nature Repair Market Committee is satisfied that the
11 varied instrument:
- 12 (i) is an appropriate means of achieving consistency of
13 methodology determinations in that class; and
- 14 (ii) would assist in ensuring that methodology
15 determinations in that class comply with the
16 biodiversity integrity standards.
- 17 (4) If the Minister decides:
- 18 (a) to vary a biodiversity assessment instrument; or
19 (b) not to vary a biodiversity assessment instrument;
20 the Minister must:
- 21 (c) cause a copy of any advice given by the Biodiversity Market
22 Committee under subsection 64(2) in relation to varying the
23 instrument to be published on the Department’s website; and
24 (d) do so as soon as practicable after making the decision.

25 **Subdivision C—Revocation of biodiversity assessment** 26 **instruments**

27 **62 Revocation of biodiversity assessment instruments**

- 28 The Minister may, by legislative instrument, revoke a biodiversity
29 assessment instrument.

EXPOSURE DRAFT

63 Procedure for revoking a biodiversity assessment instrument

- 1
2 (1) In deciding whether to revoke a biodiversity assessment
3 instrument, the Minister:
4 (a) must have regard to any advice that the Nature Repair Market
5 Committee has given to the Minister under subsection 64(2)
6 in relation to the revocation of the instrument; and
7 (b) may have regard to such other matters (if any) as the Minister
8 considers relevant.

Advice given by the Nature Repair Market Committee

- 9
10 (2) Before revoking a biodiversity assessment instrument, the Minister
11 must request the Nature Repair Market Committee to advise the
12 Minister about whether the Minister should revoke the instrument.
13 (3) The Minister must not revoke a biodiversity assessment instrument
14 unless the Nature Repair Market Committee has given the Minister
15 advice in relation to the revocation of the instrument.
16 (4) If the Minister decides:
17 (a) to revoke a biodiversity assessment instrument; or
18 (b) not to revoke a biodiversity assessment instrument;
19 the Minister must:
20 (c) cause a copy of any advice given by the Biodiversity Market
21 Committee under subsection 64(2) in relation to the
22 revocation of the instrument to be published on the
23 Department's website; and
24 (d) do so as soon as practicable after making the decision.

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 4 Biodiversity assessment instruments

Section 64

1 **Subdivision D—Advice about making, varying or revoking**
2 **biodiversity assessment instruments**

3 **64 Advice by the Nature Repair Market Committee**

4 *Scope*

- 5 (1) This section applies if the Minister requests the Nature Repair
6 Market Committee:
7 (a) under subsection 59(2), to give advice about whether the
8 Minister should make a biodiversity assessment instrument;
9 or
10 (b) under subsection 61(2), to give advice about whether the
11 Minister should vary a biodiversity assessment instrument; or
12 (c) under subsection 63(2), to give advice about whether the
13 Minister should revoke a biodiversity assessment instrument.

14 *Committee to give advice*

- 15 (2) The Nature Repair Market Committee must give the requested
16 advice to the Minister.

17 Note: The Committee must undertake public consultation before giving
18 advice about making or varying a biodiversity assessment instrument
19 (see section 65).

- 20 (3) If the requested advice relates to whether the Minister should make
21 a biodiversity assessment instrument, the Nature Repair Market
22 Committee must include in the advice:
23 (a) if the instrument applies generally—a statement that the
24 Nature Repair Market Committee is satisfied that the
25 instrument:
26 (i) is an appropriate means of achieving consistency of
27 methodology determinations; and
28 (ii) would assist in ensuring that methodology
29 determinations comply with the biodiversity integrity
30 standards; and

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- 1 (b) if the instrument applies to a class of methodology
2 determinations—a statement to the effect that the Nature
3 Repair Market Committee is satisfied that the instrument:
4 (i) is an appropriate means of achieving consistency of
5 methodology determinations in that class; and
6 (ii) would assist in ensuring that methodology
7 determinations in that class comply with the
8 biodiversity integrity standards; and
9 (c) such other information (if any) as is specified in the rules.
- 10 (4) If the requested advice relates to whether the Minister should vary
11 a biodiversity assessment instrument, the Nature Repair Market
12 Committee must include in the advice:
13 (a) a statement to the effect that the Nature Repair Market
14 Committee is satisfied that the instrument as proposed to be
15 varied:
16 (i) is an appropriate means of achieving consistency of
17 methodology determinations; and
18 (ii) would assist in ensuring that methodology
19 determinations comply with the biodiversity integrity
20 standards; and
21 (b) if the instrument as proposed to be varied applies to a class of
22 methodology determinations—a statement to the effect that
23 the Nature Repair Market Committee is satisfied that the
24 instrument as proposed to be varied:
25 (i) is an appropriate means of achieving consistency of
26 methodology determinations in that class; and
27 (ii) would assist in ensuring that methodology
28 determinations in that class comply with the
29 biodiversity integrity standards; and
30 (c) such other information (if any) as is specified in the rules.
- 31 (5) If the requested advice relates to whether the Minister should
32 revoke a biodiversity assessment instrument, the Nature Repair
33 Market Committee must include in the advice:
34 (a) a statement setting out the Committee’s opinion about
35 whether the instrument should be revoked; and

EXPOSURE DRAFT

Part 4 Methodology determinations

Division 4 Biodiversity assessment instruments

Section 65

- 1 (b) the Committee's reasons for the opinion; and
2 (c) such other information (if any) as is specified in the rules.

3 *Committee must have regard to certain matters*

- 4 (6) In giving the requested advice to the Minister, the Nature Repair
5 Market Committee must have regard to the following:
6 (a) the biodiversity integrity standards;
7 (b) any relevant advice given by the Regulator to the Committee;
8 (c) such other matters (if any) as are specified in the rules.
- 9 (7) Subsection (6) does not, by implication, limit the matters to which
10 the Nature Repair Market Committee may have regard.

11 **65 Consultation by the Nature Repair Market Committee**

- 12 (1) The Nature Repair Market Committee must not advise the Minister
13 to make or vary a biodiversity assessment instrument unless the
14 Committee has first:
15 (a) published on the Department's website:
16 (i) a detailed outline of the proposed instrument or
17 variation, as the case may be; and
18 (ii) a notice inviting the public to make a submission to the
19 Committee on the detailed outline by a specified time
20 limit; and
21 (b) considered any submissions that were received within that
22 time limit.
- 23 (2) The time limit must be 28 days after the notice is published.
- 24 (3) However, the time limit may be shorter than 28 days after the
25 notice is published, so long as:
26 (a) the Nature Repair Market Committee considers that the time
27 limit is appropriate in the circumstances; and
28 (b) the time limit is not shorter than 14 days after the notice is
29 published.

EXPOSURE DRAFT

Methodology determinations **Part 4**
Biodiversity assessment instruments **Division 4**

Section 65

1

Publication of submissions

2

(4) The Nature Repair Market Committee must publish on the Department's website any submissions under subsection (1) received within the time limit referred to in subparagraph (1)(a)(ii).

3

4

5

(5) However, the Nature Repair Market Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice:

6

7

8

9

10

(a) the commercial interests of the person or another person; or

11

(b) a biodiversity outcome.

12

(6) A request under subsection (5) must:

13

(a) be in writing; and

14

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

EXPOSURE DRAFT

Part 5 Biodiversity certificates

Division 1 Introduction

Section 66

1 **Part 5—Biodiversity certificates**

2 **Division 1—Introduction**

3 **66 Simplified outline of this Part**

4 A biodiversity certificate may be issued for a registered
5 biodiversity project, in accordance with the methodology
6 determination that covers the project. After being issued, a
7 biodiversity certificate is recorded on the Register.

8 A biodiversity certificate is personal property, and may be
9 transferred.

EXPOSURE DRAFT

1 **Division 2—Issue of biodiversity certificates**

2 **67 Application for biodiversity certificate**

- 3 (1) The project proponent of a registered biodiversity project may
4 apply to the Regulator for the Regulator to issue to the project
5 proponent a biodiversity certificate in respect of the registered
6 biodiversity project.
- 7 (2) The application may only be made:
- 8 (a) if a biodiversity certificate has not previously been issued in
9 respect of the registered biodiversity project; and
- 10 (b) if the conditions (if any) set out under
11 subparagraph 45(1)(d)(i) in the methodology determination
12 that covers the registered biodiversity project are met; and
- 13 (c) after the time worked out in accordance with provisions of
14 that methodology determination made for the purposes of
15 subparagraph 45(1)(d)(ii); and
- 16 (d) if the conditions (if any) set out in the rules for the purposes
17 of this paragraph are met.

18 **68 Form of application**

- 19 (1) An application under section 67 in relation to a registered
20 biodiversity project must:
- 21 (a) be in writing; and
- 22 (b) be in a form approved, in writing, by the Regulator; and
- 23 (c) set out the account number of an account in the Register of
24 the applicant that should be specified in the certificate; and
- 25 (d) be accompanied by such information as is specified in the
26 rules; and
- 27 (e) be accompanied by such information as is specified in the
28 methodology determination that covers the biodiversity
29 project; and

EXPOSURE DRAFT

Part 5 Biodiversity certificates

Division 2 Issue of biodiversity certificates

Section 69

- 1 (f) if, under the rules or the applicable methodology
2 determination, the application is subject to audit under this
3 Act—be accompanied by an audit report that is:
4 (i) prescribed by the rules or the applicable methodology
5 determination (as the case requires); and
6 (ii) prepared by a registered greenhouse and energy auditor
7 who has been appointed as an audit team leader for the
8 purpose; and
9 (g) be accompanied by the category A biodiversity project report
10 mentioned in section 101; and
11 (h) be accompanied by such other documents (if any) as are
12 specified in the rules; and
13 (i) be accompanied by such other documents (if any) as are
14 specified in the methodology determination that covers the
15 biodiversity project; and
16 (j) be accompanied by the fee (if any) specified in the rules.
- 17 (2) The approved form of application may provide for verification by
18 statutory declaration of statements in applications.
- 19 (3) A fee specified under paragraph (1)(j) must not be such as to
20 amount to taxation.

21 **69 Further information**

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

EXPOSURE DRAFT

1 **70 Issue of biodiversity certificate**

2 *Scope*

- 3 (1) This section applies if an application under section 67 has been
4 made for the issue of a biodiversity certificate in respect of a
5 registered biodiversity project.

6 *Issue of certificate*

- 7 (2) If the Regulator is satisfied that:
- 8 (a) the applicant is a fit and proper person; and
 - 9 (b) the applicant is the project proponent for the project; and
 - 10 (c) if the registration of the registered biodiversity project is
11 subject to a condition under section 17 (obtaining regulatory
12 approvals)—that condition has been met; and
 - 13 (d) if the registration of the registered biodiversity project is
14 subject to a condition under section 18 (obtaining consents
15 from eligible interest holders)—that condition has been met;
16 and
 - 17 (e) the project is sufficiently progressed to have resulted in, or be
18 likely to result in:
 - 19 (i) the biodiversity outcome for the project; or
 - 20 (ii) enhancement or protection of biodiversity that would be
21 unlikely to occur in the absence of the project; and
 - 22 (f) if the rules specify one or more other eligibility requirements
23 for the purposes of this paragraph—those requirements are
24 met; and
 - 25 (g) if the methodology determination that covers the project
26 specifies conditions for the purposes of paragraph 45(1)(e)—
27 those conditions are met;

28 the Regulator must issue a biodiversity certificate to the applicant
29 in respect of the project by making an entry in the account in the
30 Register identified in the application under paragraph 68(1)(c).

31 Note 1: For *fit and proper person*, see sections 97, 98 and 99.

32 Note 2: For review of decisions, see Part 20.

EXPOSURE DRAFT

Part 5 Biodiversity certificates

Division 2 Issue of biodiversity certificates

Section 71

- 1 (3) A biodiversity certificate must set out:
2 (a) the account number identified in the application under
3 paragraph 68(1)(c); and
4 (b) any other matters specified in the rules.

5 *Timing*

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

13 *Notice*

- 14 (5) The Regulator must give the applicant notice in writing if the
15 Regulator:
16 (a) decides to issue a biodiversity certificate to the applicant; or
17 (b) decides not to issue a biodiversity certificate to the applicant.

18 **71 Basis on which biodiversity certificates are issued**

- 19 A biodiversity certificate is issued on the basis that:
20 (a) the certificate may be varied in accordance with rules made
21 for the purposes of paragraph 22(1)(k) or 25(1)(k); and
22 (b) the certificate may be required to be relinquished under
23 Part 13; and
24 (c) the certificate may be cancelled, revoked, terminated or
25 varied, or required to be relinquished, by or under later
26 legislation; and
27 (d) no compensation is payable if the certificate is so cancelled,
28 revoked, terminated or varied, or required to be relinquished.

EXPOSURE DRAFT

1 **Division 3—Property in biodiversity certificates**

2 **72 A biodiversity certificate is personal property**

3 A biodiversity certificate is personal property and, subject to
4 section 74, is transmissible by assignment, by will and by
5 devolution by operation of law.

6 **73 Ownership of biodiversity certificate**

- 7 (1) The holder of a biodiversity certificate:
8 (a) is the legal owner of the certificate; and
9 (b) may, subject to this Act, deal with the certificate as its legal
10 owner and give good discharges for any consideration for
11 any such dealing.

12 Note: The holder of a biodiversity certificate is the person recorded in the
13 Register as the holder of the certificate (see the definition of *holder* in
14 section 7).

- 15 (2) Subsection (1) only protects a person who deals with the holder of
16 the certificate as a purchaser:
17 (a) in good faith for value; and
18 (b) without notice of any defect in the title of the holder.

19 **74 Transmission of biodiversity certificates**

20 A transmission of a biodiversity certificate, whether by assignment
21 or by any other lawful means, is of no force until the biodiversity
22 certificate has been transferred, in accordance with rules made for
23 the purposes of section 167:

- 24 (a) from an account in the Register held by the transferor; and
25 (b) into an account in the Register held by the transferee.

EXPOSURE DRAFT

Part 5 Biodiversity certificates

Division 3 Property in biodiversity certificates

Section 75

1 **75 Registration of equitable interests in relation to biodiversity**
2 **certificates**

3 (1) The rules may make provision for or in relation to the registration
4 in the Register of equitable interests in relation to biodiversity
5 certificates.

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

9 **76 Equitable interests in relation to biodiversity certificates**

10 (1) This Act does not affect:
11 (a) the creation of; or
12 (b) any dealings with; or
13 (c) the enforcement of;
14 equitable interests in relation to a biodiversity certificate.

15 (2) This section is enacted for the avoidance of doubt.

EXPOSURE DRAFT

Biodiversity certificates **Part 5**
Cancellation of biodiversity certificate at the end of the permanence period for a
registered biodiversity project **Division 4**

Section 77

1 **Division 4—Cancellation of biodiversity certificate at the**
2 **end of the permanence period for a registered**
3 **biodiversity project**

4 **77 Cancellation of biodiversity certificate at the end of the**
5 **permanence period for a registered biodiversity project**

6 *Scope*

- 7 (1) This section applies if:
8 (a) the permanence period for a registered biodiversity project
9 ends; and
10 (b) a person is the holder of a biodiversity certificate that relates
11 to the project.

12 *Cancellation of biodiversity certificate*

- 13 (2) If the biodiversity certificate is not deposited with the Regulator:
14 (a) the biodiversity certificate is cancelled; and
15 (b) the Regulator must remove the entry for the certificate from
16 the person's Register account in which there is an entry for
17 the certificate.
- 18 (3) If the biodiversity certificate is deposited with the Regulator:
19 (a) the biodiversity certificate is cancelled; and
20 (b) the Regulator must remove the entry for the certificate from
21 the Commonwealth Register account in which there is an
22 entry for the certificate.

EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 1 Introduction

Section 78

1 **Part 6—Purchase of biodiversity certificates by the**
2 **Commonwealth**

3 **Division 1—Introduction**

4 **78 Simplified outline of this Part**

5 The Secretary may, on behalf of the Commonwealth, enter into
6 contracts for the purchase by the Commonwealth of biodiversity
7 certificates.

8 Such a contract is to be known as a biodiversity conservation
9 contract.

10 The Secretary may enter into a biodiversity conservation contract
11 as the result of a biodiversity conservation purchasing process.

12 The Secretary may conduct biodiversity conservation purchasing
13 processes on behalf of the Commonwealth. Such processes may
14 include tender processes.

15 The Secretary must have regard to certain principles and other
16 matters when conducting a biodiversity conservation purchasing
17 process.

EXPOSURE DRAFT

Purchase of biodiversity certificates by the Commonwealth **Part 6**
Biodiversity conservation contracts **Division 2**

Section 79

1 **Division 2—Biodiversity conservation contracts**

2 **79 Biodiversity conservation contracts**

- 3 (1) The Secretary may enter into contracts, on behalf of the
4 Commonwealth, for the purchase by the Commonwealth of
5 biodiversity certificates.
- 6 (2) It is immaterial whether the biodiversity certificates are in
7 existence when the contract is entered into.
- 8 (3) For the purposes of this Act, a contract entered into under
9 subsection (1) is to be known as a *biodiversity conservation*
10 *contract*.
- 11 (4) For the purposes of this Act, if the Secretary enters into a
12 biodiversity conservation contract with a person, the person is a
13 *biodiversity conservation contractor*.

14 **80 When biodiversity conservation contracts may be entered into**

- 15 (1) The Secretary may enter into a biodiversity conservation contract
16 under section 79 as the result of a biodiversity conservation
17 purchasing process conducted by the Secretary under section 84.
- 18 (2) The Secretary must not enter into a biodiversity conservation
19 contract under section 79 unless the biodiversity conservation
20 contractor for the contract is a project proponent for a registered
21 biodiversity project (which need not be the project to which a
22 biodiversity certificate to be purchased under the contract relates).
- 23 (3) The rules may prescribe further circumstances in which the
24 Secretary must not enter into a biodiversity conservation contract
25 under section 79.

26 **81 Secretary has powers etc. of the Commonwealth**

- 27 (1) The Secretary, on behalf of the Commonwealth, has all the rights,
28 responsibilities, duties and powers of the Commonwealth in

EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 2 Biodiversity conservation contracts

Section 82

1 relation to the Commonwealth's capacity as a party to a
2 biodiversity conservation contract.

3 (2) Without limiting subsection (1):

4 (a) an amount payable by the Commonwealth under a
5 biodiversity conservation contract is to be paid by the
6 Secretary on behalf of the Commonwealth; and

7 (b) an amount payable to the Commonwealth under a
8 biodiversity conservation contract is to be paid to the
9 Secretary on behalf of the Commonwealth; and

10 (c) the Secretary may institute an action or proceeding on behalf
11 of the Commonwealth in relation to a matter that concerns a
12 biodiversity conservation contract.

13 **82 Conferral of powers on the Secretary**

14 The Secretary may exercise a power conferred on the Secretary by
15 a biodiversity conservation contract.

EXPOSURE DRAFT

Purchase of biodiversity certificates by the Commonwealth **Part 6**
Biodiversity conservation purchasing processes **Division 3**

Section 83

1 **Division 3—Biodiversity conservation purchasing**
2 **processes**

3 **83 Biodiversity conservation purchasing process**

4 For the purposes of this Act, a *biodiversity conservation*
5 *purchasing process* means:

- 6 (a) a tender process; or
7 (b) a reverse auction; or
8 (c) any other process;

9 for the purchase by the Commonwealth of biodiversity certificates.
10 (It is immaterial whether the certificates are in existence when the
11 process is conducted.)

12 **84 Conduct of biodiversity conservation purchasing processes**

- 13 (1) The Secretary may, on behalf of the Commonwealth, conduct one
14 or more biodiversity conservation purchasing processes.
- 15 (2) In exercising the power conferred by subsection (1), the Secretary
16 must have regard to:
17 (a) the principles set out in subsection (3); and
18 (b) such other matters (if any) as are specified in the rules.

19 *Principles for conduct of biodiversity conservation purchasing*
20 *processes*

- 21 (3) The principles for conducting a biodiversity conservation
22 purchasing process are that the process should:
23 (a) facilitate the Commonwealth receiving value for money
24 when purchasing biodiversity certificates; and
25 (b) maximise the protection or enhancement of biodiversity that
26 results from the process; and
27 (c) be conducted in a manner that ensures that administrative
28 costs are reasonable; and

EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 3 Biodiversity conservation purchasing processes

Section 84

- 1 (d) be conducted in a manner that ensures the integrity of the
2 process; and
3 (e) encourage competition; and
4 (f) provide for fair and ethical treatment of all participants in the
5 process.
- 6 (4) To avoid doubt, the mere fact that a person is a project proponent
7 for a registered biodiversity project does not automatically entitle
8 the person to participate in a biodiversity conservation purchasing
9 process.

EXPOSURE DRAFT

Purchase of biodiversity certificates by the Commonwealth **Part 6**
Miscellaneous **Division 4**

Section 85

1 **Division 4—Miscellaneous**

2 **85 Rules may provide for certain matters relating to purchased**
3 **biodiversity certificates**

4 The rules may make provision for and in relation to any or all of
5 the following matters in respect of biodiversity certificates
6 purchased by the Commonwealth under biodiversity conservation
7 contracts:

- 8 (a) transferring purchased certificates to a specified Register
9 account kept for the Commonwealth;
- 10 (b) prohibiting or restricting the transfer of biodiversity
11 certificates from such an account;
- 12 (c) cancelling biodiversity certificates for which there are entries
13 in such an account.

14 **86 Certain instruments relating to Commonwealth procurement are**
15 **not applicable**

16 An instrument made under section 105B of the *Public Governance,*
17 *Performance and Accountability Act 2013* does not apply in
18 relation to the functions and powers of the Secretary under
19 section 79 or 84 of this Act.

20 Note: Section 105B of the *Public Governance, Performance and*
21 *Accountability Act 2013* provides for the making of instruments
22 relating to procurement.

23 **87 Biodiversity conservation contracts are not instruments made**
24 **under this Act**

25 To avoid doubt, a biodiversity conservation contract is taken not to
26 be an instrument made under this Act.

EXPOSURE DRAFT

Part 7 Interests in land

Division 1 Introduction

Section 88

1 **Part 7—Interests in land**

2 **Division 1—Introduction**

3 **88 Simplified outline of this Part**

4 The registration of a biodiversity project may be subject to a
5 condition requiring the project proponent to obtain the consent of
6 the holders of certain interests in land before a biodiversity
7 certificate may be issued (see section 18 and paragraph 70(2)(d)).

8 This Part sets out the kinds of interests (*eligible interests*) that may
9 give rise to such a condition.

10 This Part also requires the Regulator to notify State and Territory
11 Crown lands Ministers of the registration of certain kinds of
12 biodiversity projects, and provides for entries to be recorded in title
13 registers in relation to biodiversity projects.

EXPOSURE DRAFT

1 **Division 2—Eligible interest in an area of land**

2 **89 Eligible interest in an area of land—Torrens system land**

3 *Scope*

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

6 *Eligible interest*

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

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

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

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

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

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

18 (b) another person:

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

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

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

- 26 (4) For the purposes of this Act, if the area of land:

27 (a) is Crown land; and

28 (b) is not an exclusive possession native title area; and

29 (c) is not land rights land;

EXPOSURE DRAFT

Part 7 Interests in land

Division 2 Eligible interest in an area of land

Section 89

1 the Crown lands Minister of the State or Territory holds an *eligible*
2 *interest* in the area of land.

3 (5) The rules may provide that, for the purposes of this Act, a person
4 specified in, or ascertained in accordance with, the rules holds an
5 *eligible interest* in the area of land.

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

7 (a) the area of land is land rights land; and

8 (b) the area of land is not an exclusive possession native title
9 area; and

10 (c) any of the following subparagraphs applies to the area of
11 land:

12 (i) a lease is in force over the land, and the grant of the
13 lease took place under a law of the Commonwealth that
14 makes provision for the grant of such things only to, or
15 for the benefit of, Aboriginal persons or Torres Strait
16 Islanders;

17 (ii) subparagraph (i) does not apply, and the land is held by
18 the Commonwealth;

19 (iii) subparagraph (i) does not apply, and the land is held by
20 a statutory authority of the Commonwealth;

21 then:

22 (d) if subparagraph (c)(i) applies—the Minister who administers
23 the law mentioned in that subparagraph holds an *eligible*
24 *interest* in the area of land; or

25 (e) if subparagraph (c)(ii) applies—the Minister who administers
26 the *Aboriginal Land Rights (Northern Territory) Act 1976*
27 holds an *eligible interest* in the area of land; or

28 (f) if subparagraph (c)(iii) applies—the Minister who
29 administers the Act that establishes the statutory authority
30 holds an *eligible interest* in the area of land.

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

32 (a) the area of land is land rights land in a State or Territory; and

33 (b) the area of land is not an exclusive possession native title
34 area; and

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- 1 (c) none of the subparagraphs of paragraph (6)(c) applies to the
2 area of land; and
3 (d) the area of land is not freehold land rights land;
4 the Crown lands Minister of the State or Territory holds an *eligible*
5 *interest* in the area of land.

6 **90 Eligible interest in an area of land—Crown land that is not** 7 **Torrens system land**

8 *Scope*

- 9 (1) This section applies to an area of land in a State or Territory if the
10 area of land:
11 (a) is Crown land; and
12 (b) is not Torrens system land.

13 *Eligible interest*

- 14 (2) For the purposes of this Act, if the area of land is neither:
15 (a) an exclusive possession native title area; nor
16 (b) land rights land;
17 the Crown lands Minister of the State or Territory holds an *eligible*
18 *interest* in the area of land.
- 19 (3) For the purposes of this Act, if:
20 (a) a person (other than the State or Territory) holds a legal
21 estate or interest (the *relevant estate or interest*) in the whole
22 or a part of the area of land; and
23 (b) any of the following conditions are satisfied:
24 (i) the relevant estate or interest came into existence as a
25 result of a grant by the Crown in any capacity;
26 (ii) the relevant estate or interest was derived from an estate
27 or interest that came into existence as a result of a grant
28 by the Crown in any capacity;
29 (iii) the relevant estate or interest was created by or under a
30 law of the Commonwealth, a State or a Territory;

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Part 7 Interests in land

Division 2 Eligible interest in an area of land

Section 90

- 1 (iv) the relevant estate or interest was derived from an estate
2 or interest that was created by or under a law of the
3 Commonwealth, a State or a Territory;
4 the relevant estate or interest is an *eligible interest* held by the
5 person in the area of land.
- 6 (4) For the purposes of this Act, if:
7 (a) under subsection (3), a person holds an eligible interest in the
8 area of land; and
9 (b) another person:
10 (i) is a mortgagee of the eligible interest; or
11 (ii) is a chargee of the eligible interest;
12 the mortgage or charge is an *eligible interest* held by the other
13 person in the area of land.
- 14 (5) The rules may provide that, for the purposes of this Act, a person
15 specified in, or ascertained in accordance with, the rules holds an
16 *eligible interest* in the area of land.
- 17 (6) For the purposes of this Act, if:
18 (a) the area of land is land rights land; and
19 (b) the area of land is not an exclusive possession native title
20 area; and
21 (c) any of the following subparagraphs applies to the area of
22 land:
23 (i) a lease is in force over the land, and the grant of the
24 lease took place under a law of the Commonwealth that
25 makes provision for the grant of such things only to, or
26 for the benefit of, Aboriginal persons or Torres Strait
27 Islanders;
28 (ii) subparagraph (i) does not apply, and the land is held by
29 the Commonwealth;
30 (iii) subparagraph (i) does not apply, and the land is held by
31 a statutory authority of the Commonwealth;
32 then:

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Interests in land **Part 7**
Eligible interest in an area of land **Division 2**

Section 91

- 1 (d) if subparagraph (c)(i) applies—the Minister who administers
2 the law mentioned in that subparagraph holds an *eligible*
3 *interest* in the area of land; or
4 (e) if subparagraph (c)(ii) applies—the Minister who administers
5 the *Aboriginal Land Rights (Northern Territory) Act 1976*
6 holds an *eligible interest* in the area of land; or
7 (f) if subparagraph (c)(iii) applies—the Minister who
8 administers the Act that establishes the statutory authority
9 holds an *eligible interest* in the area of land.
- 10 (7) For the purposes of this Act, if:
11 (a) the area of land is land rights land in a State or Territory; and
12 (b) the area of land is not an exclusive possession native title
13 area; and
14 (c) none of the subparagraphs of paragraph (6)(c) applies to the
15 area of land; and
16 (d) the area of land is not freehold land rights land;
17 the Crown lands Minister of the State or Territory holds an *eligible*
18 *interest* in the area of land.

91 Eligible interest in an area of land—native title areas

Scope

- 21 (1) This section applies to an area if:
22 (a) the area is a native title area; and
23 (b) there is a registered native title body corporate for the area.

Eligible interest

- 25 (2) For the purposes of this Act, the registered native title body
26 corporate holds an *eligible interest* in the area.

92 Eligible interest in an area of land—Aboriginal land council

28 For the purposes of this Act, an Aboriginal land council holds an
29 *eligible interest* in an area of land if:

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Part 7 Interests in land

Division 2 Eligible interest in an area of land

Section 92

- 1 (a) under a law of the Commonwealth, a State or a Territory, the
2 Aboriginal land council makes a claim for the area of land to
3 become land rights land (within the meaning of the law); and
4 (b) the Minister who administers the law makes a decision that
5 the land become land rights land (within the meaning of the
6 law).

EXPOSURE DRAFT

Interests in land **Part 7**
Freehold land rights land **Division 3**

Section 93

1 **Division 3—Freehold land rights land**

2 **93 Regulator to notify Crown lands Minister of approval of**
3 **registration of biodiversity project**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) the Regulator approves under section 15 the registration of a
7 biodiversity project; and
- 8 (b) the project area is, wholly or partly, freehold land rights land
9 in a particular State or Territory; and
- 10 (c) the project area is, wholly or partly, Crown land; and
- 11 (d) the project area is not wholly Torrens system land.

12 *Notification*

- 13 (2) As soon as practicable after giving the approval, the Regulator
14 must notify the Crown lands Minister of the State or Territory, in
15 writing, of the approval.

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Part 7 Interests in land

Division 4 Entries in title registers

Section 94

1 **Division 4—Entries in title registers**

2 **94 Entries in title registers—general**

3 *Scope*

4 (1) This section applies to a registered biodiversity project.

5 *Entries*

6 (2) A relevant land registration official may make such entries or
7 notations in or on registers or other documents kept by the official
8 (in electronic form or otherwise) as the official thinks appropriate
9 for the purposes of drawing the attention of persons to:

- 10 (a) the existence of the registered biodiversity project; and
11 (b) the fact that requirements may arise under this Act in relation
12 to the project; and
13 (c) such other matters (if any) relating to this Act as the official
14 considers appropriate.

15 **95 Entries in title registers—biodiversity maintenance areas**

16 *Scope*

17 (1) This section applies to one or more areas of land if those areas of
18 land are biodiversity maintenance areas declared under a
19 biodiversity maintenance declaration.

20 Note: See Part 14 (biodiversity maintenance declarations).

21 *Entries*

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

1 **Part 8—Fit and proper person**
2

3 **96 Simplified outline of this Part**

4 In determining whether a person is a fit and proper person, the
5 Regulator:

- 6 (a) must have regard to certain matters; and
7 (b) may have regard to certain matters.

8 **97 Fit and proper person—individuals**

9 *Matters the Regulator must have regard to*

- 10 (1) In determining whether an individual is a fit and proper person for
11 the purposes of this Act, the Regulator must have regard to the
12 following matters:
- 13 (a) whether the individual has been convicted of an offence
14 against, or ordered to pay a pecuniary penalty for
15 contravening a provision of, a law of the Commonwealth, a
16 State or a Territory, where the offence or provision relates to:
- 17 (i) dishonesty or fraudulent conduct; or
18 (ii) the environment; or
19 (iii) climate change; or
20 (iv) work health or safety;
- 21 (b) whether the individual has been convicted of an offence
22 against any of the following provisions of the *Criminal Code*:
- 23 (i) section 136.1 (false or misleading statements in
24 applications);
25 (ii) section 137.1 (false or misleading information);
26 (iii) section 137.2 (false or misleading documents);
- 27 (c) whether an order has been made against the individual under
28 section 76 (pecuniary penalties) of the *Competition and
29 Consumer Act 2010*;

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Part 8 Fit and proper person

Section 97

- 1 (d) whether an order has been made against the individual under
2 section 224 (pecuniary penalties) of the Australian Consumer
3 Law;
4 (e) whether the individual has contravened this Act or a
5 legislative instrument made under this Act;
6 (f) whether the individual has contravened the *Carbon Credits*
7 (*Carbon Farming Initiative*) Act 2011 or regulations or
8 legislative rules made under that Act;
9 (g) whether the individual has contravened the *National*
10 *Greenhouse and Energy Reporting Act 2007* or regulations
11 made under that Act;
12 (h) whether an application under any of the following provisions
13 was refused on the ground that the Regulator was not
14 satisfied that the individual was a fit and proper person:
15 (i) section 11;
16 (ii) rules made for the purposes of section 221;
17 (iii) a provision of this Act prescribed by the rules;
18 (i) whether the individual is an insolvent under administration;
19 (j) a matter (if any) prescribed by the rules;
20 (k) such other matters (if any) as the Regulator considers
21 relevant.

22 *Matters the Regulator may have regard to*

- 23 (2) In determining whether an individual is a fit and proper person for
24 the purposes of this Act, the Regulator may have regard to the
25 following matters:
26 (a) whether the individual has been convicted of an offence
27 against, or ordered to pay a pecuniary penalty for
28 contravening a provision of, a law of a foreign country,
29 where the offence or provision relates to:
30 (i) dishonesty or fraudulent conduct; or
31 (ii) the environment; or
32 (iii) climate change; or
33 (iv) work health or safety;

- 1 (b) whether, at any time during the previous 3 years, the
2 individual:
- 3 (i) engaged in conduct that resulted in the individual giving
4 an enforceable undertaking under a law of the
5 Commonwealth, a State or a Territory; or
- 6 (ii) breached an enforceable undertaking given by the
7 individual under a law of the Commonwealth, a State or
8 a Territory;
- 9 where that law relates to:
- 10 (iii) the environment; or
11 (iv) climate change; or
12 (v) work health or safety;
- 13 (c) a matter (if any) prescribed by the rules;
14 (d) such other matters (if any) as the Regulator considers
15 relevant.

16 *Spent convictions*

- 17 (3) To avoid doubt, nothing in this section affects the operation of
18 Part VIIC of the *Crimes Act 1914*.
- 19 (4) Rules made for the purposes of paragraph (1)(j) or (2)(c) must not
20 affect the operation of Part VIIC of the *Crimes Act 1914*.
- 21 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
22 circumstances, relieve persons from the requirement to disclose spent
23 convictions and require persons aware of such convictions to
24 disregard them.

25 **98 Fit and proper person—corporations**

26 *Matters the Regulator must have regard to*

- 27 (1) In determining whether a corporation is a fit and proper person for
28 the purposes of this Act, the Regulator must have regard to the
29 following matters:
- 30 (a) whether the corporation has been convicted of an offence
31 against, or ordered to pay a pecuniary penalty for

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Part 8 Fit and proper person

Section 98

- 1 contravening a provision of, a law of the Commonwealth, a
2 State or a Territory, where the offence or provision relates to:
- 3 (i) dishonesty or fraudulent conduct; or
4 (ii) the environment; or
5 (iii) climate change; or
6 (iv) work health or safety;
- 7 (b) whether the corporation has been convicted of an offence
8 against any of the following provisions of the *Criminal Code*:
- 9 (i) section 136.1 (false or misleading statements in
10 applications);
11 (ii) section 137.1 (false or misleading information);
12 (iii) section 137.2 (false or misleading documents);
- 13 (c) whether an order has been made against the corporation
14 under section 76 (pecuniary penalties) of the *Competition
15 and Consumer Act 2010*;
- 16 (d) whether an order has been made against the corporation
17 under section 224 (pecuniary penalties) of the Australian
18 Consumer Law;
- 19 (e) whether the corporation has contravened this Act or a
20 legislative instrument made under this Act;
- 21 (f) whether the corporation has contravened the *Carbon Credits
22 (Carbon Farming Initiative) Act 2011* or regulations or
23 legislative rules made under that Act;
- 24 (g) whether the corporation has contravened the *National
25 Greenhouse and Energy Reporting Act 2007* or regulations
26 made under that Act;
- 27 (h) whether an application under any of the following provisions
28 was refused on the ground that the Regulator was not
29 satisfied that the corporation was a fit and proper person:
- 30 (i) section 11;
31 (ii) rules made for the purposes of section 221;
32 (iii) a provision of this Act prescribed by the rules;
- 33 (i) whether the corporation is a corporation under external
34 administration;

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- 1 (j) whether any of the events set out in paragraphs 97(1)(a) to (i)
2 have happened in relation to an executive officer of the
3 corporation;
4 (k) a matter (if any) prescribed by the rules;
5 (l) such other matters (if any) as the Regulator considers
6 relevant.

7 *Matters the Regulator may have regard to*

- 8 (2) In determining whether a corporation is a fit and proper person for
9 the purposes of this Act, the Regulator may have regard to the
10 following matters:
11 (a) whether the corporation has been convicted of an offence
12 against, or ordered to pay a pecuniary penalty for
13 contravening a provision of, a law of a foreign country,
14 where the offence or provision relates to:
15 (i) dishonesty or fraudulent conduct; or
16 (ii) the environment; or
17 (iii) climate change; or
18 (iv) work health or safety;
19 (b) whether, at any time during the previous 3 years, the
20 corporation:
21 (i) engaged in conduct that resulted in the corporation
22 giving an enforceable undertaking under a law of the
23 Commonwealth, a State or a Territory; or
24 (ii) breached an enforceable undertaking given by the
25 corporation under a law of the Commonwealth, a State
26 or a Territory;
27 where that law relates to:
28 (iii) the environment; or
29 (iv) climate change; or
30 (v) work health or safety;
31 (c) whether any of the events set out in paragraphs 97(2)(a) or
32 (b) have happened in relation to an executive officer of the
33 corporation;
34 (d) a matter (if any) prescribed by the rules;
-

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Part 8 Fit and proper person

Section 99

1 (e) such other matters (if any) as the Regulator considers
2 relevant.

3 *Spent convictions*

4 (3) To avoid doubt, nothing in this section affects the operation of
5 Part VIIC of the *Crimes Act 1914*.

6 (4) Rules made for the purposes of paragraph (1)(k) or (2)(d) must not
7 affect the operation of Part VIIC of the *Crimes Act 1914*.

8 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
9 circumstances, relieve persons from the requirement to disclose spent
10 convictions and require persons aware of such convictions to
11 disregard them.

12 **99 Fit and proper person—trusts**

13 *Matters the Regulator must have regard to*

14 (1) In determining whether a trust is a fit and proper person for the
15 purposes of this Act, the Regulator must have regard to the
16 following matters:

17 (a) whether the trust or a trustee of the trust has been convicted
18 of an offence against, or ordered to pay a pecuniary penalty
19 for contravening a provision of, a law of the Commonwealth,
20 a State or a Territory, where the offence or provision relates
21 to:

22 (i) dishonesty or fraudulent conduct; or

23 (ii) the environment; or

24 (iii) climate change; or

25 (iv) work health or safety;

26 (b) whether a trustee of the trust has been convicted of an
27 offence against any of the following provisions of the
28 *Criminal Code*:

29 (i) section 136.1 (false or misleading statements in
30 applications);

31 (ii) section 137.1 (false or misleading information);

32 (iii) section 137.2 (false or misleading documents);

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- 1 (c) whether an order has been made against a trustee of the trust
2 under section 76 (pecuniary penalties) of the *Competition*
3 *and Consumer Act 2010*;
- 4 (d) whether an order has been made against a trustee of the trust
5 under section 224 (pecuniary penalties) of the Australian
6 Consumer Law;
- 7 (e) whether the trust or a trustee of the trust has contravened this
8 Act or a legislative instrument made under this Act;
- 9 (f) whether the trust or a trustee of the trust has contravened the
10 *Carbon Credits (Carbon Farming Initiative) Act 2011* or
11 regulations or legislative rules made under that Act;
- 12 (g) whether the trust or a trustee of the trust has contravened the
13 *National Greenhouse and Energy Reporting Act 2007* or
14 regulations made under that Act;
- 15 (h) whether an application under any of the following provisions
16 was refused on the ground that the Regulator was not
17 satisfied that the trust or a trustee of the trust was a fit and
18 proper person:
- 19 (i) section 11;
- 20 (ii) rules made for the purposes of section 221;
- 21 (iii) a provision of this Act prescribed by the rules;
- 22 (i) whether a trustee of the trust is a body corporate under
23 external administration;
- 24 (j) whether a trustee of the trust is an insolvent under
25 administration;
- 26 (k) a matter (if any) prescribed by the rules;
- 27 (l) such other matters (if any) as the Regulator considers
28 relevant.

29 *Matters the Regulator may have regard to*

- 30 (2) In determining whether a trust is a fit and proper person for the
31 purposes of this Act, the Regulator may have regard to the
32 following matters:
- 33 (a) whether a trustee of the trust has been convicted of an
34 offence against, or ordered to pay a pecuniary penalty for

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Part 8 Fit and proper person

Section 99

- 1 contravening a provision of, a law of a foreign country,
2 where the offence or provision relates to:
- 3 (i) dishonesty or fraudulent conduct; or
 - 4 (ii) the environment; or
 - 5 (iii) climate change; or
 - 6 (iv) work health or safety;
- 7 (b) whether, at any time during the previous 3 years, a trustee of
8 the trust:
- 9 (i) engaged in conduct that resulted in the trustee giving an
10 enforceable undertaking under a law of the
11 Commonwealth, a State or a Territory; or
 - 12 (ii) breached an enforceable undertaking given by the
13 trustee under a law of the Commonwealth, a State or a
14 Territory;
- 15 where that law relates to:
- 16 (iii) the environment; or
 - 17 (iv) climate change; or
 - 18 (v) work health or safety;
- 19 (c) a matter (if any) prescribed by the rules;
- 20 (d) such other matters (if any) as the Regulator considers
21 relevant.

22 *Spent convictions*

- 23 (3) To avoid doubt, nothing in this section affects the operation of
24 Part VIIC of the *Crimes Act 1914*.
- 25 (4) Rules made for the purposes of paragraph (1)(k) or (2)(c) must not
26 affect the operation of Part VIIC of the *Crimes Act 1914*.

27 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain
28 circumstances, relieve persons from the requirement to disclose spent
29 convictions and require persons aware of such convictions to
30 disregard them.

EXPOSURE DRAFT

Reporting and notification requirements **Part 9**

Introduction **Division 1**

Section 100

1 **Part 9—Reporting and notification requirements**

2 **Division 1—Introduction**

3 **100 Simplified outline of this Part**

4 If a project proponent applies for the Regulator to issue a
5 biodiversity certificate, the application must be accompanied by a
6 category A biodiversity project report.

7 After a biodiversity certificate is issued in respect of a project, the
8 project proponent must give subsequent category A biodiversity
9 project reports for the rest of the activity period of the project.

10 If a biodiversity certificate has not been issued in respect of a
11 project, the project proponent must give category B biodiversity
12 project reports.

13 Division 3 sets out requirements for a project proponent to notify
14 the Regulator of various matters, including the following:

- 15 (a) the project proponent ceasing to have the right to carry
16 out the project;
- 17 (b) the project proponent becoming aware of a significant
18 reversal of the biodiversity outcome to which the project
19 relates;
- 20 (c) other matters set out in the rules.

EXPOSURE DRAFT

Part 9 Reporting and notification requirements

Division 2 Reporting requirements

Section 101

1 **Division 2—Reporting requirements**

2 **Subdivision A—Category A biodiversity project reports**

3 **101 Category A biodiversity project reports—first report**

4 (1) This section applies if the project proponent for a registered
5 biodiversity project applies under section 67 for the Regulator to
6 issue a biodiversity certificate in respect of the project.

7 (2) The application must be accompanied by a written report (a
8 *category A biodiversity project report*), in accordance with
9 section 103, about the project.

10 Note: See paragraph 68(1)(g).

11 (3) The report must relate to a period (the *reporting period* for the
12 report) that:

13 (a) begins when the project was registered; and

14 (b) ends within 6 months before the application is made.

15 **102 Category A biodiversity project reports—subsequent reports**

16 (1) This section applies to a registered biodiversity project if the
17 Regulator has issued a biodiversity certificate in relation to the
18 project (whether or not the certificate is in effect).

19 (2) The project proponent for the project must give the Regulator a
20 written report (a *category A biodiversity project report*) in
21 accordance with section 103 about the project for a period that:

22 (a) is expressed to be the *reporting period* for the report; and

23 (b) begins immediately after the end of the previous reporting
24 period for a report under this section, or section 101, in
25 relation to the project; and

26 (c) subject to paragraph (d)—ends at least 1 month, and not
27 more than 5 years, after it begins; and

28 (d) ends no later than the end of the activity period for the
29 project.

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1 *Civil penalty provision*

- 2 (3) The project proponent for the project contravenes this subsection
3 if:
4 (a) subsection (2) requires the project proponent to give a
5 category A biodiversity project report for a reporting period;
6 and
7 (b) the project proponent does not comply with the requirement
8 before the end of the period mentioned in
9 paragraph 103(1)(h).

10 Civil penalty: 200 penalty units.

- 11 (4) For the purposes of subsection (3), assume that the reporting period
12 ends at the earlier of the following times:
13 (a) 5 years after the reporting period begins;
14 (b) the end of the activity period for the project.
15 (5) The maximum civil penalty for each day that a contravention of
16 subsection (3) continues is 5% of the maximum civil penalty that
17 can be imposed in respect of that contravention.

18 Note: Subsection (3) is a continuing civil penalty provision under section 93
19 of the Regulatory Powers Act.

20 **103 Requirements for category A biodiversity project reports**

- 21 (1) A category A biodiversity project report about a registered
22 biodiversity project for a reporting period must:
23 (a) be given in the manner and form prescribed by the rules; and
24 (b) set out the information (if any) specified in the rules; and
25 (c) set out the information (if any) specified in the methodology
26 determination that covers the project; and
27 (d) if, under the rules or the applicable methodology
28 determination, the category A biodiversity project report is
29 subject to audit under this Act—be accompanied by an audit
30 report that is:
31 (i) prescribed by the rules or the applicable methodology
32 determination (as the case requires); and

EXPOSURE DRAFT

Part 9 Reporting and notification requirements

Division 2 Reporting requirements

Section 103

- 1 (ii) prepared by a registered greenhouse and energy auditor
2 who has been appointed as an audit team leader for the
3 purpose; and
- 4 (e) if, before the category A biodiversity project report was
5 given to the Regulator, the Regulator gave the project
6 proponent a written notice stating that the report would be
7 subject to audit under this Act—be accompanied by an audit
8 report that is:
- 9 (i) prescribed by the rules; and
- 10 (ii) prepared by a registered greenhouse and energy auditor
11 who has been appointed as an audit team leader for the
12 purpose; and
- 13 (f) be accompanied by such other documents (if any) as are
14 specified in the rules; and
- 15 (g) be accompanied by such other documents (if any) as are
16 specified in the methodology determination that covers the
17 project; and
- 18 (h) for a category A biodiversity project report under section 102
19 (subsequent biodiversity project reports)—be given to the
20 Regulator within:
- 21 (i) 6 months after the end of the reporting period; or
- 22 (ii) if a greater number of months is specified in the
23 methodology determination that covers the project—
24 that greater number of months after the end of the
25 reporting period.
- 26 (2) To avoid doubt, a category A biodiversity project report for a
27 period may deal with matters that occur before the start of the
28 period.
- 29 (3) Information specified in rules made for the purposes of
30 paragraph (1)(b) or a provision of a methodology determination
31 made for the purposes of paragraph (1)(c) may relate to a matter
32 arising before, during or after the reporting period.
- 33 (4) A document specified in rules made for the purposes of
34 paragraph (1)(f) or a provision of a methodology determination

EXPOSURE DRAFT

1 made for the purposes of paragraph (1)(g) may relate to a matter
2 arising before, during or after the reporting period.

3 **Subdivision B—Category B biodiversity project reports**

4 **104 Category B biodiversity project reports**

- 5 (1) This section applies if the Regulator has not issued a biodiversity
6 certificate in relation to a registered biodiversity project.
- 7 (2) The project proponent for the project must give the Regulator a
8 written report (a *category B biodiversity project report*) for each
9 period that, under the rules, is a *reporting period* for the purposes
10 of this section.
- 11 (3) A category B biodiversity project report about a project for a
12 reporting period must:
- 13 (a) be given in the manner and form prescribed by the rules; and
14 (b) set out the information (if any) specified in the rules; and
15 (c) set out the information (if any) specified in the methodology
16 determination that covers the project; and
17 (d) be accompanied by such other documents (if any) as are
18 specified in the rules; and
19 (e) be accompanied by such other documents (if any) as are
20 specified in the methodology determination that covers the
21 project; and
22 (f) be given to the Regulator within the period ascertained in
23 accordance with the rules.

24 *Civil penalty provision*

- 25 (4) The project proponent for the project contravenes this subsection
26 if:
- 27 (a) subsection (2) requires the project proponent to give a
28 category B biodiversity project report for a reporting period;
29 and

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Part 9 Reporting and notification requirements

Division 2 Reporting requirements

Section 104

1 (b) the project proponent does not comply with the requirement
2 before the end of the period ascertained in accordance with
3 rules made for the purposes of paragraph (3)(f).

4 Civil penalty: 200 penalty units.

5 (5) The maximum civil penalty for each day that a contravention of
6 subsection (4) continues is 5% of the maximum civil penalty that
7 can be imposed in respect of that contravention.

8 Note: Subsection (4) is a continuing civil penalty provision under section 93
9 of the Regulatory Powers Act.

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Reporting and notification requirements **Part 9**

Notification requirements **Division 3**

Section 105

1 **Division 3—Notification requirements**

2 **105 Notification requirement—project proponent ceases to have**
3 **right to carry out project**

4 *Scope*

- 5 (1) This section applies to an eligible person if:
- 6 (a) the eligible person is the project proponent of a registered
7 biodiversity project that has one project proponent; and
8 (b) the eligible person ceases to have a right that is necessary for
9 the project to be carried out.
- 10 (2) This section also applies to an eligible person if:
- 11 (a) the eligible person is one of the project proponents of a
12 registered biodiversity project that has multiple project
13 proponents; and
14 (b) any of the project proponents ceases to have a right that is
15 necessary for the project to be carried out; and
16 (c) the cessation results in no project proponent having that right.

17 *Notification*

- 18 (2) The eligible person must, within 90 days after the cessation occurs,
19 notify the Regulator, in writing, of the cessation.

20 Civil penalty: 200 penalty units.

- 21 (3) The maximum civil penalty for each day that a contravention of
22 subsection (2) continues is 5% of the maximum civil penalty that
23 can be imposed in respect of that contravention.

24 Note: Subsection (2) is a continuing civil penalty provision under section 93
25 of the Regulatory Powers Act.

EXPOSURE DRAFT

Part 9 Reporting and notification requirements

Division 3 Notification requirements

Section 106

1 **106 Notification requirement—withdrawal or cessation of**
2 **regulatory approval**

3 *Scope*

- 4 (1) This section applies to the project proponent of a registered
5 biodiversity project if a regulatory approval required for the project
6 to be carried out:
7 (a) is withdrawn; or
8 (b) otherwise ceases to have effect for any reason.

9 *Notification*

- 10 (2) The project proponent must, within 90 days after the withdrawal or
11 cessation occurs, notify the Regulator, in writing, of the withdrawal
12 or cessation.

13 Civil penalty: 200 penalty units.

- 14 (3) The maximum civil penalty for each day that a contravention of
15 subsection (2) continues is 5% of the maximum civil penalty that
16 can be imposed in respect of that contravention.

17 Note: Subsection (2) is a continuing civil penalty provision under section 93
18 of the Regulatory Powers Act.

19 **107 Notification requirement—death of project proponent**

20 *Scope*

- 21 (1) This section applies if a person who is the project proponent for a
22 registered biodiversity project dies.

23 *Notification*

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

26 Civil penalty: 60 penalty units.

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- 1 (3) The maximum civil penalty for each day that a contravention of
2 subsection (2) continues is 5% of the maximum civil penalty that
3 can be imposed in respect of that contravention.

4 Note: Subsection (2) is a continuing civil penalty provision under section 93
5 of the Regulatory Powers Act.

6 **108 Notification requirement—methodology determinations**

7 *Scope*

- 8 (1) This section applies if:
9 (a) there is a registered biodiversity project; and
10 (b) under the methodology determination that covers the project,
11 the project proponent for the project is subject to a
12 requirement to notify the Regulator of one or more matters
13 relating to the project.

14 *Notification*

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

16 Civil penalty: 60 penalty units.

- 17 (3) The maximum civil penalty for each day that a contravention of
18 subsection (2) continues is 5% of the maximum civil penalty that
19 can be imposed in respect of that contravention.

20 Note: Subsection (2) is a continuing civil penalty provision under section 93
21 of the Regulatory Powers Act.

22 **109 Notification requirement—reversal of biodiversity outcome**

23 *Scope*

- 24 (1) This section applies if:
25 (a) there is a registered biodiversity project; and
26 (b) the project proponent for the project becomes aware of a
27 significant reversal of the biodiversity outcome to which the
28 project relates.

29 Note: See section 111.

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Part 9 Reporting and notification requirements

Division 3 Notification requirements

Section 110

1 *Notification*

2 (2) The project proponent must notify the Regulator, in writing, of the
3 reversal within 60 days after the project proponent becomes aware
4 of the reversal.

5 Civil penalty: 200 penalty units.

6 (3) The maximum civil penalty for each day that a contravention of
7 subsection (2) continues is 5% of the maximum civil penalty that
8 can be imposed in respect of that contravention.

9 Note: Subsection (2) is a continuing civil penalty provision under section 93
10 of the Regulatory Powers Act.

11 **110 Notification requirement—event or conduct that causes, or is**
12 **likely to cause, reversal of biodiversity outcome**

13 *Scope*

14 (1) This section applies if:

15 (a) there is a registered biodiversity project; and

16 (b) the project proponent for the project becomes aware of any of
17 the following:

18 (i) a natural disturbance that causes a significant reversal of
19 the biodiversity outcome to which the project relates;

20 (ii) a natural disturbance that is likely to cause a significant
21 reversal of the biodiversity outcome to which the project
22 relates;

23 (iii) conduct engaged in by the project proponent for the
24 project, or any other person, that causes a significant
25 reversal of the biodiversity outcome to which the project
26 relates;

27 (iv) conduct engaged in by the project proponent for the
28 project, or any other person, that is likely to cause a
29 significant reversal of the biodiversity outcome to which
30 the project relates.

31 Note: See section 111.

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Reporting and notification requirements **Part 9**

Notification requirements **Division 3**

Section 111

1 *Notification*

2 (2) The project proponent must notify the Regulator, in writing, of the
3 matter mentioned in paragraph (1)(b) within 60 days after the
4 project proponent becomes aware of the matter.

5 Civil penalty: 200 penalty units.

6 (3) The maximum civil penalty for each day that a contravention of
7 subsection (2) continues is 5% of the maximum civil penalty that
8 can be imposed in respect of that contravention.

9 Note: Subsection (2) is a continuing civil penalty provision under section 93
10 of the Regulatory Powers Act.

11 **111 Significant reversals in biodiversity outcomes—notification**
12 **requirements**

13 (1) The rules may prescribe circumstances in which, for the purposes
14 of paragraphs 109(1)(b) and 110(1)(b):

15 (a) there is taken to have been a reversal of a biodiversity
16 outcome to which a registered biodiversity project relates;
17 and

18 (b) the reversal is taken to be significant, or not taken to be
19 significant.

20 (2) This section does not limit section 148 (significant reversals in
21 biodiversity outcomes—relinquishment requirements).

22 **112 Notification requirement—event relevant to whether a project**
23 **proponent is a fit and proper person**

24 *Scope*

25 (1) This section applies to a project proponent of a registered
26 biodiversity project if:

27 (a) in a case where the project proponent is an individual—an
28 event set out in paragraph 97(1)(a), (b), (c), (d) or (i) or (2)(a)
29 occurred in relation to the project proponent; or

30 (b) in a case where the project proponent is a corporation:

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Part 9 Reporting and notification requirements

Division 3 Notification requirements

Section 113

- 1 (i) an event set out in paragraph 98(1)(a), (b), (c), (d) or (i)
2 or (2)(a) occurred in relation to the project proponent; or
3 (ii) an event set out in paragraph 98(1)(a), (b), (c), (d) or (i)
4 or (2)(a) occurred in relation to an executive officer of
5 the project proponent; or
6 (c) in a case where the project proponent is a trust:
7 (i) an event set out in paragraph 99(1)(a), (b), (c) or (d) or
8 (2)(a) occurred in relation to the project proponent; or
9 (ii) an event set out in paragraph 99(1)(a), (b), (c), (d), (i) or
10 (j) or (2)(a) occurred in relation to a trustee of the
11 project proponent; or
12 (d) an event prescribed by the rules has occurred in relation to
13 the project proponent.

- 14 (2) However, this section does not apply to a project proponent of a
15 registered biodiversity project if the event consists of a breach of:
16 (a) this Act or an instrument under this Act; or
17 (b) a climate change law (within the meaning of the *Clean*
18 *Energy Regulator Act 2011*).

19 *Notification*

- 20 (3) The project proponent must, within 90 days after the event, notify
21 the Regulator, in writing, of the event.

22 Civil penalty: 200 penalty units.

- 23 (4) The maximum civil penalty for each day that a contravention of
24 subsection (3) continues is 5% of the maximum civil penalty that
25 can be imposed in respect of that contravention.

26 Note: Subsection (3) is a continuing civil penalty provision under section 93
27 of the Regulatory Powers Act.

28 **113 Notification requirement—variation of project plan**

- 29 (1) If:
30 (a) the project plan for a registered biodiversity project is varied;
31 and

EXPOSURE DRAFT

- 1 (b) the variation is not of a minor nature;
2 the project proponent for the project must, within 60 days after the
3 variation has taken effect:
4 (c) notify the Regulator, in writing, of:
5 (i) the details of the variation; and
6 (ii) the date the variation took effect; and
7 (d) give the Regulator a copy of the project plan as varied.

8 Civil penalty: 60 penalty units.

9 (2) If:

- 10 (a) the project plan for a registered biodiversity project is varied;
11 and
12 (b) the variation is of a minor nature;
13 the Regulator may, by written notice given to the project proponent
14 for the project, require the project proponent to:
15 (c) give the Regulator a copy of the project plan as varied; and
16 (d) do so within 60 days after the notice is given.

17 Civil penalty: 60 penalty units.

18 **114 The rules may impose notification requirements**

- 19 (1) The rules may make provision requiring the project proponent of a
20 registered biodiversity project to notify the Regulator of a matter
21 within a period specified in the rules.
22 (2) A matter specified in rules made for the purposes of subsection (1)
23 must be relevant to the operation of this Act.

24 *Notification*

- 25 (3) If a person is subject to a requirement under rules made for the
26 purposes of subsection (1), the person must comply with that
27 requirement within the period specified in those rules.

28 Civil penalty: 60 penalty units.

EXPOSURE DRAFT

Part 9 Reporting and notification requirements

Division 3 Notification requirements

Section 114

1 (4) The maximum civil penalty for each day that a contravention of
2 subsection (3) continues is 5% of the maximum civil penalty that
3 can be imposed in respect of that contravention.

4 Note: Subsection (3) is a continuing civil penalty provision under section 93
5 of the Regulatory Powers Act.

1 **Part 10—Information-gathering powers**
2

3 **115 Simplified outline of this Part**

4

The Regulator may obtain information or documents.

5 **116 Regulator may obtain information or documents**

6 *Scope*

- 7 (1) This section applies to a person if the Regulator believes on
8 reasonable grounds that the person has information or a document
9 that is relevant to the operation of this Act or the associated
10 provisions.

11 *Requirement*

- 12 (2) The Regulator may, by written notice given to the person, require
13 the person:
14 (a) to give to the Regulator, within the period and in the manner
15 and form specified in the notice, any such information; or
16 (b) to produce to the Regulator, within the period and in the
17 manner specified in the notice, any such documents; or
18 (c) to make copies of any such documents and to produce to the
19 Regulator, within the period and in the manner specified in
20 the notice, those copies.
- 21 (3) A period specified under subsection (2) must not be shorter than 14
22 days after the notice is given.

23 *Compliance*

- 24 (4) A person must comply with a requirement under subsection (2) to
25 the extent that the person is capable of doing so.

26 Civil penalty: 60 penalty units.

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Part 10 Information-gathering powers

Section 117

- 1 (5) The maximum civil penalty for each day that a contravention of
2 subsection (4) continues is 5% of the maximum civil penalty that
3 can be imposed in respect of that contravention.

4 Note: Subsection (4) is a continuing civil penalty provision under section 93
5 of the Regulatory Powers Act.

6 *No limitation*

- 7 (6) This section is not limited by any other provision of this Act that
8 relates to the powers of the Regulator to obtain information or
9 documents.

117 Copying documents—compensation

11 A person is entitled to be paid by the Regulator, on behalf of the
12 Commonwealth, reasonable compensation for complying with a
13 requirement covered by paragraph 116(2)(c).

118 Copies of documents

- 15 (1) The Regulator may:
16 (a) inspect a document or copy produced under
17 subsection 116(2); and
18 (b) make and retain copies of, or take and retain extracts from,
19 such a document.
- 20 (2) The Regulator may retain possession of a copy of a document
21 produced in accordance with a requirement covered by
22 paragraph 116(2)(c).

119 Regulator may retain documents

- 24 (1) The Regulator may take, and retain for as long as is necessary,
25 possession of a document produced under subsection 116(2).
- 26 (2) The person otherwise entitled to possession of the document is
27 entitled to be supplied, as soon as practicable, with a copy certified
28 by the Regulator to be a true copy.

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- 1 (3) The certified copy must be received in all courts and tribunals as
2 evidence as if it were the original.
- 3 (4) Until a certified copy is supplied, the Regulator must, at such times
4 and places as the Regulator thinks appropriate, permit the person
5 otherwise entitled to possession of the document, or a person
6 authorised by that person, to inspect and make copies of, or take
7 extracts from, the document.

EXPOSURE DRAFT

Part 11 Audits

Division 1 Introduction

Section 120

1 **Part 11—Audits**

2 **Division 1—Introduction**

3 **120 Simplified outline of this Part**

4 The Regulator may require audits of one or more aspects of a
5 person's compliance with this Act and the associated provisions to
6 be carried out.

7 An audit team leader or a person assisting an audit team leader
8 must not use or disclose protected audit information unless the use
9 or disclosure is:

- 10 (a) authorised by a provision of this Part; or
11 (b) authorised or required by a law of the Commonwealth or
12 a prescribed law of a State or Territory.

13 An audit team leader or person assisting an audit team leader may
14 use or disclose audit information in certain circumstances.

15 **Division 2—Audits**

16 **121 Compliance audits**

17 *Scope*

- 18 (1) This section applies if:
19 (a) a person is, or has been, the project proponent for a registered
20 biodiversity project; and
21 (b) the Regulator has reasonable grounds to suspect that the
22 person has contravened, is contravening, or is proposing to
23 contravene, this Act or the associated provisions.

EXPOSURE DRAFT

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Audit

- (2) The Regulator may, by written notice given to the person, require the person to:
- (a) appoint as an audit team leader:
 - (i) a registered greenhouse and energy auditor of the 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 person’s compliance with this Act or the associated provisions; 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 on or before the day specified in the notice.
- Note: For the conduct of an audit under this section, see section 75 of the *National Greenhouse and Energy Reporting Act 2007*.
- (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) A person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader’s duties under this Act.
- Civil penalty: 60 penalty units.
- (5) Without limiting subsection (4), providing assistance that is reasonably necessary includes complying with any request under section 123 that relates to the audit.

EXPOSURE DRAFT

Part 11 Audits

Division 2 Audits

Section 121

- 1 (6) Subsection (4) does not require a person to allow an audit team
2 leader or a person assisting an audit team leader:
3 (a) to enter premises; or
4 (b) to take samples of any thing on premises; or
5 (c) to inspect any thing on premises.
- 6 (7) If the Regulator gives a person written notice under subsection (2),
7 the person must comply with the requirements of the notice.
- 8 Civil penalty: 200 penalty units.
- 9 (8) The maximum civil penalty for each day that a contravention of
10 subsection (7) continues after the day specified for the purposes of
11 paragraph (2)(d) is 5% of the maximum civil penalty that can be
12 imposed in respect of that contravention.

13 Note: Subsection (7) is a continuing civil penalty provision under section 93
14 of the Regulatory Powers Act.

15 *Reimbursement*

- 16 (9) If:
17 (a) the Regulator gives a person a notice under subsection (2);
18 and
19 (b) in complying with that notice, the person arranges for an
20 audit team leader to carry out an audit on one or more aspects
21 of the person's compliance with this Act or the associated
22 provisions; and
23 (c) the audit report does not indicate that there is evidence of
24 non-compliance by the person with this Act or the associated
25 provisions; and
26 (d) the person requests the Regulator to reimburse the person for
27 reasonable costs incurred by the person in complying with
28 the notice; and
29 (e) the Regulator is satisfied that the person would suffer
30 financial hardship if the person were not reimbursed for those
31 costs;
32 the Regulator may, on behalf of the Commonwealth, reimburse the
33 person for those costs.

1 Note: For review of decisions, see Part 20.

- 2 (10) A request under paragraph (9)(d) must:
- 3 (a) be in writing; and
- 4 (b) be in a form approved, in writing, by the Regulator; and
- 5 (c) be accompanied by such information as is specified in the
- 6 rules; and
- 7 (d) be accompanied by such documents (if any) as are specified
- 8 in the rules.
- 9 (11) The approved form of request may provide for verification by
- 10 statutory declaration of statements in requests.

11 **122 Other audits**

12 *Audit*

- 13 (1) If a person is, or has been, the project proponent for a registered
- 14 biodiversity project, the Regulator may appoint a registered
- 15 greenhouse and energy auditor as an audit team leader to carry out
- 16 an audit of the person's compliance with one or more aspects of
- 17 this Act or the associated provisions.
- 18 (2) The Regulator must give written notice to the person of a decision
- 19 to appoint an audit team leader under subsection (1). The notice
- 20 must:
- 21 (a) specify the audit team leader; and
- 22 (b) specify the period within which the audit is to be undertaken;
- 23 and
- 24 (c) specify the type of audit to be carried out; and
- 25 (d) specify the matters to be covered by the audit; and
- 26 (e) be given to the person at a reasonable time before the audit is
- 27 to be undertaken.

28 Note: For the conduct of an audit under this section, see section 75 of the

29 *National Greenhouse and Energy Reporting Act 2007*.

- 30 (3) The person must provide the audit team leader, and any persons
- 31 assisting the audit team leader, with all reasonable facilities and

EXPOSURE DRAFT

Part 11 Audits

Division 3 Audit information

Section 123

1 assistance necessary for the effective exercise of the audit team
2 leader's duties under this Act.

3 Civil penalty: 60 penalty units.

4 (4) Without limiting subsection (3), providing assistance that is
5 reasonably necessary includes complying with any request under
6 section 123 that relates to the audit.

7 (5) Subsection (3) does not require a person to allow an audit team
8 leader or a person assisting an audit team leader:

9 (a) to enter premises; or

10 (b) to take samples of any thing on premises; or

11 (c) to inspect any thing on premises.

12 **123 Information-gathering of audit team leaders and persons** 13 **assisting audit team leaders**

14 (1) For the purpose of carrying out an audit under section 121 or 122,
15 an audit team leader or a person assisting an audit team leader may
16 request a person who the audit team leader or person assisting the
17 audit team leader reasonably believes has information or
18 documents that are relevant to the audit to:

19 (a) provide any such information; or

20 (b) produce any such documents.

21 (2) An audit team leader or a person assisting an audit team leader may
22 make copies of, or take extracts from, a document produced under
23 subsection (1).

24 **Division 3—Audit information**

25 **Subdivision A—Information**

26 **124 Meaning of *audit information***

27 For the purposes of this Act, *audit information* means information
28 that satisfies the following conditions:

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- 1 (a) the information was obtained by a person in the person's
2 capacity as an audit team leader or a person assisting an audit
3 team leader;
4 (b) the information was obtained in the course of, or for the
5 purposes of:
6 (i) carrying out a biodiversity audit; or
7 (ii) preparing a biodiversity audit report.

8 **125 Meaning of *protected audit information***

9 For the purposes of this Act, *protected audit information* means
10 *audit information* that is:

- 11 (a) information the use or disclosure of which could reasonably
12 be expected to substantially prejudice the commercial
13 interests of a person; or
14 (b) information the disclosure of which could reasonably be
15 expected to found an action by a person (other than the
16 Commonwealth) for breach of a duty of confidence; or
17 (c) information the disclosure of which could reasonably be
18 expected to prejudice the prevention, detection or
19 investigation of, or the conduct of proceedings relating to, an
20 offence or a contravention of a civil penalty provision; or
21 (d) information the disclosure of which could reasonably be
22 expected to prejudice the protection of public safety or the
23 environment; or
24 (e) information the disclosure of which could reasonably be
25 expected to endanger the life or safety of an individual or
26 group of individuals.

27 **Subdivision B—Secrecy**

28 **126 Secrecy—protected audit information**

- 29 (1) If:
30 (a) a person is, or has been, an audit team leader or a person
31 assisting an audit team leader; and
32 (b) the person has obtained protected audit information:

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Section 127

- 1 the person must not:
2 (c) disclose the information to another person; or
3 (d) use the information.

4 Civil penalty: 120 penalty units.

5 *Exceptions*

- 6 (2) Each of the following is an exception to the prohibition in
7 subsection (1):
8 (a) the disclosure or use is authorised by a provision of this Part;
9 (b) the disclosure or use is authorised or required by:
10 (i) a law of the Commonwealth; or
11 (ii) a prescribed law of a State or a Territory.

12 Note: A defendant bears an evidential burden in relation to the matter in this
13 subsection (see section 96 of the Regulatory Powers Act).

14 **Subdivision C—Disclosure or use of audit information**

15 **127 Disclosure or use for purposes of carrying out biodiversity audit** 16 **or preparing biodiversity audit report etc.**

17 An audit team leader or a person assisting an audit team leader may
18 disclose or use audit information if:

- 19 (a) the disclosure or use is for the purposes of carrying out a
20 biodiversity audit; or
21 (b) the disclosure or use is for the purposes of preparing a
22 biodiversity audit report; or
23 (c) if the information relates to a biodiversity project that is, or is
24 to be, the subject of an application under section 11—the
25 disclosure or use is for the purposes of giving a biodiversity
26 audit report to:
27 (i) if the project is to have one project proponent—the
28 eligible person who is proposed to be the project
29 proponent for the project; or

- 1 (ii) if the project is to have 2 or more project proponents—
2 any of the eligible persons who are proposed to be the
3 project proponents for the project; or
4 (d) if the information relates to a registered biodiversity
5 project—the disclosure or use is for the purposes of giving a
6 biodiversity audit report to:
7 (i) if one person is registered as the project proponent for
8 the project—that person; or
9 (ii) if there are 2 or more persons registered as the project
10 proponents for the project—any of those persons.

11 **128 Disclosure to the Regulator**

12 An audit team leader or a person assisting an audit team leader may
13 disclose audit information to the Regulator if:

- 14 (a) the disclosure is for the purposes of this Act or a legislative
15 instrument made under this Act; and
16 (b) the audit team leader or person assisting an audit team leader
17 is satisfied that the disclosure is likely to assist the Regulator
18 in performing functions or exercising powers under this Act
19 or a legislative instrument made under this Act.

20 **129 Disclosure to Minister etc.**

21 An audit team leader or a person assisting an audit team leader may
22 disclose audit information to the Minister.

23 **130 Disclosure to the Secretary etc.**

- 24 (1) An audit team leader or a person assisting an audit team leader may
25 disclose audit information to:
26 (a) the Secretary; or
27 (b) an officer of the Department who is authorised by the
28 Secretary, in writing, for the purposes of this section;
29 if the disclosure is:
30 (c) for the purposes of this Act or a legislative instrument made
31 under this Act; and

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Section 131

1 (d) likely to assist in the performance of functions, or the
2 exercise of powers, under this Act or a legislative instrument
3 made under this Act.

4 (2) To avoid doubt, an authorisation under paragraph (1)(b) may:

5 (a) authorise a specified officer; or

6 (b) authorise a person who holds, occupies or performs the duties
7 of, a specified office or position.

8 **131 Disclosure to reduce serious risk to life or health of individual**

9 An audit team leader or a person assisting an audit team leader may
10 disclose audit information if:

11 (a) the audit team leader or person assisting an audit team leader
12 believes on reasonable grounds that the disclosure is
13 necessary to prevent or lessen a serious risk to the life or
14 health of an individual; and

15 (b) the disclosure is for the purposes of preventing or lessening
16 that risk.

17 **132 Disclosure to reduce serious risk to the environment**

18 An audit team leader or a person assisting an audit team leader may
19 disclose audit information if:

20 (a) the audit team leader or person assisting the audit team leader
21 reasonably believes that the disclosure is necessary to prevent
22 or lessen a serious risk to the environment; and

23 (b) the disclosure is for the purposes of preventing or lessening
24 that risk.

25 **133 Disclosure to a court, tribunal etc**

26 An audit team leader or a person assisting an audit team leader may
27 disclose audit information:

28 (a) for the purposes of proceedings before:

29 (i) a court; or

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- 1 (ii) a tribunal, authority or person that has the power to
2 require the answering of questions or the production of
3 documents; or
4 (b) in accordance with an order of a court or such a tribunal,
5 authority or person.

6 **134 Disclosure of publicly available information**

7 An audit team leader or a person assisting an audit team leader may
8 disclose audit information if it has already been lawfully made
9 available to the public.

10 **135 Disclosure with consent**

11 An audit team leader or a person assisting an audit team leader may
12 disclose audit information that relates to the affairs of a person if:
13 (a) the person has consented to the disclosure; and
14 (b) the disclosure is in accordance with that consent.

15 **136 Disclosure to person to whom audit information relates**

16 An audit team leader or a person assisting an audit team leader may
17 disclose audit information to a person if the information relates to
18 the affairs of the person.

19 **137 Disclosure to person who provided audit information**

20 An audit team leader or a person assisting an audit team leader may
21 disclose audit information to a person if the audit team leader or
22 person assisting an audit team leader obtained the information from
23 the person.

24 **138 Disclosure of statistics**

25 An audit team leader or a person assisting an audit team leader may
26 disclose statistics derived from audit information if those statistics
27 are not likely to enable the identification of a person.

EXPOSURE DRAFT

Part 12 Deposit of biodiversity certificates with the Regulator

Section 139

1 **Part 12—Deposit of biodiversity certificates with**
2 **the Regulator**
3

4 **139 Simplified outline of this Part**

5 The Regulator may approve the deposit of a biodiversity certificate
6 with the Regulator.

7 If a biodiversity certificate is deposited with the Regulator, the
8 certificate cannot be transmitted or otherwise dealt with.

9 **140 Application to approve the deposit of a biodiversity certificate**
10 **with the Regulator**

- 11 (1) If a person is the holder of a biodiversity certificate, the person
12 may apply to the Regulator for the Regulator to approve the
13 deposit of the certificate with the Regulator.
- 14 (2) An application must:
15 (a) be in a form approved, in writing, by the Regulator; and
16 (b) specify the biodiversity certificate; and
17 (c) specify the account number of the person's Register account
18 in which there is an entry for the biodiversity certificate; and
19 (d) contain such other information (if any) required by the
20 approved form.
- 21 (3) An application must be accompanied by:
22 (a) such documents (if any) as are specified in the rules; and
23 (b) the fee (if any) specified in the rules.
- 24 (4) A fee specified under paragraph (3)(b) must not be such as to
25 amount to taxation.

EXPOSURE DRAFT

1 **141 Approval of deposit of a biodiversity certificate with the**
2 **Regulator**

3 *Scope*

- 4 (1) This section applies if an application under section 140 has been
5 made for the Regulator to approve the deposit of a biodiversity
6 certificate (the *relevant biodiversity certificate*) with the Regulator.

7 *Approval*

- 8 (2) After considering the application, the Regulator must decide to:
9 (a) approve the deposit of the relevant biodiversity certificate
10 with the Regulator; or
11 (b) refuse to approve the deposit of the relevant biodiversity
12 certificate with the Regulator.

13 Note: For review of decisions, see Part 20.

- 14 (3) The Regulator must give written notice of a decision under
15 subsection (2) to the applicant.

16 *Criteria for approval*

- 17 (4) The Regulator must approve the deposit of the relevant
18 biodiversity certificate with the Regulator unless the Regulator is
19 satisfied that:
20 (a) it would be inappropriate to approve the deposit of the
21 relevant biodiversity certificate with the Regulator; or
22 (b) both:
23 (i) another biodiversity certificate in respect of a registered
24 biodiversity project has previously been relinquished
25 under section 152; and
26 (ii) the relevant biodiversity certificate is in respect of that
27 registered biodiversity project.

EXPOSURE DRAFT

Part 12 Deposit of biodiversity certificates with the Regulator

Section 142

142 Deposit of a biodiversity certificate with the Regulator

- 1
- 2 (1) If the Regulator approves the deposit of a biodiversity certificate
- 3 with the Regulator:
- 4 (a) the Regulator must transfer the certificate, in accordance with
- 5 rules made for the purposes of section 167, from the Register
- 6 account in which there is an entry for the certificate to a
- 7 Commonwealth Register account; and
- 8 (b) the certificate must not be transferred from the
- 9 Commonwealth Register account to another Register
- 10 account; and
- 11 (c) while an entry for the certificate is in the Commonwealth
- 12 Register account, the certificate is taken, for the purposes of
- 13 this Act, to be *deposited with the Regulator*; and
- 14 (d) subject to section 152 (relinquishment), while an entry for the
- 15 certificate is in the Commonwealth Register account:
- 16 (i) the certificate remains in force; and
- 17 (ii) the person who applied for the approval must be
- 18 recorded in the Register as the holder of the certificate;
- 19 and
- 20 (iii) the certificate cannot be transmitted or otherwise dealt
- 21 with; and
- 22 (e) the Regulator must remove the entry for the certificate from
- 23 the Commonwealth Register account at whichever is the
- 24 earlier of the following times:
- 25 (i) when the Regulator is required by section 77
- 26 (cancellation) to remove the entry;
- 27 (ii) when the Regulator is required by section 152
- 28 (relinquishment) to remove the entry.
- 29 Note: Section 73 provides that the holder of a biodiversity certificate is the
- 30 legal owner of the certificate.
- 31 (2) The Register must set out a record of each transfer under
- 32 paragraph (1)(a).

EXPOSURE DRAFT

Relinquishment requirements **Part 13**

Introduction **Division 1**

Section 143

1 **Part 13—Relinquishment requirements**

2 **Division 1—Introduction**

3 **143 Simplified outline of this Part**

4 A biodiversity certificate may be required to be relinquished if:

- 5 (a) the certificate was issued as a result of false or
6 misleading information; or
7 (b) the registration of the biodiversity project for which the
8 certificate was issued is cancelled; or
9 (c) there is a significant reversal of a biodiversity outcome.

10 A requirement to relinquish a biodiversity certificate may be
11 satisfied by relinquishment of one or more equivalent certificates
12 instead.

13 A civil penalty may apply to a failure to comply with a
14 relinquishment requirement, and a biodiversity maintenance
15 declaration may be made under Part 14.

EXPOSURE DRAFT

Part 13 Relinquishment requirements

Division 2 Relinquishment notices

Section 144

1 **Division 2—Relinquishment notices**

2 **144 Relinquishment notice—false or misleading information**

3 *Scope*

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

- 5 (a) a biodiversity certificate (the *original biodiversity certificate*)
6 has been issued to the person in relation to a biodiversity
7 project (whether or not the person still holds the certificate,
8 and whether or not the certificate remains in effect); and
9 (b) information was given by the person to the Regulator in
10 connection with the project; and
11 (c) the information was:
12 (i) contained in an application under this Act or the rules;
13 or
14 (ii) given in connection with an application under this Act
15 or the rules; or
16 (iii) contained in a biodiversity project report; or
17 (iv) contained in a notification under Division 3 of Part 9;
18 and
19 (d) the information was false or misleading in a material
20 particular; and
21 (e) the issue of the certificate was substantially attributable
22 (whether directly or indirectly) to the false or misleading
23 information.

24 *Relinquishment notice*

25 (2) The Regulator may give a relinquishment notice to the person in
26 relation to the original biodiversity certificate.

27 Note: For review of decisions, see Part 20.

EXPOSURE DRAFT

Relinquishment requirements **Part 13**

Relinquishment notices **Division 2**

Section 145

1 **145 Relinquishment notice—cancellation of registration of**
2 **biodiversity project**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a biodiversity certificate (the *original biodiversity certificate*)
6 has been issued in relation to a biodiversity project (whether
7 or not the certificate remains in effect); and
 - 8 (b) the registration of the project as a registered biodiversity
9 project is cancelled under rules made for the purposes of any
10 of the following provisions:
 - 11 (i) subsection 28(1) (eligibility requirements not met etc.);
 - 12 (ii) subsection 29(1) (project proponent ceases to be a fit
13 and proper person);
 - 14 (iii) subsection 30(1) (project proponent ceases to exist etc.);
 - 15 (iv) subsection 31(1) (false or misleading information);
 - 16 (v) subsection 42(1) (failure of multiple project proponents
17 to nominate a nominee); and
 - 18 (c) the permanence period of the project has not ended.

19 *Relinquishment notice*

- 20 (2) The Regulator may give a relinquishment notice, in relation to the
21 original biodiversity certificate, to any person who was a project
22 proponent of the project immediately before the registration was
23 cancelled as mentioned in paragraph (1)(b).

24 Note: For review of decisions, see Part 20.

25 **146 Relinquishment notice—reversal of biodiversity outcome other**
26 **than due to natural disturbance or conduct etc.**

27 *Scope*

- 28 (1) This section applies if:

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Part 13 Relinquishment requirements

Division 2 Relinquishment notices

Section 147

- 1 (a) a biodiversity certificate (the *original biodiversity certificate*)
2 has been issued in relation to a biodiversity project (whether
3 or not the certificate remains in effect); and
4 (b) subject to rules made for the purposes of section 148, there
5 has been a significant reversal of the biodiversity outcome to
6 which the project relates; and
7 (c) the reversal is not attributable to:
8 (i) natural disturbance; or
9 (ii) reasonable actions taken to reduce the risk of bushfire;
10 or
11 (iii) conduct engaged in by a person (other than the project
12 proponent for the project), where the conduct is not
13 within the reasonable control of the project proponent;
14 and
15 (d) the permanence period of the project has not ended.

16 *Relinquishment notice*

- 17 (2) The Regulator may give a relinquishment notice, in relation to the
18 original biodiversity certificate, to the project proponent.

19 Note 1: For projects with multiple project proponents, see Part 3 (and in
20 particular sections 40 and 43).

21 Note 2: For review of decisions, see Part 20.

22 **147 Relinquishment notice—reversal of biodiversity outcome due to** 23 **natural disturbance or conduct and no mitigation** 24 **happens**

25 *Scope*

- 26 (1) This section applies if:
27 (a) a biodiversity certificate (the *original biodiversity certificate*)
28 has been issued in relation to a biodiversity project (whether
29 or not the certificate remains in effect); and
30 (b) subject to rules made for the purposes of section 148, there
31 has been a significant reversal of the biodiversity outcome to
32 which the project relates; and

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Relinquishment requirements **Part 13**

Relinquishment notices **Division 2**

Section 148

- 1 (c) the reversal is attributable to:
2 (i) natural disturbance; or
3 (ii) conduct engaged in by a person (other than the project
4 proponent for the project), where the conduct is not
5 within the reasonable control of the project proponent;
6 and
7 (d) the Regulator is not satisfied that the project proponent has,
8 within a reasonable period, taken reasonable steps to mitigate
9 the effect of the natural disturbance or conduct, as the case
10 may be, on the project; and
11 (e) the permanence period of the project has not ended.

12 *Relinquishment notice*

- 13 (2) The Regulator may give a relinquishment notice, in relation to the
14 original biodiversity certificate, to the project proponent.

15 Note 1: For projects with multiple project proponents, see Part 3 (and in
16 particular sections 40 and 43).

17 Note 2: For review of decisions, see Part 20.

18 **148 Significant reversals in biodiversity outcomes—relinquishment** 19 **requirements**

- 20 (1) The rules may prescribe circumstances in which, for the purposes
21 of paragraphs 146(1)(b) and 147(1)(b):
22 (a) there is taken to have been a reversal of the biodiversity
23 outcome to which a registered biodiversity project relates;
24 and
25 (b) the reversal is taken to be significant, or not taken to be
26 significant.
27 (2) This section does not limit section 111 (significant reversals in
28 biodiversity outcomes—notification requirements).

29 **149 Form and content of relinquishment notice**

30 A relinquishment notice must:

- 31 (a) be in writing; and
-

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Part 13 Relinquishment requirements

Division 2 Relinquishment notices

Section 149

1

(b) include the information prescribed by the rules.

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Relinquishment requirements **Part 13**
Complying with a relinquishment notice **Division 3**

Section 150

1 **Division 3—Complying with a relinquishment notice**

2 **150 Requirement for compliance with relinquishment notice**

- 3 (1) A relinquishment notice given to a person (the *notice recipient*)
4 under this Part must be complied with under section 151 before the
5 end of 6 months after the notice is given.

6 *Extension of period to comply*

- 7 (2) The Regulator may extend the period mentioned in subsection (1)
8 by a further period of up to 6 months if the Regulator is satisfied
9 that:
10 (a) not doing so would lead to significant hardship for the notice
11 recipient; or
12 (b) the notice recipient cannot relinquish the original biodiversity
13 certificate under paragraph 151(1)(a), and there are no
14 certificates that could be used to comply with
15 paragraph 151(1)(b) reasonably available for the notice
16 recipient to obtain.

17 Note: For review of decisions, see Part 20.

- 18 (3) Only one extension under subsection (2) may be given in respect of
19 any relinquishment notice.
20 (4) The rules may provide for and in relation to:
21 (a) a person applying for the Regulator to grant an extension
22 under subsection (2); and
23 (b) the Regulator considering, and making a decision on, such an
24 application.

25 *Civil penalty*

- 26 (5) A person is liable to a civil penalty if:
27 (a) the person is given a relinquishment notice under this Part;
28 and

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Part 13 Relinquishment requirements

Division 3 Complying with a relinquishment notice

Section 150

- 1 (b) the notice is not complied with before the end of the period
2 mentioned in subsection (1) (subject to any extension under
3 subsection (2)).
- 4 (6) Subsection (5) is a civil penalty provision.
- 5 (7) Despite subsection 82(5) of the Regulatory Powers Act, the
6 pecuniary penalty in relation to a contravention of subsection (5) of
7 this section (whether the person is a body corporate or otherwise)
8 must not be more than the greater of:
9 (a) 2,000 penalty units; and
10 (b) if the court can determine the market value of the
11 biodiversity certificate in relation to which the
12 relinquishment notice was given—twice that market value.
- 13 (8) In determining the pecuniary penalty, the court must take into
14 account:
15 (a) the nature and extent of any harm to the environment that has
16 been, might be or will be caused by the conduct or
17 circumstances that resulted in the relinquishment notice
18 being given; and
19 (b) the nature and extent of any harm to the market for
20 biodiversity certificates that has been, might be or will be
21 caused by:
22 (i) the conduct or circumstances that resulted in the
23 relinquishment notice being given; or
24 (ii) the failure to comply with the relinquishment notice.
- 25 (9) Subsection (8) does not limit subsection 82(6) of the Regulatory
26 Powers Act.
- 27 (10) To avoid doubt, a person may be liable to pay a pecuniary penalty
28 for a contravention of subsection (5) even if:
29 (a) the person is not the holder of any biodiversity certificates; or
30 (b) the person is not the holder of the biodiversity certificate in
31 relation to which the relinquishment notice was given; or
32 (c) the biodiversity certificate in relation to which the
33 relinquishment notice was given is no longer in effect; or

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Relinquishment requirements **Part 13**
Complying with a relinquishment notice **Division 3**

Section 151

- 1 (d) the person is not the holder of one or more biodiversity
2 certificates that, if relinquished under section 152 in relation
3 to the relinquishment notice, would result in the
4 relinquishment notice being complied with under
5 paragraph 151(1)(b); or
6 (e) no biodiversity certificates exist that, if relinquished under
7 section 152 in relation to the relinquishment notice, would
8 result in the relinquishment notice being complied with under
9 paragraph 151(1)(b).
- 10 (11) Section 93 (continuing contraventions) of the Regulatory Powers
11 Act does not apply to subsection (5) of this section.

12 **151 Compliance with relinquishment requirement—relinquishing** 13 **equivalent biodiversity certificate or certificates**

- 14 (1) A relinquishment notice that relates to a biodiversity certificate
15 (the *original biodiversity certificate*) is complied with if:
16 (a) the original biodiversity certificate is relinquished, in relation
17 to the notice, in accordance with section 152; or
18 (b) both of the following apply:
19 (i) one or more other biodiversity certificates (*relinquished*
20 *certificates*) are relinquished, in relation to the notice, in
21 accordance with section 152;
22 (ii) the relinquished certificate or certificates meet the
23 relinquishment equivalence requirements in relation to
24 the original biodiversity certificate.
- 25 Note: The certificate or certificates may be relinquished by the person who
26 was given the relinquishment notice, or by another person.
- 27 (2) The rules may prescribe the circumstances in which:
28 (a) a biodiversity certificate meets the *relinquishment*
29 *equivalence requirements* in relation to another biodiversity
30 certificate; or
31 (b) 2 or more biodiversity certificates together meet the
32 *relinquishment equivalence requirements* in relation to
33 another biodiversity certificate.

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Part 13 Relinquishment requirements

Division 3 Complying with a relinquishment notice

Section 152

1 **152 How biodiversity certificates are relinquished**

- 2 (1) If a person is the holder of a biodiversity certificate, the person
3 may, by electronic notice transmitted to the Regulator, relinquish
4 the certificate.
- 5 (2) A notice under subsection (1) must:
- 6 (a) specify the biodiversity certificate that is being relinquished;
7 and
- 8 (b) if the certificate is being relinquished in order to comply with
9 a relinquishment notice given under section 144, 145, 146 or
10 147—identify the relinquishment notice in relation to which
11 the certificate is being relinquished; and
- 12 (c) if the certificate is being voluntarily relinquished in order to
13 satisfy a condition for cancellation of the registration of a
14 biodiversity project under section 23 (voluntary cancellation
15 of registration where certificate is in effect)—identify the
16 registered biodiversity project in relation to which the
17 certificate is being relinquished; and
- 18 (d) if the certificate is being voluntarily relinquished for the
19 purposes of paragraph 158(1)(c) (revocation of a biodiversity
20 maintenance declaration)—identify the biodiversity
21 maintenance declaration in relation to which the certificate is
22 being relinquished; and
- 23 (e) if there is an entry for the certificate in the person's Register
24 account—specify the account number of that account; and
- 25 (f) if the certificate is deposited with the Regulator—include a
26 statement to the effect that the certificate is deposited with
27 the Regulator; and
- 28 (g) include any other information prescribed by the rules.
- 29 (3) If a person relinquishes a biodiversity certificate under this section,
30 then:
- 31 (a) in a case where the biodiversity certificate is not deposited
32 with the Regulator:
- 33 (i) the biodiversity certificate is cancelled; and

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Relinquishment requirements **Part 13**
Complying with a relinquishment notice **Division 3**

Section 152

- 1 (ii) the Regulator must remove the entry for the certificate
2 from the person's Register account in which there is an
3 entry for the certificate; or
4 (b) in a case where the biodiversity certificate is deposited with
5 the Regulator:
6 (i) the biodiversity certificate is cancelled; and
7 (ii) the Regulator must remove the entry for the certificate
8 from the Commonwealth Register account in which
9 there is an entry for the certificate.
- 10 Note: A biodiversity certificate that is cancelled under subsection (3) may
11 have originally been issued for a biodiversity project that remains a
12 registered biodiversity project (this may occur, for example, if the
13 cancelled certificate was relinquished in accordance with
14 paragraph 151(1)(b) to comply with a relinquishment notice issued for
15 a different project).
- 16 In such a case, the cancellation of the certificate does not affect the
17 registration of the biodiversity project to which the certificate relates,
18 and the obligations of the project proponent in relation to that project
19 may continue to apply.
- 20 (4) To avoid doubt, the relinquishment of a particular biodiversity
21 certificate is effective for only one purpose mentioned in
22 paragraph (2)(b), (c) or (d).
- 23 (5) The Register must set out a record of each notice under
24 subsection (1).

EXPOSURE DRAFT

Part 14 Biodiversity maintenance declarations

Division 1 Introduction

Section 153

1 **Part 14—Biodiversity maintenance declarations**

2 **Division 1—Introduction**

3 **153 Simplified outline of this Part**

4 If a relinquishment requirement under Part 13 that relates to a
5 biodiversity project is not complied with, the Regulator may
6 declare a biodiversity maintenance area.

7 The declaration may prohibit specified activities in the area. A civil
8 penalty may apply to a person who contravenes a prohibition in a
9 biodiversity maintenance declaration.

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1 **Division 2—Biodiversity maintenance declarations**

2 **154 Biodiversity maintenance declaration**

3 *Declaration*

4 (1) The Regulator may, by legislative instrument, declare that a
5 specified area is a *biodiversity maintenance area* if:

6 (a) the biodiversity maintenance area is, or has been, the project
7 area, or part of the project area, of a biodiversity project (the
8 *maintained project*); and

9 (b) the maintained project is, or has been, a registered
10 biodiversity project; and

11 (c) a biodiversity certificate (the *original biodiversity certificate*)
12 has been issued in relation to the maintained biodiversity
13 project (whether or not the certificate remains in effect); and

14 (d) any of the following apply:

15 (i) a relinquishment notice has been given in relation to the
16 original biodiversity certificate, and the notice was not
17 complied with in accordance with section 150;

18 (ii) a relinquishment notice has been given in relation to the
19 original biodiversity certificate, and the Regulator is
20 satisfied that it is likely that the notice will not be
21 complied with in accordance with section 150;

22 (iii) the Regulator is satisfied that a relinquishment notice is
23 likely to be given in relation to the original biodiversity
24 certificate, and that it is likely that the notice, if given,
25 would not be complied with in accordance with
26 section 150;

27 (iv) the Regulator is satisfied that it would be appropriate to
28 give a relinquishment notice in relation to the original
29 biodiversity certificate, but the notice cannot be given
30 because the person to whom the Regulator would give
31 the notice cannot be located or no longer exists, or for
32 some other reason.

EXPOSURE DRAFT

Part 14 Biodiversity maintenance declarations

Division 2 Biodiversity maintenance declarations

Section 154

- 1 (2) A declaration under subsection (1) is a ***biodiversity maintenance***
2 ***declaration***.
- 3 (3) The biodiversity maintenance area specified in a biodiversity
4 maintenance declaration may consist of:
5 (a) a single area; or
6 (b) multiple areas, which need not be continuous.
- 7 *Declared prohibited activities*
- 8 (4) A biodiversity maintenance declaration may specify one or more
9 activities that are ***declared prohibited activities*** in relation to the
10 biodiversity maintenance area.
- 11 (5) Without limiting subsection (4), an activity may be specified under
12 that subsection by reference to:
13 (a) the area or areas (which must be, or fall within, the
14 biodiversity maintenance area) on or in which the activity
15 must not be carried out; or
16 (b) a manner or manners in which the activity must not be
17 carried out; or
18 (c) the time or times at which the activity must not be carried
19 out; or
20 (d) the period or periods during which the activity must not be
21 carried out; or
22 (e) the person or persons who must not carry out the activity.
- 23 *Notice of declaration*
- 24 (6) If the Regulator makes a biodiversity maintenance declaration
25 under subsection (1), the Regulator must take all reasonable steps
26 to ensure that notice of the making of the declaration is given to:
27 (a) the project proponent for the maintained project; and
28 (b) if the project is wholly or partly land-based—the relevant
29 land registration official; and
30 (c) any other person specified in the rules.

EXPOSURE DRAFT

- 1 (7) A failure to comply with subsection (6) does not affect the validity
2 of a biodiversity maintenance declaration.

3 **155 Civil penalty for carrying out declared prohibited activity**

4 A person must not carry out an activity in a biodiversity
5 maintenance area if the activity is a declared prohibited activity in
6 relation to the biodiversity maintenance area.

7 Civil penalty: 2,000 penalty units.

8 **156 When a biodiversity maintenance declaration ceases to be in**
9 **force**

10 Unless sooner revoked, a biodiversity maintenance declaration
11 ceases to be in force at the earlier of the following times:

- 12 (a) the end of the permanence period for the maintained project;
13 (b) if a civil penalty order is made under Part 4 of the Regulatory
14 Powers Act, as that Part applies in relation to
15 subsection 150(5) of this Act, that relates to a relinquishment
16 notice given in respect of the biodiversity certificate issued in
17 respect of the maintained project—the time the penalty is
18 paid in full to the Commonwealth.

19 **157 Variation or revocation of biodiversity maintenance declaration**

20 *Scope*

- 21 (1) This section applies if a biodiversity maintenance declaration is in
22 force in relation to an area or areas.

23 *Variation or revocation*

- 24 (2) The Regulator may, by legislative instrument, vary or revoke the
25 declaration.
- 26 (3) The Regulator may do so:
27 (a) on the Regulator's own initiative; or
28 (b) on application made to the Regulator by a person.

EXPOSURE DRAFT

Part 14 Biodiversity maintenance declarations

Division 2 Biodiversity maintenance declarations

Section 158

1

Application

2

(4) An application under paragraph (3)(b) must:

3

(a) be in writing; and

4

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

5

(c) be accompanied by the fee (if any) specified in the rules.

6

(5) A fee specified under paragraph (4)(c) must not be such as to amount to taxation.

7

8

Notification of variation or revocation

9

(6) If the Regulator varies or revokes the declaration, the Regulator must take all reasonable steps to ensure that notice of the variation or revocation is given to:

10

11

12

(a) the project proponent for the maintained project; and

13

(b) if the project is wholly or partly land-based—the relevant land registration official; and

14

15

(c) any other person specified in the rules.

16

(7) A failure to comply with subsection (6) does not affect the validity of a variation or revocation.

17

18

Refusal

19

(8) If the Regulator decides to refuse to vary or revoke the declaration on an application under paragraph (3)(b), the Regulator must give written notice of the decision to the applicant.

20

21

22

158 Revocation of biodiversity maintenance declaration—voluntary relinquishment of biodiversity certificate

23

24

Scope

25

(1) This section applies if:

26

(a) a biodiversity maintenance declaration is in force; and

27

(b) a person applies to the Regulator for the revocation of the biodiversity maintenance declaration; and

28

EXPOSURE DRAFT

- 1 (c) before the application was made, the applicant or another
2 person voluntarily relinquished, in accordance with
3 section 152 and in relation to the biodiversity maintenance
4 declaration:
5 (i) the biodiversity certificate for the maintained project; or
6 (ii) one or more other biodiversity certificates that meet the
7 relinquishment equivalence requirements in relation to
8 the biodiversity certificate for the maintained project.

9 Note: For when one or more biodiversity certificates meet the
10 **relinquishment equivalence requirements** in relation to another
11 biodiversity certificate, see rules made for the purposes of
12 subsection 151(2).

13 *Revocation*

- 14 (2) The Regulator must, by legislative instrument, revoke the
15 declaration.

16 *Application*

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

20 *Notification of revocation*

- 21 (4) If the Regulator revokes the declaration, the Regulator must take
22 all reasonable steps to ensure that notice of the revocation is given
23 to:
24 (a) the project proponent for the maintained project; and
25 (b) if the project is wholly or partly land-based—the relevant
26 land registration official; and
27 (c) any other person specified in the rules.
28 (5) A failure to comply with subsection (4) does not affect the validity
29 of a revocation.

EXPOSURE DRAFT

Part 14 Biodiversity maintenance declarations

Division 2 Biodiversity maintenance declarations

Section 159

1

Refusal

2

(6) If the Regulator decides to refuse to revoke the declaration, the

3

Regulator must give written notice of the decision to the applicant.

4

159 Delegation by the Regulator

5

(1) The Regulator may, by writing, delegate a power to make, vary or
revoke a biodiversity maintenance declaration to a member of the
Regulator.

6

7

8

Note 1: Under subsection 35(3) of the *Clean Energy Regulator Act 2011*, the
Regulator's general power of delegation does not apply to a power to
make, vary or revoke a legislative instrument.

9

10

11

Note 2: For members of the Regulator, see section 17 of the *Clean Energy
Regulator Act 2011*.

12

13

(2) A delegate must comply with any written directions of the
Regulator.

14

EXPOSURE DRAFT

Registers **Part 15**
Introduction **Division 1**

Section 160

1 **Part 15—Registers**

2 **Division 1—Introduction**

3 **160 Simplified outline of this Part**

4 The Biodiversity Market Register holds entries for each registered
5 biodiversity project and each biodiversity certificate. The
6 Regulator must keep the Register in accordance with the rules.

7 The rules may also provide for an online platform, to facilitate
8 trading in biodiversity certificates and for other purposes.

EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 161

1 **Division 2—Biodiversity Market Register**

2 **161 Biodiversity Market Register**

- 3 (1) The Regulator must keep a register, to be known as the
4 Biodiversity Market Register.

5 Note: In this Act, the Biodiversity Market Register is known as the Register
6 (see the definition of *Register* in section 7).

- 7 (2) The Register is to be maintained by electronic means.

- 8 (3) The Register is to be made available for inspection on the
9 Regulator’s website.

- 10 (4) The Regulator must ensure that the Register is up to date.

11 **162 Entries in the Register—registered biodiversity projects and**
12 **former registered biodiversity projects**

- 13 (1) The Register must set out, for each registered biodiversity project:
14 (a) the name of the project; and
15 (b) a description, in accordance with the rules, of the project area
16 for the project; and
17 (c) a description of the project, including such details (if any) as
18 are prescribed by the rules; and
19 (d) the project proponent or project proponents for the project;
20 and
21 (e) the methodology determination that covers the project; and
22 (f) whether the registration of the project is subject to a
23 condition under section 17 (conditions about obtaining
24 regulatory approvals); and
25 (g) whether the registration of the project is subject to a
26 condition under section 18 (conditions about obtaining
27 consent from eligible interest holders); and
28 (h) if:
29 (i) the project proponent has requested the Regulator that
30 the Register contain particular information about the
-

EXPOSURE DRAFT

- 1 extent to which the project area, or any part of the
2 project area, is also an area on or in which a registered
3 project under a related scheme has been, is being, or is
4 to be, carried out; and
- 5 (ii) the request has not been withdrawn; and
- 6 (iii) the Regulator is satisfied that the requested information
7 meets the requirements specified in the rules;
8 the requested information; and
- 9 (i) if a project plan is required by the methodology
10 determination that covers the project—such information (if
11 any) about the project plan as is prescribed by the rules; and
- 12 (j) such other information (if any) as is provided for under
13 paragraph 45(1)(c) by the methodology determination that
14 covers the project; and
- 15 (k) such other information (if any) as the Regulator considers
16 appropriate; and
- 17 (l) such other information (if any) as is prescribed by the rules.
- 18 (2) Paragraph (1)(b) has effect subject to section 163.
- 19 Note: Section 163 deals with requests for information about a project area
20 not to be set out in the Register.
- 21 (3) A request under subparagraph (1)(h)(i) must:
- 22 (a) be in a form approved, in writing, by the Regulator; and
- 23 (b) be accompanied by such documents (if any) as are specified
24 in the rules.
- 25 (4) If:
- 26 (a) the Register contains information covered by
27 paragraph (1)(h); and
- 28 (b) the Regulator becomes aware that the information has ceased
29 to be correct;
- 30 the Regulator may remove the information from the Register.
- 31 *Former registered biodiversity projects*
- 32 (5) The rules may provide for the Register to set out prescribed
33 information for biodiversity projects that have been, but have
-

EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 163

1 ceased to be, registered biodiversity projects (including such
2 projects that are no longer being carried on).

3 **163 Requests for information about project area not to be set out in** 4 **the Register**

5 (1) The Register must not set out a project area, or a part of a project
6 area, for a registered biodiversity project if:

7 (a) either:

8 (i) the project proponent for the project; or

9 (ii) another person;

10 has requested the Regulator not to set out the project area, or
11 the part of the project area, as the case may be, in the
12 Register; and

13 (b) the Regulator is satisfied that:

14 (i) setting out the project area, or the part of the project
15 area, as the case may be, could reasonably be expected
16 to substantially prejudice a matter referred to in
17 subsection (2); and

18 (ii) the prejudice outweighs the public interest in the setting
19 out of the project area, or the part of the project area, as
20 the case may be.

21 (2) For the purposes of subparagraph (1)(b)(i), the matters are the
22 following:

23 (a) the commercial interests of the project proponent for the
24 project or another person;

25 (b) the biodiversity of the project area, or the part of the project
26 area, as the case may be;

27 (c) the safety of any person.

28 (3) The Register must not set out a project area, or a part of a project
29 area, for a registered biodiversity project if:

30 (a) either:

31 (i) the project proponent for the project; or

32 (ii) another person;

EXPOSURE DRAFT

- 1 has requested the Regulator not to set out the project area, or
2 the part of the project area, as the case may be, in the
3 Register; and
- 4 (b) the Regulator is satisfied that:
- 5 (i) there is a local community of Aboriginal persons, or
6 Torres Strait Islanders, who have a connection to the
7 project area, or the part of the project area, as the case
8 may be; and
- 9 (ii) setting out the project area, or the part of the project
10 area, as the case may be, could reasonably be expected
11 to have a material adverse impact on that community;
12 and
- 13 (iii) the adverse impact outweighs the public interest in the
14 setting out of the project area, or the part of the project
15 area, as the case may be.
- 16 (4) A request under subsection (1) or (3) must:
- 17 (a) be in writing; and
18 (b) be in a form approved, in writing, by the Regulator.
- 19 (5) The Regulator must take all reasonable steps to ensure that a
20 decision is made on the request within 30 days after the request
21 was made.
- 22 (6) If the Regulator decides to refuse the request, the Regulator must
23 give written notice of the decision to the project proponent.

24 **164 Entries in the Register—biodiversity certificates**

- 25 (1) The Register must set out, for each biodiversity certificate that is in
26 effect:
- 27 (a) the biodiversity project to which the certificate relates; and
28 (b) the date of issue of the certificate; and
29 (c) the holder of the certificate; and
30 (d) such other information (if any) as is provided for under
31 paragraph 45(1)(g) by the methodology determination that
32 covers the project; and
33 (e) such other information (if any) as is prescribed by the rules.
-

EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 165

- 1 (2) The Register must set out, for each biodiversity certificate that has
2 been in effect, but has ceased to be in effect:
3 (a) the biodiversity project to which the certificate related; and
4 (b) the date of issue of the certificate; and
5 (c) such other information (if any) as is provided for under
6 paragraph 45(1)(g) by the methodology determination that
7 covers the project; and
8 (d) such other information (if any) as is prescribed by the rules.

9 **165 Entries in the Register—accounts for holding biodiversity** 10 **certificates**

11 The rules may make provision for and in relation to empowering
12 the Regulator to open accounts in the Register to hold biodiversity
13 certificates.

14 **166 Suspension of operation of the Register**

- 15 (1) The Regulator may temporarily suspend the operation of the
16 Register if the Regulator is satisfied that:
17 (a) the suspension is required so that maintenance can be carried
18 out; or
19 (b) it is prudent to suspend the operation of the Register in order
20 to:
21 (i) ensure the integrity of the Register; or
22 (ii) prevent, mitigate or minimise abuse of the Register; or
23 (iii) prevent, mitigate or minimise criminal activity
24 involving the Register.
- 25 (2) If the Regulator suspends the operation of the Register, the
26 Regulator must publish a notice on the Regulator's website
27 informing the public of the suspension.
- 28 (3) If the Regulator suspends the operation of the Register, the
29 Regulator may defer taking action in relation to the Register until
30 the suspension ends.

EXPOSURE DRAFT

1 **167 Rules may make provision in relation to the Register**

- 2 (1) The rules may make provision for and in relation to the Register.
- 3 (2) Without limiting subsection (1), the rules may make provision for
4 or in relation to any of the following:
- 5 (a) matters that are to be recorded in the Register;
 - 6 (b) the manner in which information may be communicated to or
7 by the Regulator in relation to the Register;
 - 8 (c) requests to open, close, transfer or otherwise deal with
9 accounts in the Register (including forms for making
10 requests, information that must accompany a request and the
11 consideration of a request by the Regulator);
 - 12 (d) identification procedures that the Regulator may or must
13 carry out in relation to a record in the Register;
 - 14 (e) joint accounts;
 - 15 (f) accounts to be kept for the Commonwealth;
 - 16 (g) unilateral closure of accounts by the Regulator;
 - 17 (h) the holding of biodiversity certificates in accounts in the
18 Register, and the transfer of certificates between accounts;
 - 19 (i) requiring the holders of accounts to notify the Regulator of
20 specified events;
 - 21 (j) correction or rectification of the Register;
 - 22 (k) verification by statutory declaration of information provided
23 to the Regulator in relation to the Register;
 - 24 (l) fees for things done by the Regulator in relation to the
25 Register.
- 26 (3) A fee provided for by rules made for the purposes of this section
27 must not be such as to amount to taxation.
- 28 (4) A person must not contravene rules made for the purposes of
29 paragraph (2)(i).
- 30 Civil penalty: 200 penalty units.

EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 168

1 **168 Use and disclosure of information obtained from the Register**

2 *Use*

- 3 (1) The rules may provide that a person must not use information to
4 contact or send material to another person if that information:
5 (a) is about the other person; and
6 (b) was obtained from the Register.

7 *Disclosure*

- 8 (2) The rules may provide that a person (the *first person*) must not
9 disclose information that:
10 (a) is about another person; and
11 (b) was obtained from the Register; and
12 (c) the first person knows is likely to be used to contact or send
13 material to the other person.
- 14 (3) A person must not contravene rules made for the purposes of
15 subsection (1) or (2).

16 Civil penalty: 200 penalty units.

17 *Exception*

- 18 (4) Subsection (3) does not apply in circumstances specified by the
19 rules.

20 Note: A person who wishes to rely on subsection (4) in proceedings for a
21 civil penalty order bears an evidential burden in relation to the matter
22 in that subsection: see section 96 of the Regulatory Powers Act.

1 **Division 3—Online platform**

2 **169 Online Platform**

- 3 (1) The rules may make provision for and in relation to empowering
4 the Regulator to maintain an online platform for any of the
5 following purposes:
- 6 (a) facilitating the trading of any of the following:
 - 7 (i) biodiversity certificates;
 - 8 (ii) other certificates, units or credits (however described,
9 and whether issued under a law of the Commonwealth,
10 a State or a Territory, or in some other way) that relate
11 to biodiversity projects;
 - 12 (b) facilitating arrangements between project proponents, or
13 prospective project proponents, of registered biodiversity
14 projects and prospective purchasers of biodiversity
15 certificates;
 - 16 (c) facilitating arrangements relating to biodiversity projects that
17 are not, and are not intended to be, registered under this Act;
 - 18 (d) any other purpose incidental or related to any of the above.
- 19 (2) The rules must not require a person to use the online platform in
20 order to:
- 21 (a) be the project proponent of a registered biodiversity project;
22 or
 - 23 (b) be issued with, hold or deal with a biodiversity certificate; or
 - 24 (c) otherwise receive the benefit of any other provision of this
25 Act.

EXPOSURE DRAFT

Part 16 Publication of information

Division 1 Introduction

Section 170

1 **Part 16—Publication of information**

2 **Division 1—Introduction**

3 **170 Simplified outline of this Part**

4
5
6

This Part allows or requires the Regulator and the Secretary to publish certain information about biodiversity certificates, registered biodiversity projects and the operation of this Act.

EXPOSURE DRAFT

1 **Division 2—Information about biodiversity certificates**

2 **171 Information about biodiversity certificates**

- 3 (1) As soon as practicable after a biodiversity certificate is issued to a
4 person, the Regulator must publish on the Regulator’s website:
5 (a) the name of the person; and
6 (b) such other information relating to the certificate as is
7 prescribed by the rules.
- 8 (2) As soon as practicable after a variation of a biodiversity certificate
9 is made, the Regulator must publish on the Regulator’s website:
10 (a) the name of the holder of the certificate; and
11 (b) such other information relating to the certificate or the
12 variation as is prescribed by the rules.
- 13 (3) As soon as practicable after a biodiversity certificate is transferred
14 from one account in the Register to another account in the Register,
15 the Regulator must publish on the Regulator’s website:
16 (a) the name of the holder of each of those accounts; and
17 (b) such other information relating to the certificate or the
18 transfer as is prescribed by the rules.

19 **172 Reports about activities of Regulator**

- 20 (1) As soon as practicable after the end of a financial year, the
21 Regulator must publish on the Regulator’s website a report about
22 the activities of the Regulator under this Act during the financial
23 year.
- 24 (2) The report must deal with any matters prescribed by the rules.

25 **173 Publication of concise description of the characteristics of**
26 **biodiversity certificates**

27 The Regulator must:

EXPOSURE DRAFT

Part 16 Publication of information

Division 2 Information about biodiversity certificates

Section 173

- 1 (a) publish on the Regulator’s website a statement setting out a
2 concise description of the characteristics of biodiversity
3 certificates; and
4 (b) keep that statement up to date.

EXPOSURE DRAFT

1 **Division 3—Information about biodiversity certificates**
2 **purchased by the Commonwealth**

3 **174 Information about biodiversity conservation purchasing**
4 **processes**

5 After the Secretary conducts a biodiversity conservation
6 purchasing process, the Secretary may publish on the Department’s
7 website the following information:

- 8 (a) when the process was conducted;
9 (b) the total amount that the Commonwealth agreed to pay by
10 way of purchasing biodiversity certificates through the
11 process (whether or not those payments have been made);
12 (c) such other summary information (if any) relating to the
13 process as the Secretary considers appropriate;
14 (d) such other statistics (if any) relating to the process as the
15 Secretary considers appropriate.

16 **175 Annual reports about purchases of biodiversity certificates**

17 The Secretary may publish on the Department’s website a report,
18 in relation to a financial year, on the following matters:

- 19 (a) the total number of biodiversity certificates that the
20 Commonwealth has purchased, or has agreed to purchase,
21 under biodiversity conservation contracts entered into during
22 the financial year;
23 (b) the total amount that the Commonwealth will be liable to
24 pay, or has paid, under biodiversity conservation contracts
25 entered into during the financial year;
26 (c) the total number of biodiversity certificates that were
27 transferred to the Commonwealth during the financial year as
28 a result of biodiversity conservation contracts (including such
29 contracts entered into before the financial year);
30 (d) the total amount that the Commonwealth paid during the
31 financial year under biodiversity conservation contracts

EXPOSURE DRAFT

Part 16 Publication of information

Division 3 Information about biodiversity certificates purchased by the Commonwealth

Section 175

- 1 (including such contracts entered into before the financial
2 year);
- 3 (e) for each biodiversity certificate transferred to the
4 Commonwealth during the financial year as a result of a
5 biodiversity conservation contract (including such a contract
6 entered into before the financial year)—sufficient
7 information to identify the registered biodiversity project in
8 relation to which the certificate was issued;
- 9 (f) such other summary information (if any) relating to the
10 purchase of biodiversity certificates by the Commonwealth
11 under biodiversity conservation contracts as the Secretary
12 considers appropriate;
- 13 (g) such other statistics (if any) relating to the purchase of
14 biodiversity certificates by the Commonwealth under
15 biodiversity conservation contracts as the Secretary considers
16 appropriate.

EXPOSURE DRAFT

1 **Division 4—Information about relinquishment**
2 **requirements**

3 **176 Information about relinquishment requirements**

4 *Scope*

- 5 (1) This section applies if the Regulator gives a person a
6 relinquishment notice under Part 13.

7 *Relinquishment requirement*

- 8 (2) As soon as practicable after giving the relinquishment notice, the
9 Regulator must publish on the Regulator’s website:
10 (a) the name of the person; and
11 (b) details of the relinquishment requirement.
- 12 (3) If any of the following paragraphs applies:
13 (a) the decision to require the person to relinquish one or more
14 biodiversity certificates is being reconsidered by the
15 Regulator under section 215;
16 (b) the decision to require the person to relinquish one or more
17 biodiversity certificates has been affirmed or varied by the
18 Regulator under section 215, and the decision as so affirmed
19 or varied is the subject of an application for review by the
20 Administrative Appeals Tribunal;
21 (c) the decision to require the person to relinquish one or more
22 biodiversity certificates is the subject of an application for
23 review by the Administrative Appeals Tribunal;
24 the Regulator must:
25 (d) publish an appropriate annotation on the Regulator’s website;
26 and
27 (e) if paragraph (a) applies—when the Regulator notifies the
28 applicant for reconsideration of the Regulator’s decision on
29 the reconsideration, the Regulator must publish an
30 appropriate annotation on the Regulator’s website; and

EXPOSURE DRAFT

Part 16 Publication of information

Division 4 Information about relinquishment requirements

Section 177

- 1 (f) if paragraph (b) or (c) applies—when the review by the
2 Administrative Appeals Tribunal (including any court
3 proceedings arising out of the review) has been finalised, the
4 Regulator must publish an appropriate annotation on the
5 Regulator’s website.

6 **177 Information about relinquished certificates**

7 *Scope*

- 8 (1) This section applies if:
9 (a) the Regulator gives a person a relinquishment notice; and
10 (b) one or more biodiversity certificates are relinquished under
11 section 152 in order to comply with the relinquishment
12 notice.

13 *Biodiversity certificates relinquished*

- 14 (2) As soon as practicable after receiving the notice under section 152
15 relinquishing the biodiversity certificate or certificates, the
16 Regulator must publish on the Regulator’s website:
17 (a) the name of the person; and
18 (b) such information in relation to the biodiversity certificate or
19 certificates as the Regulator thinks appropriate.

EXPOSURE DRAFT

Record-keeping and project monitoring requirements **Part 17**

Introduction **Division 1**

Section 178

1 **Part 17—Record-keeping and project monitoring**
2 **requirements**

3 **Division 1—Introduction**

4 **178 Simplified outline of this Part**

5 The rules may require a person to:

- 6 (a) make a record of information; and
7 (b) retain the record.

8 A person is subject to record-keeping requirements in relation to
9 the preparation of a biodiversity project report.

10 A project proponent must comply with record-keeping and project
11 monitoring requirements imposed by a methodology
12 determination.

EXPOSURE DRAFT

Part 17 Record-keeping and project monitoring requirements

Division 2 Record-keeping requirements

Section 179

1 **Division 2—Record-keeping requirements**

2 **179 Record-keeping requirements—general**

- 3 (1) The rules may require a person to:
- 4 (a) make a record of specified information, where the
- 5 information is relevant to this Act; and
- 6 (b) retain:
- 7 (i) the record; or
- 8 (ii) a copy of the record;
- 9 for 7 years after the making of the record.

- 10 (2) If a person is subject to a requirement under rules made for the
- 11 purposes of subsection (1), the person must comply with that
- 12 requirement.

13 Civil penalty: 200 penalty units.

14 *Other provisions do not limit this section*

- 15 (3) This section is not limited by any other provision of this Act that
- 16 relates to the keeping or retention of records.

17 **180 Record-keeping requirements—preparation of biodiversity**

18 **project report**

19 *Scope*

- 20 (1) This section applies if a person:
- 21 (a) made a record of particular information; and
- 22 (b) used the information to prepare a biodiversity project report.

23 *Record-keeping requirements*

- 24 (2) The rules may require the person to retain:
- 25 (a) the record; or
- 26 (b) a copy of the record;

EXPOSURE DRAFT

Record-keeping and project monitoring requirements **Part 17**
Record-keeping requirements **Division 2**

Section 181

1 for 7 years after the biodiversity project report was given to the
2 Regulator.

3 (3) If a person is subject to a requirement under rules made for the
4 purposes of subsection (2), the person must comply with that
5 requirement.

6 Civil penalty: 200 penalty units.

7 **181 Record-keeping requirements—methodology determinations**

8 *Scope*

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

10 (a) the person is the project proponent for a registered
11 biodiversity project; and

12 (b) under the methodology determination that covers the project,
13 the person is subject to a record-keeping requirement relating
14 to the project.

15 *Record-keeping requirement*

16 (2) The person must comply with the requirement.

17 Civil penalty: 200 penalty units.

EXPOSURE DRAFT

Part 17 Record-keeping and project monitoring requirements

Division 3 Project monitoring requirements

Section 182

1 **Division 3—Project monitoring requirements**

2 **182 Project monitoring requirements—methodology determinations**

3 *Scope*

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

5 (a) the person is the project proponent for a registered
6 biodiversity project; and

7 (b) under the methodology determination that covers the project,
8 the person is subject to a requirement to monitor the project.

9 *Project monitoring requirement*

10 (2) The person must comply with the requirement.

11 Civil penalty: 200 penalty units.

1 **Part 18—Enforcement**

2 **Division 1—Introduction**

3 **183 Simplified outline of this Part**

4 Certain provisions are subject to monitoring under Part 2 of the
5 Regulatory Powers Act.

6 Certain provisions are subject to investigation under Part 3 of the
7 Regulatory Powers Act.

8 Civil penalty orders may be sought under Part 4 of the Regulatory
9 Powers Act from a relevant court in relation to contraventions of
10 civil penalty provisions.

11 Infringement notices may be given under Part 5 of the Regulatory
12 Powers Act for alleged contraventions of civil penalty provisions.

13 Undertakings to comply with certain provisions may be accepted
14 and enforced under Part 6 of the Regulatory Powers Act.

15 Injunctions under Part 7 of the Regulatory Powers Act may be used
16 to restrain a person from contravening section 155 of this Act (civil
17 penalty for carrying out declared prohibited activity) or to compel
18 compliance with that section.

19 **184 Appointment of inspectors**

- 20 (1) The Chair of the Regulator may, in writing, appoint a person who
21 is one of the following as an inspector for the purposes of this Act:
- 22 (a) a person who is:
 - 23 (i) a member of the staff of the Regulator; and
 - 24 (ii) an SES employee or acting SES employee;
 - 25 (b) a person who is:

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Division 1 Introduction

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- 1 (i) a member of the staff of the Regulator; and
2 (ii) an APS employee who holds or performs the duties of
3 an Executive Level 1 or 2 position or an equivalent
4 position;
5 (c) a member or special member of the Australian Federal
6 Police.
- 7 Note: The expressions *APS employee*, *SES employee* and *acting SES*
8 *employee* are defined in section 2B of the *Acts Interpretation Act*
9 *1901*.
- 10 (2) The Chair must not appoint a person as an inspector unless the
11 Chair is satisfied that the person has the knowledge or experience
12 necessary to properly exercise the powers of an inspector.
- 13 (3) An inspector must, in exercising powers as such, comply with any
14 directions of the Chair.
- 15 (4) If a direction is given under subsection (3) in writing, the direction
16 is not a legislative instrument.

1 **Division 2—Monitoring powers**

2 **185 Monitoring powers**

3 *Provisions subject to monitoring*

4 (1) The following provisions are subject to monitoring under Part 2 of
5 the Regulatory Powers Act:

6 (a) each provision of this Act or a legislative instrument made
7 under this Act;

8 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*
9 *Code*, to the extent that it relates to one or more of the
10 provisions mentioned in paragraph (a).

11 Note: Part 2 of the Regulatory Powers Act creates a framework for
12 monitoring whether the provisions mentioned in this subsection have
13 been complied with. It includes powers of entry and inspection.

14 *Information subject to monitoring*

15 (2) Information given in compliance or purported compliance with a
16 provision of this Act, the rules or a methodology determination is
17 subject to monitoring under Part 2 of the Regulatory Powers Act.

18 Note: Part 2 of the Regulatory Powers Act creates a framework for
19 monitoring whether the information is correct. It includes powers of
20 entry and inspection.

21 *Related provisions, authorised applicant, authorised person,*
22 *issuing officer, relevant chief executive and relevant court*

23 (3) For the purposes of Part 2 of the Regulatory Powers Act, as that
24 Part applies in relation to the provisions mentioned in
25 subsection (1) and the information mentioned in subsection (2):

26 (a) there are no related provisions; and

27 (b) an inspector is an authorised applicant; and

28 (c) an inspector is an authorised person; and

29 (d) a magistrate is an issuing officer; and

30 (e) the Chair of the Regulator is the relevant chief executive; and

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Section 185

- 1 (f) each of the following is a relevant court:
2 (i) the Federal Court;
3 (ii) a court of a State or Territory that has jurisdiction in
4 relation to matters arising under this Act or the
5 associated provisions.
- 6 (4) The relevant chief executive may, in writing, delegate the powers
7 and functions mentioned in subsection (5) to a person who is:
8 (a) a member of the staff of the Regulator; and
9 (b) an SES employee or acting SES employee.
- 10 Note: The expressions *SES employee* and *acting SES employee* are defined
11 in section 2B of the *Acts Interpretation Act 1901*.
- 12 (5) The powers and functions that may be delegated are:
13 (a) powers and functions under Part 2 of the Regulatory Powers
14 Act in relation to the provisions mentioned in subsection (1)
15 and the information mentioned in subsection (2); and
16 (b) powers and functions under the Regulatory Powers Act that
17 are incidental to a power or function mentioned in
18 paragraph (a).
- 19 (6) A person exercising powers or performing functions under a
20 delegation under subsection (4) must comply with any directions of
21 the relevant chief executive.
- 22 *Person assisting*
- 23 (7) An authorised person may be assisted by other persons in
24 exercising powers or performing functions or duties under Part 2 of
25 the Regulatory Powers Act in relation to the provisions mentioned
26 in subsection (1) and the information mentioned in subsection (2).
- 27 *Extension to external Territories*
- 28 (8) Part 2 of the Regulatory Powers Act, as that Part applies in relation
29 to the provisions mentioned in subsection (1) and the information
30 mentioned in subsection (2), extends to every external Territory.

1 **186 Modifications of Part 2 of the Regulatory Powers Act**

2 *Additional monitoring power*

3 (1) For the purposes of determining:

4 (a) whether a provision mentioned in subsection 185(1) has
5 been, or is being, complied with; or

6 (b) the correctness of information mentioned in
7 subsection 185(2);

8 the additional powers mentioned in subsection (2) of this section
9 are taken to be included in the monitoring powers under Part 2 of
10 the Regulatory Powers Act.

11 (2) The additional monitoring powers are:

12 (a) the power to take samples of any thing on premises entered
13 under Part 2 of the Regulatory Powers Act; and

14 (b) the power to remove, test and analyse such samples; and

15 (c) the power to secure premises entered under Part 2 of the
16 Regulatory Powers Act; and

17 (d) the power to secure things on premises entered under Part 2
18 of the Regulatory Powers Act for the purpose of sampling,
19 testing or analysing those things; and

20 (e) the power to secure a container on premises entered under
21 Part 2 of the Regulatory Powers Act that contains a thing if
22 the inspector reasonably believes that it is not reasonably
23 practicable to secure the thing without also securing the
24 container (whether or not the container contains any other
25 thing).

26 *Use of force in executing a monitoring warrant*

27 (3) In executing a monitoring warrant under Part 2 of the Regulatory
28 Powers Act, as that Part applies in relation to the provisions
29 mentioned in subsection 185(1) and the information mentioned in
30 subsection 185(2) of this Act:

31 (a) an authorised person may use such force against things as is
32 necessary and reasonable in the circumstances; and

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Division 2 Monitoring powers

Section 186

1 (b) a person assisting the authorised person may use such force
2 against things as is necessary and reasonable in the
3 circumstances.

4 *Identity cards*

5 (4) A reference to an identity card in sections 25 and 26 and
6 subsection 35(6) of the Regulatory Powers Act, as those provisions
7 apply in relation to the provisions mentioned in subsection 185(1)
8 of this Act and information mentioned in subsection 185(2) of this
9 Act, is taken to include a reference to written evidence identifying
10 the authorised person as a member or special member of the
11 Australian Federal Police.

12 (5) Subsection 35(1) of the Regulatory Powers Act, as that subsection
13 applies in relation to the provisions mentioned in subsection 185(1)
14 of this Act and information mentioned in subsection 185(2) of this
15 Act, does not require the relevant chief executive to issue an
16 identity card to an authorised person who is a member or special
17 member of the Australian Federal Police.

1 **Division 3—Investigation powers**

2 **187 Investigation powers**

3 *Provisions subject to investigation*

- 4 (1) A provision is subject to investigation under Part 3 of the
5 Regulatory Powers Act if it is:
6 (a) a civil penalty provision of this Act; or
7 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*
8 *Code*, to the extent that it relates to this Act.

9 Note: Part 3 of the Regulatory Powers Act creates a framework for
10 investigating whether a provision has been contravened. It includes
11 powers of entry, search and seizure.

12 *Related provisions, authorised applicant, authorised person,*
13 *issuing officer, relevant chief executive and relevant court*

- 14 (2) For the purposes of Part 3 of the Regulatory Powers Act, as that
15 Part applies in relation to evidential material that relates to a
16 provision mentioned in subsection (1):
17 (a) there are no related provisions; and
18 (b) an inspector is an authorised applicant; and
19 (c) an inspector is an authorised person; and
20 (d) a magistrate is an issuing officer; and
21 (e) the Chair of the Regulator is the relevant chief executive; and
22 (f) each of the following is a relevant court:
23 (i) the Federal Court;
24 (ii) a court of a State or Territory that has jurisdiction in
25 relation to matters arising under this Act or the
26 associated provisions.
- 27 (3) The relevant chief executive may, in writing, delegate the powers
28 and functions mentioned in subsection (4) to a person who is:
29 (a) a member of the staff of the Regulator; and
30 (b) an SES employee or acting SES employee.

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Part 18 Enforcement

Division 3 Investigation powers

Section 188

1 Note: The expressions *SES employee* and *acting SES employee* are defined
2 in section 2B of the *Acts Interpretation Act 1901*.

- 3 (4) The powers and functions that may be delegated are:
- 4 (a) powers and functions under Part 3 of the Regulatory Powers
5 Act in relation to evidential material that relates to a
6 provision mentioned in subsection (1); and
- 7 (b) powers and functions under the Regulatory Powers Act that
8 are incidental to a power or function mentioned in
9 paragraph (a).
- 10 (5) A person exercising powers or performing functions under a
11 delegation under subsection (3) must comply with any directions of
12 the relevant chief executive.

13 *Person assisting*

- 14 (6) An authorised person may be assisted by other persons in
15 exercising powers or performing functions or duties under Part 3 of
16 the Regulatory Powers Act in relation to evidential material that
17 relates to a provision mentioned in subsection (1).

18 *Extension to external Territories*

- 19 (7) Part 3 of the Regulatory Powers Act, as that Part applies in relation
20 to a provision mentioned in subsection (1), extends to every
21 external Territory.

22 **188 Modifications of Part 3 of the Regulatory Powers Act**

23 *Additional investigative powers*

- 24 (1) The additional powers mentioned in subsection (2) are taken to be
25 included in the investigation powers under Part 3 of the Regulatory
26 Powers Act, as that Part applies in relation to evidential material
27 that relates to a provision mentioned in subsection 187(1) of this
28 Act.
- 29 (2) The additional investigation powers are:

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- 1 (a) the power to take samples of any thing on premises entered
2 under Part 3 of the Regulatory Powers Act; and
3 (b) the power to remove, test and analyse such samples; and
4 (c) the power to secure premises entered under Part 3 of the
5 Regulatory Powers Act; and
6 (d) the power to secure things on premises entered under Part 3
7 of the Regulatory Powers Act for the purpose of sampling,
8 testing or analysing those things; and
9 (e) the power to secure a container on premises entered under
10 Part 3 of the Regulatory Powers Act that contains a thing if
11 the inspector reasonably believes that it is not reasonably
12 practicable to secure the thing without also securing the
13 container (whether or not the container contains any other
14 thing).

15 *Operating electronic equipment etc. that may contain evidential*
16 *material*

- 17 (3) Subsection 50(1) of the Regulatory Powers Act is taken to include
18 the power (subject to subsections 50(3) and (4) of that Act) to:
19 (a) operate electronic equipment on premises entered under
20 Part 3 of that Act, as that Part applies to evidential material
21 that relates to a provision mentioned in subsection 187(1) of
22 this Act; and
23 (b) use a disk, tape or other storage device that:
24 (i) is on those premises; and
25 (ii) can be used with the equipment or is associated with it;
26 to find out whether the equipment, disk, tape or other storage
27 device contains such evidential material.

28 *Use of force in executing an investigation warrant*

- 29 (4) In executing an investigation warrant under Part 3 of the
30 Regulatory Powers Act, as that Part applies in relation to evidential
31 material that relates to a provision mentioned in subsection 187(1)
32 of this Act:
33 (a) an authorised person may use such force against things as is
34 necessary and reasonable in the circumstances; and

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Division 3 Investigation powers

Section 188

1 (b) a person assisting the authorised person may use such force
2 against things as is necessary and reasonable in the
3 circumstances.

4 *Identity cards*

5 (5) A reference to an identity card in sections 55 and 56 and
6 subsection 76(6) of the Regulatory Powers Act, as those provisions
7 apply in relation to evidential material that relates to a provision
8 mentioned in subsection 187(1) of this Act, is taken to include a
9 reference to written evidence identifying the authorised person as a
10 member or special member of the Australian Federal Police.

11 (6) Subsection 76(1) of the Regulatory Powers Act, as that subsection
12 applies in relation to evidential material that relates to a provision
13 mentioned in subsection 187(1) of this Act, does not require the
14 relevant chief executive to issue an identity card to an authorised
15 person who is a member or special member of the Australian
16 Federal Police.

1 **Division 4—Civil penalty provisions**

2 **189 Civil penalty provisions**

3 *Enforceable civil penalty provisions*

- 4 (1) Each civil penalty provision of this Act is enforceable under Part 4
5 of the Regulatory Powers Act.

6 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
7 be enforced by obtaining an order for a person to pay a pecuniary
8 penalty for the contravention of the provision.

9 *Authorised applicant*

- 10 (2) For the purposes of Part 4 of the Regulatory Powers Act, the Chair
11 of the Regulator is an authorised applicant in relation to the civil
12 penalty provisions of this Act.

- 13 (3) An authorised applicant may, in writing, delegate the authorised
14 applicant's powers and functions under Part 4 of the Regulatory
15 Powers Act in relation to the civil penalty provisions of this Act to
16 a person who is:

- 17 (a) a member of the staff of the Regulator; and
18 (b) an SES employee or acting SES employee.

19 Note: The expressions *SES employee* and *acting SES employee* are defined
20 in section 2B of the *Acts Interpretation Act 1901*.

21 *Relevant court*

- 22 (4) For the purposes of Part 4 of the Regulatory Powers Act, each of
23 the following courts is a relevant court in relation to the civil
24 penalty provisions of this Act:
25 (a) the Federal Court;
26 (b) a court of a State or Territory that has jurisdiction in relation
27 to matters arising under this Act or the associated provisions.

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Part 18 Enforcement

Division 4 Civil penalty provisions

Section 189

1 *Extension to external Territories*

2 (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation
3 to the civil penalty provisions of this Act, extends to every external
4 Territory.

5 *Liability of Crown*

6 (6) Part 4 of the Regulatory Powers Act, as that Part applies in relation
7 to the civil penalty provisions of this Act, does not make the
8 Crown liable to a pecuniary penalty.

1 **Division 5—Infringement notices**

2 **190 Infringement notices**

3 *Provisions subject to an infringement notice*

- 4 (1) A civil penalty provision of this Act is subject to an infringement
5 notice under Part 5 of the Regulatory Powers Act.

6 Note: Part 5 of the Regulatory Powers Act creates a framework for using
7 infringement notices in relation to provisions.

8 *Infringement officer*

- 9 (2) For the purposes of Part 5 of the Regulatory Powers Act, each of
10 the following persons is an infringement officer in relation to the
11 provisions mentioned in subsection (1):

- 12 (a) an inspector;
13 (b) a person who is:
14 (i) a member of the staff of the Regulator; and
15 (ii) an SES employee or acting SES employee.

16 Note: The expressions *SES employee* and *acting SES employee* are defined
17 in section 2B of the *Acts Interpretation Act 1901*.

18 *Relevant chief executive*

- 19 (3) For the purposes of Part 5 of the Regulatory Powers Act, the Chair
20 of the Regulator is the relevant chief executive in relation to the
21 provisions mentioned in subsection (1).

- 22 (4) The relevant chief executive may, in writing, delegate the relevant
23 chief executive's powers and functions under Part 5 of the
24 Regulatory Powers Act in relation to the provisions mentioned in
25 subsection (1) to a person who is:

- 26 (a) a member of the staff of the Regulator; and
27 (b) an SES employee or acting SES employee.

28 Note: The expressions *SES employee* and *acting SES employee* are defined
29 in section 2B of the *Acts Interpretation Act 1901*.

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Part 18 Enforcement

Division 5 Infringement notices

Section 190

- 1 (5) A person exercising powers or performing functions under a
2 delegation under subsection (4) must comply with any directions of
3 the relevant chief executive.

4 *Extension to external Territories*

- 5 (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation
6 to the provisions mentioned in subsection (1), extends to every
7 external Territory.

1 **Division 6—Enforceable undertakings**

2 **191 Enforceable undertakings**

3 *Enforceable provisions*

- 4 (1) The following provisions are enforceable under Part 6 of the
5 Regulatory Powers Act:
- 6 (a) each provision of this Act or a legislative instrument made
7 under this Act;
- 8 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*
9 *Code*, to the extent that it relates to one or more of the
10 provisions mentioned in paragraph (a).

11 Note: Part 6 of the Regulatory Powers Act creates a framework for
12 accepting and enforcing undertakings relating to compliance with
13 provisions.

14 *Authorised person*

- 15 (2) For the purposes of Part 6 of the Regulatory Powers Act, the Chair
16 of the Regulator is an authorised person in relation to the
17 provisions mentioned in subsection (1).
- 18 (3) An authorised person may, in writing, delegate the authorised
19 person's powers and functions under Part 6 of the Regulatory
20 Powers Act in relation to the provisions mentioned in
21 subsection (1) to a person who is:
- 22 (a) a member of the staff of the Regulator; and
23 (b) an SES employee or acting SES employee.

24 Note: The expressions *SES employee* and *acting SES employee* are defined
25 in section 2B of the *Acts Interpretation Act 1901*.

26 *Relevant court*

- 27 (4) For the purposes of Part 6 of the Regulatory Powers Act, each of
28 the following courts is a relevant court in relation to the provisions
29 mentioned in subsection (1):
- 30 (a) the Federal Court;
-

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Part 18 Enforcement

Division 6 Enforceable undertakings

Section 191

1 (b) a court of a State or Territory that has jurisdiction in relation
2 to matters arising under this Act or the associated provisions.

3 *Enforceable undertaking may be published on the Regulator's*
4 *website*

5 (5) The Regulator may cause an undertaking given under Part 6 of the
6 Regulatory Powers Act in relation to a provision mentioned in
7 subsection (1) to be published on the Regulator's website.

8 *Extension to external Territories*

9 (6) Part 6 of the Regulatory Powers Act, as that Part applies in relation
10 to the provisions mentioned in subsection (1), extends to every
11 external Territory.

1 **Division 7—Injunctions**

2 **192 Injunctions**

3 *Enforceable provisions*

- 4 (1) Each provision of this Act or a legislative instrument made under
5 this Act is enforceable under Part 7 of the Regulatory Powers Act.

6 Note: Part 7 of the Regulatory Powers Act creates a framework for using
7 injunctions to enforce provisions.

8 *Authorised person*

- 9 (2) For the purposes of Part 7 of the Regulatory Powers Act, the Chair
10 of the Regulator is an authorised person in relation to the
11 provisions mentioned in subsection (1).

- 12 (3) An authorised person may, in writing, delegate the authorised
13 person's powers and functions under Part 7 of the Regulatory
14 Powers Act in relation to the provisions mentioned in
15 subsection (1) to a person who is:

- 16 (a) a member of the staff of the Regulator; and
17 (b) an SES employee or acting SES employee.

18 Note: The expressions *SES employee* and *acting SES employee* are defined
19 in section 2B of the *Acts Interpretation Act 1901*.

20 *Relevant court*

- 21 (4) For the purposes of Part 7 of the Regulatory Powers Act, each of
22 the following courts is a relevant court in relation to the provisions
23 mentioned in subsection (1):

- 24 (a) the Federal Court;
25 (b) a court of a State or Territory that has jurisdiction in relation
26 to matters arising under this Act or the associated provisions.

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Part 18 Enforcement
Division 7 Injunctions

Section 192

- 1 *Extension to external Territories*
- 2 (5) Part 7 of the Regulatory Powers Act, as that Part applies in relation
- 3 to the provision mentioned in subsection (1), extends to every
- 4 external Territory.

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Nature Repair Market Committee **Part 19**

Introduction **Division 1**

Section 193

1 **Part 19—Nature Repair Market Committee**

2 **Division 1—Introduction**

3 **193 Simplified outline of this Part**

4 This Part establishes the Nature Repair Market Committee.

5 This Part also sets out the following:

- 6 (a) the functions of the Committee;
- 7 (b) the membership of the Committee;
- 8 (c) the appointment of Committee members;
- 9 (d) other terms and conditions on which Committee
- 10 members hold office.

11 The Regulator and the Department may assist the Nature Repair

12 Market Committee in the performance of its functions.

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Part 19 Nature Repair Market Committee

Division 2 Establishment and functions of the Nature Repair Market Committee

Section 194

1 **Division 2—Establishment and functions of the Nature**
2 **Repair Market Committee**

3 **194 Nature Repair Market Committee**

4 The Nature Repair Market Committee is established by this
5 section.

6 Note: The Committee is not a Commonwealth entity for the purposes of the
7 *Public Governance, Performance and Accountability Act 2013*.

8 **195 Functions of the Nature Repair Market Committee**

9 The Nature Repair Market Committee has the following functions:

- 10 (a) the functions that are conferred on it by:
- 11 (i) this Act; or
- 12 (ii) the rules; or
- 13 (iii) an instrument made under this Act;
- 14 (b) to advise the Minister about matters that:
- 15 (i) relate to biodiversity projects; and
- 16 (ii) are referred to the Committee by the Minister;
- 17 (c) to advise the Minister about the suspension of the
- 18 consideration by the Regulator of applications for the
- 19 registration of biodiversity projects (see section 16);
- 20 (d) to monitor the compliance of methodology determinations
- 21 with the biodiversity integrity standards;
- 22 (e) to undertake periodic reviews of methodology
- 23 determinations;
- 24 (f) to undertake public consultation in relation to reviews of
- 25 methodology determinations;
- 26 (g) to advise the Minister in relation to the outcomes of reviews
- 27 of methodology determinations and any related public
- 28 consultation;
- 29 (h) to advise the Secretary in relation to the outcomes of reviews
- 30 of methodology determinations and any related public
- 31 consultation;

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Nature Repair Market Committee **Part 19**
Establishment and functions of the Nature Repair Market Committee **Division 2**

Section 196

1 (i) to do anything incidental to or conducive to the performance
2 of the above functions.

3 **196 Nature Repair Market Committee may obtain advice**

4 The Nature Repair Market Committee may obtain advice that is
5 relevant to the performance of its functions.

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Part 19 Nature Repair Market Committee

Division 3 Membership of the Nature Repair Market Committee

Section 197

1 **Division 3—Membership of the Nature Repair Market**
2 **Committee**

3 **197 Membership of the Nature Repair Market Committee**

4 The Nature Repair Market Committee consists of the following
5 members:

- 6 (a) a Chair;
7 (b) at least 4, and not more than 5, other members.

8 **198 Appointment of Nature Repair Market Committee members**

- 9 (1) Each Nature Repair Market Committee member is to be appointed
10 by the Minister by written instrument.

11 Note: A Nature Repair Market Committee member may be reappointed: see
12 section 33AA of the *Acts Interpretation Act 1901*.

- 13 (2) A person is not eligible for appointment as a Nature Repair Market
14 Committee member unless the Minister is satisfied that the person
15 has:

- 16 (a) substantial experience or knowledge; and
17 (b) significant standing;
18 in at least one of the following fields of expertise:
19 (c) agriculture;
20 (d) biological or ecological science;
21 (e) environmental markets;
22 (f) Indigenous knowledge relevant to the functions of the
23 Committee;
24 (g) land management;
25 (h) economics.

- 26 (3) The Minister must ensure that the Chair of the Nature Repair
27 Market Committee is not:

- 28 (a) an employee of the Commonwealth; or
29 (b) an employee of an authority of the Commonwealth; or

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1 (c) a person who holds a full-time office under a law of the
2 Commonwealth.

3 (4) A Nature Repair Market Committee member holds office on a
4 part-time basis.

5 **199 Period for appointment for Nature Repair Market Committee** 6 **members**

7 (1) The Chair of the Nature Repair Market Committee holds office for
8 the period specified in the instrument of appointment. The period
9 must not exceed 5 years.

10 Note: The Chair of the Nature Repair Market Committee may be
11 reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

12 (2) A Nature Repair Market Committee member (other than the Chair)
13 holds office for the period specified in the instrument of
14 appointment. The period must not exceed 3 years.

15 Note: A Nature Repair Market Committee member may be reappointed: see
16 section 33AA of the *Acts Interpretation Act 1901*.

17 **200 Acting Nature Repair Market Committee members**

18 *Acting Chair of the Nature Repair Market Committee*

19 (1) The Minister may, by written instrument, appoint a Nature Repair
20 Market Committee member to act as the Chair of the Nature Repair
21 Market Committee:

22 (a) during a vacancy in the office of the Chair of the Nature
23 Repair Market Committee (whether or not an appointment
24 has previously been made to the office); or

25 (b) during any period, or during all periods, when the Chair of
26 the Nature Repair Market Committee:

27 (i) is absent from duty or from Australia; or

28 (ii) is, for any reason, unable to perform the duties of the
29 office.

30 Note: For rules that apply to acting appointments, see sections 33AB and
31 33A of the *Acts Interpretation Act 1901*.

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Part 19 Nature Repair Market Committee

Division 3 Membership of the Nature Repair Market Committee

Section 201

- 1 *Acting Nature Repair Market Committee member (other than the*
2 *Chair)*
- 3 (2) The Minister may, by written instrument, appoint a person to act as
4 a Nature Repair Market Committee member (other than the Chair
5 of the Nature Repair Market Committee):
- 6 (a) during a vacancy in the office of a Nature Repair Market
7 Committee member (other than the Chair of the Committee),
8 whether or not an appointment has previously been made to
9 the office; or
- 10 (b) during any period, or during all periods, when a Nature
11 Repair Market Committee member (other than the Chair of
12 the Committee):
- 13 (i) is absent from duty or from Australia; or
14 (ii) is, for any reason, unable to perform the duties of the
15 office.
- 16 Note: For rules that apply to acting appointments, see sections 33AB and
17 33A of the *Acts Interpretation Act 1901*.

18 *Eligibility*

- 19 (3) A person is not eligible for appointment to act as:
- 20 (a) the Chair of the Nature Repair Market Committee; or
21 (b) a Nature Repair Market Committee member (other than the
22 Chair of the Committee);
- 23 unless the person is eligible for appointment as a Nature Repair
24 Market Committee member.

25 Note 1: For eligibility for appointment as a Nature Repair Market Committee
26 member, see subsection 198(2).

27 Note 2: For rules that apply to acting appointments, see sections 33AB and
28 33A of the *Acts Interpretation Act 1901*.

29 **201 Procedures**

- 30 (1) The rules may prescribe the procedures to be followed at or in
31 relation to meetings of the Nature Repair Market Committee,
32 including matters relating to the following:
- 33 (a) the convening of meetings of the Committee;
-

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- 1 (b) the number of Nature Repair Market Committee members
2 who are to constitute a quorum;
- 3 (c) the selection of a Nature Repair Market Committee member
4 to preside at meetings of the Committee in the absence of the
5 Chair of the Committee;
- 6 (d) the manner in which questions arising at a meeting of the
7 Committee are to be decided.
- 8 (2) A resolution is taken to have been passed at a meeting of the
9 Nature Repair Market Committee if:
- 10 (a) without meeting, a majority of Nature Repair Market
11 Committee members indicate agreement with the resolution
12 in accordance with the method determined by the Committee
13 under subsection (3); and
- 14 (b) all Nature Repair Market Committee members were
15 informed of the proposed resolution, or reasonable efforts
16 had been made to inform all Nature Repair Market
17 Committee members of the proposed resolution.
- 18 (3) Subsection (2) applies only if the Nature Repair Market
19 Committee:
- 20 (a) determines that it applies; and
- 21 (b) determines the method by which Nature Repair Market
22 Committee members are to indicate agreement with
23 resolutions.

202 Disclosure of interests to the Minister

24
25 A Nature Repair Market Committee member must give written
26 notice to the Minister of all interests, pecuniary or otherwise, that
27 the member has or acquires and that conflict or could conflict with
28 the proper performance of the member's duties.

203 Disclosure of interests to the Nature Repair Market Committee

- 29
30 (1) A Nature Repair Market Committee member who has an interest,
31 pecuniary or otherwise, in a matter being considered or about to be

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Part 19 Nature Repair Market Committee

Division 3 Membership of the Nature Repair Market Committee

Section 204

- 1 considered by the Committee must disclose the nature of the
2 interest to a meeting of the Committee.
- 3 (2) The disclosure must be made as soon as possible after the relevant
4 facts have come to the Nature Repair Market Committee member's
5 knowledge.
- 6 (3) The disclosure must be recorded in the minutes of the meeting.
- 7 (4) Unless the Nature Repair Market Committee otherwise determines,
8 the Nature Repair Market Committee member:
9 (a) must not be present during any deliberation by the
10 Committee on the matter; and
11 (b) must not take part in any decision of the Committee with
12 respect to the matter.
- 13 (5) For the purposes of making a determination under subsection (4),
14 the Nature Repair Market Committee member:
15 (a) must not be present during any deliberation of the Committee
16 for the purpose of making the determination; and
17 (b) must not take part in making the determination.
- 18 (6) A determination under subsection (4) must be recorded in the
19 minutes of the meeting of the Nature Repair Market Committee.

204 Other paid work

21 A Nature Repair Market Committee member must not engage in
22 any paid work that conflicts or could conflict with the proper
23 performance of the Nature Repair Market Committee member's
24 duties.

205 Remuneration

- 26 (1) A Nature Repair Market Committee member is to be paid the
27 remuneration that is determined by the Remuneration Tribunal. If
28 no determination of that remuneration by the Tribunal is in
29 operation, the Nature Repair Market Committee member is to be
30 paid the remuneration that is prescribed by the rules.

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- 1 (2) A Nature Repair Market Committee member is to be paid the
2 allowances that are prescribed by the rules.
- 3 (3) This section has effect subject to the *Remuneration Tribunal Act*
4 *1973*.

5 **206 Leave of absence**

- 6 (1) The Minister may grant leave of absence to the Chair of the Nature
7 Repair Market Committee on the terms and conditions that the
8 Minister determines.
- 9 (2) The Chair of the Nature Repair Market Committee may grant leave
10 of absence to any Nature Repair Market Committee member on the
11 terms and conditions that the Chair determines.

12 **207 Resignation**

- 13 (1) A Nature Repair Market Committee member may resign the
14 member's appointment by giving the Minister a written
15 resignation.
- 16 (2) The resignation takes effect on the day it is received by the
17 Minister or, if a later day is specified in the resignation, on that
18 later day.

19 **208 Termination of appointment**

- 20 (1) The Minister may terminate the appointment of a Nature Repair
21 Market Committee member:
22 (a) for misbehaviour; or
23 (b) if the member is unable to perform the duties of the
24 member's office because of physical or mental incapacity.
- 25 (2) The Minister may terminate the appointment of a Nature Repair
26 Market Committee member if:
27 (a) the member:
28 (i) becomes bankrupt; or

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Part 19 Nature Repair Market Committee

Division 3 Membership of the Nature Repair Market Committee

Section 209

- 1 (ii) applies to take the benefit of any law for the relief of
2 bankrupt or insolvent debtors; or
3 (iii) compounds with the member's creditors; or
4 (iv) makes an assignment of the member's remuneration for
5 the benefit of the member's creditors; or
6 (b) the member is absent, except on leave of absence, from 3
7 consecutive meetings of the Committee; or
8 (c) the member engages in paid work that conflicts or could
9 conflict with the proper performance of the member's duties
10 (see section 204); or
11 (d) the member fails, without reasonable excuse, to comply with
12 section 202 or 203 (which deal with the duty to disclose
13 interests).
- 14 (3) The Minister may terminate the appointment of the Chair of the
15 Nature Repair Market Committee if the Chair is any of the
16 following:
17 (a) an employee of the Commonwealth;
18 (b) an employee of an authority of the Commonwealth;
19 (c) a person who holds a full-time office under a law of the
20 Commonwealth.

21 **209 Other terms and conditions**

22 A Nature Repair Market Committee member holds office on the
23 terms and conditions (if any) in relation to matters not covered by
24 this Act or the rules that are determined by the Minister.

25 **210 Assistance to Nature Repair Market Committee**

- 26 (1) Any or all of the following bodies:
27 (a) the Regulator;
28 (b) the Department;
29 (c) any other Department, agency or authority of the
30 Commonwealth;
31 may assist the Nature Repair Market Committee in the
32 performance of its functions.

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- 1 (2) The assistance provided by the Regulator may include the
2 following:
3 (a) the provision of information;
4 (b) the provision of advice.
- 5 (3) The assistance provided by a body mentioned in paragraph (1)(b)
6 or (c) may include the following:
7 (a) the provision of information;
8 (b) the provision of advice;
9 (c) the making available of resources and facilities (including
10 secretariat services and clerical assistance).
- 11 (4) If an officer or employee of a body mentioned in subsection (1)
12 assists the Nature Repair Market Committee, the officer or
13 employee is taken, for the purposes of this Act, to be a person
14 assisting the Nature Repair Market Committee under this section.

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Part 20 Review of decisions

Division 1 Introduction

Section 211

1 **Part 20—Review of decisions**

2 **Division 1—Introduction**

3 **211 Simplified outline of this Part**

4 Certain decisions of delegates of the Regulator may be reviewed by
5 the Administrative Appeals Tribunal following a process of
6 internal reconsideration by the Regulator.

7 Certain decisions of the Regulator may be reviewed by the
8 Administrative Appeals Tribunal.

1 **Division 2—Decisions of the Regulator**

2 **212 Reviewable decisions**

3 For the purposes of this Act, each of the following decisions is a
4 *reviewable decision*:

- 5 (a) a decision under section 15 to approve, or refuse to approve,
6 the registration of a biodiversity project;
- 7 (b) a decision under rules made for the purposes of section 19,
8 20 or 21 to vary, or refuse to vary, the registration of a
9 registered biodiversity project;
- 10 (c) a decision under rules made for the purposes of section 23 or
11 24 to cancel, or refuse to cancel, the registration of a
12 registered biodiversity project;
- 13 (d) a decision under rules made for the purposes of section 26,
14 27, 28, 29, 30, 31 or 42 to cancel the registration of a
15 registered biodiversity project;
- 16 (e) a decision under section 70 to issue, or refuse to issue, a
17 biodiversity certificate;
- 18 (f) a decision under subsection 121(9) to reimburse, or refuse to
19 reimburse, a person for reasonable costs incurred by the
20 person in complying with a notice under subsection 121(2);
- 21 (g) a decision under section 144, 145, 146 or 147 to give a
22 relinquishment notice;
- 23 (h) a decision under subsection 150(2) to refuse to extend the
24 period mentioned in subsection 150(1);
- 25 (i) a decision under section 141 to approve, or refuse to approve,
26 the deposit of a biodiversity certificate with the Regulator;
- 27 (j) a decision under paragraph 162(1)(h) to comply with, or
28 refuse, a request under that paragraph;
- 29 (k) a decision under subsection 162(4) to remove, or not to
30 remove, information from the Register;
- 31 (l) a decision under section 163 to comply with, or refuse, a
32 request not to set out a project area in the Register;

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Part 20 Review of decisions

Division 2 Decisions of the Regulator

Section 213

- 1 (m) a decision under a provision of the rules, or under a provision
2 of another legislative instrument made under this Act, if the
3 provision is prescribed by the rules for the purposes of this
4 paragraph.

5 **213 Notice of decision and reconsideration rights to be given—** 6 **decisions made by delegates of the Regulator**

7 *Scope*

- 8 (1) This section applies to a reviewable decision if the decision is
9 made by a delegate of the Regulator.

10 *Notice of decision and reconsideration rights*

- 11 (2) The delegate must take such steps as are reasonable in the
12 circumstances to give notice, in writing or otherwise, to each
13 person whose interests are affected by the decision, of:
14 (a) the making of the decision; and
15 (b) the person's right to have the decision reconsidered under
16 this Part.

17 Note: For notification of reviewable decisions made by the Regulator (rather
18 than a delegate), see section 27A of the *Administrative Appeals*
19 *Tribunal Act 1975*.

- 20 (3) A failure to comply with this section does not affect the validity of
21 the decision.

22 **214 Applications for reconsideration of decisions made by delegates** 23 **of the Regulator**

24 *Scope*

- 25 (1) This section applies to a reviewable decision if the decision is
26 made by a delegate of the Regulator.

27 Note: For review of decisions not made by a delegate of the Regulator, see
28 subsection 217(2).

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- 1 *Application*
- 2 (2) A person affected by a reviewable decision who is dissatisfied with
- 3 the decision may apply to the Regulator for the Regulator to
- 4 reconsider the decision.
- 5 (3) The application must:
- 6 (a) be in a form approved in writing by the Regulator; and
- 7 (b) set out the reasons for the application; and
- 8 (c) be accompanied by the fee (if any) specified in the rules.
- 9 (4) The application must be made within:
- 10 (a) 28 days after the applicant is informed of the decision; or
- 11 (b) if, either before or after the end of that period of 28 days, the
- 12 Regulator extends the period within which the application
- 13 may be made—the extended period.
- 14 (5) An approved form of an application may provide for verification
- 15 by statutory declaration of statements in applications.
- 16 (6) A fee specified under paragraph (3)(c) must not be such as to
- 17 amount to taxation.

215 Reconsideration by the Regulator

- 18
- 19 (1) Upon receiving such an application, the Regulator must:
- 20 (a) reconsider the decision; and
- 21 (b) affirm, vary or revoke the decision.
- 22 (2) The Regulator’s decision on reconsideration of a decision has
- 23 effect as if it had been made under the provision under which the
- 24 original decision was made.
- 25 (3) The Regulator must give to the applicant a written notice stating
- 26 the Regulator’s decision on the reconsideration.
- 27 (4) Within 28 days after making the decision on the reconsideration,
- 28 the Regulator must give the applicant a written statement of the
- 29 Regulator’s reasons for the decision.

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Part 20 Review of decisions

Division 2 Decisions of the Regulator

Section 216

1 **216 Deadline for reconsideration**

2 (1) The Regulator must make its decision on reconsideration of a
3 decision within 90 days after receiving an application for
4 reconsideration.

5 (2) The Regulator is taken, for the purposes of this Part, to have made
6 a decision affirming the original decision if the Regulator has not
7 informed the applicant of its decision on the reconsideration before
8 the end of the period of 90 days.

9 **217 Review by the Administrative Appeals Tribunal**

10 (1) Applications may be made to the Administrative Appeals Tribunal
11 to review a reviewable decision if the Regulator has affirmed or
12 varied the decision under section 215.

13 (2) Applications may be made to the Administrative Appeals Tribunal
14 to review a reviewable decision if the decision was not made by a
15 delegate of the Regulator.

16 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires
17 notification of a decision that is reviewable.

1 **Part 21—Miscellaneous**
2

3 **218 Simplified outline of this Part**

4

This Part deals with miscellaneous matters.

5 **219 Miscellaneous functions of the Regulator**

6 The Regulator has the following functions:

- 7 (a) to monitor compliance with this Act and the associated
8 provisions;
- 9 (b) to promote compliance with this Act and the associated
10 provisions;
- 11 (c) to conduct or coordinate education programs about this Act
12 and the associated provisions;
- 13 (d) to advise the Minister on matters relating to this Act and the
14 associated provisions;
- 15 (e) to advise the Nature Repair Market Committee on matters
16 relating to the making, variation or revocation of
17 methodology determinations or biodiversity assessment
18 instruments;
- 19 (f) to advise and assist persons in relation to their obligations
20 under this Act and the associated provisions;
- 21 (g) to advise and assist prospective applicants in connection with
22 ensuring that applications are in accordance with this Act and
23 the associated provisions;
- 24 (h) to advise and assist the representatives of persons in relation
25 to compliance by persons with this Act and the associated
26 provisions;
- 27 (i) to liaise with regulatory and other relevant bodies, whether in
28 Australia or elsewhere, about cooperative arrangements for
29 matters relating to this Act and the associated provisions;
- 30 (j) to advise and assist in relation to the development of the
31 market for:

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Part 21 Miscellaneous

Section 220

- 1 (i) biodiversity certificates; or
2 (ii) other certificates, units or credits (however described,
3 and whether issued under a law of the Commonwealth,
4 a State or a Territory, or in some other way) that relate
5 to biodiversity projects;
6 (k) to collect, analyse, interpret and disseminate statistical
7 information relating to the operation of this Act and the
8 associated provisions.

9 **220 Treatment of trusts**

- 10 (1) This Act applies to a trust as if it were a person, but with the
11 changes set out in this section.

12 *Trusts with a single trustee*

- 13 (2) If the trust has a single trustee:
14 (a) an obligation that would otherwise be imposed on the trust by
15 or under this Act is imposed on the trustee instead; and
16 (b) an offence against this Act that would otherwise have been
17 committed by the trust is taken to have been committed by
18 the trustee.

19 *Trusts with multiple trustees*

- 20 (3) If the trust has 2 or more trustees:
21 (a) an obligation that would otherwise be imposed on the trust by
22 or under this Act is imposed on each trustee instead, but may
23 be discharged by any of the trustees; and
24 (b) an offence against this Act that would otherwise have been
25 committed by the trust is taken to have been committed by
26 each trustee of the trust, at the time the offence was
27 committed, who:
28 (i) did the relevant act or made the relevant omission; or
29 (ii) aided, abetted, counselled or procured the relevant act or
30 omission; or

- 1 (iii) was in any way knowingly concerned in, or party to, the
2 relevant act or omission (whether directly or indirectly
3 and whether by any act or omission of the trustee).

4 *Contraventions of civil penalty provisions*

- 5 (4) This section applies to a contravention of a civil penalty provision
6 in a corresponding way to the way in which it applies to an
7 offence.

8 *Offence against this Act*

- 9 (5) For the purposes of this section, *offence against this Act* includes
10 an offence against Chapter 7 of the *Criminal Code* that relates to
11 this Act.

12 **221 Rules may provide for voluntary accreditation of advisers etc.**

- 13 (1) The rules may make provision for and in relation to the voluntary
14 accreditation of persons who give advice, or otherwise provide
15 assistance, in relation to any of the following:
16 (a) the operation of this Act;
17 (b) the carrying out of biodiversity projects;
18 (c) the trading of biodiversity certificates.
- 19 (2) Without limiting subsection (1), rules made for the purposes of that
20 subsection may do any of the following:
21 (a) make it a condition of accreditation that a person pass a test
22 relating to the person's knowledge of the scheme for
23 biodiversity stewardship established by this Act;
24 (b) make it a condition of accreditation that a person be a fit and
25 proper person to hold the accreditation;
26 (c) set fees for applications under the rules.
- 27 (3) A fee set under paragraph (2)(c) must not be such as to amount to
28 taxation.

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Part 21 Miscellaneous

Section 222

- 1 (4) Rules made for the purposes of subsection (1) must not require a
2 person to be accredited in order to engage in an activity referred to
3 in a paragraph of subsection (1).

4 **222 Information previously given to the Regulator**

- 5 If:
- 6 (a) on a particular occasion, a person gave information to the
7 Regulator under:
- 8 (i) this Act or the rules; or
9 (ii) the *Carbon Credits (Carbon Farming Initiative) Act*
10 *2011*, or a legislative instrument made under that Act;
11 and
- 12 (b) the person is subsequently required or permitted, under this
13 Act or the rules, to give the same information to the
14 Regulator;
- 15 the person is taken to have given the information to the Regulator
16 on that later occasion.

17 **223 Delegation by the Minister**

- 18 (1) The Minister may, in writing, delegate all or any of the Minister's
19 functions or powers under this Act or the rules to:
- 20 (a) the Secretary; or
21 (b) an SES employee, or acting SES employee, in the
22 Department.
- 23 Note 1: The expressions *SES employee* and *acting SES employee* are defined
24 in section 2B of the *Acts Interpretation Act 1901*.
- 25 Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
26 provisions relating to delegations.
- 27 (2) In performing a delegated function or exercising a delegated
28 power, the delegate must comply with any written directions of the
29 Minister.
- 30 (3) Subsection (1) does not apply to a power to make, vary or revoke a
31 legislative instrument.

1 **224 Delegation by the Secretary**

- 2 (1) The Secretary may, in writing, delegate all or any of the
3 Secretary's functions or powers under this Act or the rules to:
4 (a) a person who is an SES employee, or acting SES employee,
5 in the Department; or
6 (b) a person who is:
7 (i) an official of the Regulator; and
8 (ii) an SES employee, or acting SES employee.

9 Note 1: The expressions *SES employee* and *acting SES employee* are defined
10 in section 2B of the *Acts Interpretation Act 1901*.

11 Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
12 provisions relating to delegations.

- 13 (2) In performing a delegated function or exercising a delegated
14 power, the delegate must comply with any written directions of the
15 Secretary.

16 **225 Concurrent operation of State and Territory laws**

17 This Act is not intended to exclude or limit the operation of a law
18 of a State or Territory that is capable of operating concurrently
19 with this Act.

20 **226 Law relating to legal professional privilege not affected**

21 This Act does not affect the law relating to legal professional
22 privilege.

23 **227 Arrangements with States and Territories**

24 The Minister may enter into an arrangement with a relevant
25 Minister of a State or Territory in relation to the administration of
26 this Act, including:

- 27 (a) arrangements for the performance of the functions of a
28 magistrate under this Act by a magistrate of that State or
29 Territory; and

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Part 21 Miscellaneous

Section 228

- 1 (b) arrangements for the exercise of the powers conferred by
2 section 94 on relevant land registration officials of that State
3 or Territory; and
4 (c) arrangements for the exercise of the powers conferred by
5 section 95 on relevant land registration officials of that State
6 or Territory.

7 **228 Liability for damages**

8 None of the following:

- 9 (a) the Minister;
10 (b) a delegate of the Minister;
11 (c) the Secretary;
12 (d) a delegate of the Secretary;
13 (e) the Regulator;
14 (f) a delegate of the Regulator;
15 (g) an inspector;
16 (h) a person assisting an inspector;
17 (i) an audit team leader;
18 (j) a person assisting an audit team leader;
19 (k) a Nature Repair Market Committee member;
20 (l) a person assisting the Nature Repair Market Committee;
21 is liable to an action or other proceeding for damages for, or in
22 relation to, an act or matter in good faith done or omitted to be
23 done:
24 (m) in the performance or purported performance of any function;
25 or
26 (n) in the exercise or purported exercise of any power;
27 conferred by this Act or the associated provisions.

28 **229 Executive power of the Commonwealth**

29 This Act does not, by implication, limit the executive power of the
30 Commonwealth.

1 **230 Notional payments by the Commonwealth**

2 (1) The purpose of this section is to ensure that amounts payable under
3 this Act or the rules are notionally payable by the Commonwealth
4 (or parts of the Commonwealth).

5 (2) The Minister responsible for administering the *Public Governance,*
6 *Performance and Accountability Act 2013* may give written
7 directions for the purposes of this section, including directions
8 relating to the transfer of amounts within, or between, accounts
9 operated by the Commonwealth.

10 **231 Compensation for acquisition of property**

11 (1) If the operation of this Act, the rules or a methodology
12 determination would result in an acquisition of property (within the
13 meaning of paragraph 51(xxxi) of the Constitution) from a person
14 otherwise than on just terms (within the meaning of that
15 paragraph), the Commonwealth is liable to pay a reasonable
16 amount of compensation to the person.

17 (2) If the Commonwealth and the person do not agree on the amount
18 of the compensation, the person may institute proceedings in:
19 (a) the Federal Court; or
20 (b) the Supreme Court of a State or Territory;
21 for the recovery from the Commonwealth of such reasonable
22 amount of compensation as the court determines.

23 **232 Native title rights not affected**

24 This Act does not affect the operation of the *Native Title Act 1993*.

25 **233 Racial Discrimination Act not affected**

26 This Act does not affect the operation of the *Racial Discrimination*
27 *Act 1975*.

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Part 21 Miscellaneous

Section 234

1 **234 Administrative decisions under the rules**

2 The rules may make provision in relation to a matter by conferring
3 a power to make a decision of an administrative character on the
4 Regulator.

5 **235 Revocation or variation of instruments**

6 A provision of this Act that expressly authorises the revocation or
7 variation of an instrument does not, by implication, limit the
8 application of subsection 33(3) of the *Acts Interpretation Act 1901*
9 in relation to other instruments under this Act.

10 **236 Review of operation of this Act etc.**

11 (1) The Minister must cause reviews of the operation of the following
12 to be undertaken:

- 13 (a) this Act;
14 (b) the rules.

15 (2) A review under subsection (1) must include a review of:

- 16 (a) the extent to which this Act has achieved the objects of this
17 Act; and
18 (b) any other matters that the Minister directs, in writing, the
19 review to consider.

20 *Public consultation*

21 (3) A review under subsection (1) must make provision for public
22 consultation.

23 *Report*

24 (4) The persons undertaking a review under subsection (1) must give
25 the Minister a written report of the review.

26 (5) A report of the review:

- 27 (a) must set out any directions given by the Minister under
28 paragraph (2)(b); and

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- 1 (b) may set out recommendations to the Commonwealth
2 Government.
- 3 (6) The Minister must cause a copy of a report of the review to be:
4 (a) tabled in each House of the Parliament within 15 sitting days
5 of that House after the report is given to the Minister; and
6 (b) published on the Department's website as soon as practicable
7 after the report is given to the Minister.
- 8 (7) If a report of the review sets out one or more recommendations to
9 the Commonwealth Government:
10 (a) as soon as practicable after receiving the report, the Minister
11 must cause to be prepared a statement setting out the
12 Commonwealth Government's response to each of the
13 recommendations; and
14 (b) within 6 months after receiving the report, the Minister must
15 cause copies of the statement to be tabled in each House of
16 the Parliament.

17 *First review*

- 18 (8) The first review under subsection (1) must be completed within 5
19 years after the day determined by the Minister under
20 subsection 11(2).

21 Note: The day determined by the Minister under subsection 11(2) is the first
22 day on which applications may be made for the Regulator to approve
23 the registration of a biodiversity project.

24 *Subsequent reviews*

- 25 (9) Each subsequent review under subsection (1) must be completed
26 within 5 years after the completion of the previous review.

27 *When review is completed*

- 28 (10) For the purposes of subsections (8) and (9) a review is completed
29 when the report of the review is given to the Minister under
30 subsection (4).

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Part 21 Miscellaneous

Section 237

1 *Direction not a legislative instrument*

2 (11) A direction given under paragraph (2)(b) is not a legislative
3 instrument.

4 **237 Rules**

5 (1) The Minister may, by legislative instrument, make rules
6 prescribing matters:

7 (a) required or permitted by this Act to be prescribed by the
8 rules; or

9 (b) necessary or convenient to be prescribed for carrying out or
10 giving effect to this Act.

11 (2) To avoid doubt, the rules may not do the following:

12 (a) create an offence or civil penalty;

13 (b) provide powers of:

14 (i) arrest or detention; or

15 (ii) entry, search or seizure;

16 (c) impose a tax;

17 (d) set an amount to be appropriated from the Consolidated
18 Revenue Fund under an appropriation in this Act;

19 (e) directly amend the text of this Act.

20 (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may
21 make provision in relation to a matter by applying, adopting or
22 incorporating, with or without modification, any matter contained
23 in any other instrument or other writing as in force or existing from
24 time to time.