Safeguard Mechanism (Crediting) Amendment Act 2023

No. 14, 2023

An Act to amend legislation relating to emissions reductions, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Safeguard Mechanism (Crediting) Amendment Act 2023

No. 14, 2023

An Act to amend legislation relating to emissions reductions, and for related purposes

[*Assented to 11 April 2023*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Safeguard Mechanism (Crediting) Amendment Act 2023*.

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2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 April 2023
2. Schedules 1, 2 and 3	The day after this Act receives the Royal Assent.	12 April 2023
3. Schedule 4, Part 1	The day after this Act receives the Royal Assent.	12 April 2023
4. Schedule 4, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Safeguard mechanism

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

National Greenhouse and Energy Reporting Act 2007

1 Subsection 3(2)

Repeal the subsection, substitute:

(2) The second object of this Act is to contribute to the achievement of Australia's greenhouse gas emissions reduction targets by ensuring that each of the following outcomes (the ***safeguard outcomes***) are achieved:

(a) net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility;

(b) total net safeguard emissions for all of the financial years between 1 July 2020 and 30 June 2030 do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence;

(c) net safeguard emissions decline to:

(i) no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029; and

(ii) zero for any financial year to begin after 30 June 2049;

(d) the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are lower than the past 5-year rolling average safeguard emissions for that financial year;

(e) the responsible emitter for each designated large facility has a material incentive to invest in reducing covered emissions from the operation of the facility;

(f) the competitiveness of trade-exposed industries is appropriately supported as Australia and its regions seize the opportunities of the move to a global net zero economy.

2 Section 7

Insert:

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1 April, when used in the safeguard provisions, means:

(a) if the 1 April concerned is a business day—that 1 April; or

(b) if the 1 April concerned is not a business day—the first business day after that 1 April.

3 Section 7 (definition of *1 March*)

Repeal the definition.

4 Section 7

Insert:

5-year rolling average safeguard emissions, for a financial year, means the amount, in tonnes of carbon dioxide equivalence, that is one fifth of the total amount of safeguard emissions for the 5 previous financial years.

associated provisions means the following provisions:

(a) the provisions of a legislative instrument made under this Act;

(b) the provisions of a legislative instrument made under the regulations;

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

(i) this Act; or

(ii) a legislative instrument made under this Act; or

(iii) a legislative instrument made under the regulations.

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

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

net safeguard emissions, for a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of net covered emissions from the operation, during the financial year, of all designated large facilities for the financial year.

past 5-year rolling average safeguard emissions, for a financial year (the ***current financial year***), means the amount, in tonnes of

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carbon dioxide equivalence, that is one fifth of the total amount of safeguard emissions for the period of 5 financial years that ended:

(a) if the current financial year ends before 1 July 2027—3 years before the start of the current financial year; or

(b) otherwise—2 years before the start of the current financial year.

5 Section 7 (definition of *registered holder*)

After "carbon unit", insert "or a relinquishable unit".

6 Section 7

Insert:

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

7 Section 7 (definition of *safeguard audit*)

Before "subsection 22XQ(3)", insert "paragraph 22XNA(4)(c) or".

8 Section 7 (definition of *safeguard audit report*)

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

9 Section 7

Insert:

safeguard emissions, for a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of covered emissions from the operation, during the financial year, of all designated large facilities for the financial year.

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

safeguard outcome has the meaning given by subsection 3(2).

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

Insert:

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

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10A Section 7

Insert:

Secretary means the Secretary of the Department.

11 Paragraph 9(1)(b)

Omit "section 54 or 54A", substitute "section 54, 54A or 54B".

12 At the end of section 10

Add:

(4) A determination under subsection (3) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

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

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

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

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

13 Subdivision B of Division 1 of Part 2 (heading)

Omit "**responsible emitter for a designated large facility etc.**", substitute "**person who is not a controlling corporation**".

14 Section 15B (heading)

Omit "**responsible emitter for a designated large facility etc.**", substitute "**person who is not a controlling corporation**".

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15 After subsection 15B(3)

Insert:

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

(a) the person has operational control of a facility of a kind specified in the safeguard rules; and

(b) the person is not a controlling corporation.

16 Subsection 15B(4)

After "subsection (1)", insert "or (3A)".

17 After paragraph 18B(3)(b)

Insert:

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

18 Paragraph 22XB(1)(b)

Repeal the paragraph, substitute:

(b) either:

(i) at least one day in the relevant financial year is included in a monitoring period for the facility in relation to the person; or

(ii) the facility is specified in the safeguard rules; and

19 Subsection 22XB(1) (note)

After "Note", insert "1".

20 At the end of subsection 22XB(1)

Add:

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

21 At the end of section 22XD

Add:

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- This Part also sets up a scheme for issuing and relinquishing safeguard mechanism credit units.

22 Subsection 22XF(1)

Omit "(1)".

23 Subsection 22XF(1)

Omit "at any time on or after".

24 Paragraphs 22XF(1)(c) and (d)

Omit "1 March", substitute "on the 1 April".

25 Subsection 22XF(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: The number of penalty units that is equal to the difference between the net emissions number for the facility for the monitoring period and the baseline emissions number for the facility for the monitoring period.

26 Subsections 22XF(2) to (4)

Repeal the subsections.

27 Subsection 22XK(2)

Omit "by the number of prescribed carbon units surrendered.", substitute:

by:

(c) if the safeguard rules provide that this paragraph applies to the surrender of those units—the number worked out in accordance with the safeguard rules for that surrender; or

(d) otherwise—the number of units surrendered.

28 After subsection 22XK(2)

Insert:

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

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(a) a person:
(i) surrendered; or
(ii) because of safeguard rules made for the purposes of paragraph (3)(d), is taken to have surrendered;
a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period; and
(b) some or all of those units:
(i) are prescribed carbon units of a specified kind; or
(ii) satisfy specified conditions;
the ***net emissions number*** for the facility for the period is reduced (but not below zero) by a number, worked out in accordance with those rules, that is less than the number of prescribed carbon units surrendered.

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

29 At the end of section 22XK

Add:

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

30 After paragraph 22XM(1)(a)

Insert:

(aa) a safeguard mechanism credit unit; or

31 Subsection 22XN(1)

Repeal the subsection, substitute:

(1) A person who is the registered holder of one or more prescribed carbon units may, by electronic notice transmitted to the Regulator, surrender any or all of those units for the purposes of reducing the net emissions number for a facility for a period if:
(a) the person has complied with the requirements (if any) specified in the safeguard rules; and
(b) the surrender meets the requirements (if any) specified in the safeguard rules; and

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(c) the period meets the requirements (if any) specified in the safeguard rules.

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

(a) must include a number of:

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

(ii) prescribed carbon units that satisfy specified conditions;

that is worked out in accordance with those rules; or

(b) must not include a number of:

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

(ii) prescribed carbon units that satisfy specified conditions;

that exceeds a number worked out in accordance with those rules.

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

32 Paragraph 22XN(2)(b)

Omit "for a specified facility for a specified period", substitute "for the facility for the period".

33 At the end of section 22XN

Add:

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

34 After Division 4 of Part 3H

Insert:

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Division 4A—Safeguard mechanism credit units

Subdivision A—Issuing safeguard mechanism credit units

22XNA Issuing safeguard mechanism credit units

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

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

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

(3) Without limiting subsection (2), the safeguard rules may make provision in relation to one or more of the following:

(a) applying for safeguard mechanism credit units to be issued;

(b) the number of such units that may be issued to a person in relation to a facility;

(c) how the Regulator is to determine the number of such units to be issued to a person in relation to a facility;

(d) any conditions that may be imposed by the Regulator on a person issued with such units;

(e) the review or reconsideration of any decision under the safeguard rules relating to the issuing of such units.

(4) Without limiting paragraph (3)(c), the safeguard rules may provide for the following in relation to a determination by the Regulator mentioned in that paragraph:

(a) the methodology to be used by the Regulator in making a determination;

(b) how a person may apply for a determination;

(c) requiring an application for a determination to be accompanied by an audit report that is:

(i) prescribed by the safeguard rules; and

(ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for that purpose.

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

Units issued to the Commonwealth

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

Units issued to persons other than the Commonwealth

(2) If the Regulator decides to issue a safeguard mechanism credit unit to a person (other than the Commonwealth) in relation to a facility, the Regulator must make an entry for the unit in a Registry account kept by the person.

(3) The Regulator must not issue a safeguard mechanism credit unit to a person (other than the Commonwealth) unless:
  (a) the person is a registered person; and
  (b) the person has a Registry account.

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

Scope

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

Requirement

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

22XND Safeguard mechanism credit units held in Commonwealth Registry accounts

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

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

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

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

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

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

Scope

(1) This section applies if:

(a) a number of safeguard mechanism credit units have been issued to a person (other than the Commonwealth) in relation to a facility; and

(b) the units were issued to the person on the basis of information given to the Regulator (whether or not by the person); and

(c) the information was false or misleading in a material particular; and

(d) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information.

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

Relinquishment

(2) The Regulator may, by written notice given to the person, require the person to relinquish a specified number of relinquishable units.

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(3) The specified number must not exceed the number of safeguard mechanism credit units the issue of which was directly or indirectly attributable to the false or misleading information.

(4) The person must comply with the requirement within 90 days after the notice was given.

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

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

Scope

(1) This section applies if:

(a) one or more safeguard mechanism credit units were issued to a person on a particular occasion; and

(b) the person has been convicted of an offence against:

(i) section 134.1 of the *Criminal Code*; or

(ii) section 134.2 of the *Criminal Code*; or

(iii) section 135.1 of the *Criminal Code*; or

(iv) section 135.2 of the *Criminal Code*; or

(v) section 135.4 of the *Criminal Code*; or

(vi) section 136.1 of the *Criminal Code*; or

(vii) section 137.1 of the *Criminal Code*; or

(viii) section 137.2 of the *Criminal Code*; and

(c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

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

Relinquishment

(2) The court may, on application made by the Director of Public Prosecutions or the Regulator, order the person:

(a) to relinquish a specified number of relinquishable units not exceeding the number of safeguard mechanism credit units issued as mentioned in paragraph (1)(a); and

(b) to do so by a specified time.

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Compliance

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

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

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

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

Copy of order

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

Appropriate court

(7) For the purposes of this section, each of the following is an ***appropriate court***:
(a) the court that convicted the person of the offence;
(b) the Federal Court of Australia;
(c) the Supreme Court of a State or Territory.

Spent convictions

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

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22XNG Information on Regulator's website regarding relinquishment requirements

(1) If a person is required under section 22XNE or 22XNF to relinquish a specified number of relinquishable units, the Regulator must publish the following information on the Regulator's website:
  (a) the person's name;
  (b) details of the requirement;
  (c) if an amount payable by the person under section 22XNI in relation to non-compliance with the requirement remains unpaid after the time when the amount became due for payment—details of the unpaid amount;
  (d) if the person relinquishes one or more units to comply with the requirement—the total number of units relinquished.

(2) If a decision by the Regulator under section 22XNE is the subject of an application for review made to the Administrative Appeals Tribunal, the Regulator must publish an appropriate annotation on the Regulator's website about:
  (a) the application; and
  (b) when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.

Subdivision C—Compliance with relinquishment requirement

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

(1) If:
  (a) a person is required under section 22XNE or 22XNF to relinquish a specified number of relinquishable units; and
  (b) the person is the registered holder of one or more relinquishable units;

the person may, by electronic notice transmitted to the Regulator, relinquish any or all of the units held by the person.

(2) The notice must specify:
  (a) the units that are being relinquished; and
  (b) the requirement to which the relinquishment relates; and

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(c) the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the units that are being relinquished.

(3) The units relinquished are cancelled and the Regulator must remove the entries for those units from the person's Registry account.

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

22XNI Administrative penalty if relinquishment requirements not complied with

Scope

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

No units relinquished

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

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

where:

prescribed amount means the greater of the following amounts:
(a) $20;
(b) 200% of the market value of a safeguard mechanism credit unit as at the compliance deadline.

Relinquishment of insufficient units

(3) If, by the compliance deadline:

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(a) the person has relinquished one or more units in order to comply with the requirement; and

(b) the number of units is less than the number of units required to be relinquished;

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

$$\left(\begin{array}{c} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{c} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \text{Prescribed amount}$$

where:

prescribed amount means the greater of the following amounts:

(a) $20;

(b) 200% of the market value of a safeguard mechanism credit unit as at the compliance deadline.

When penalty becomes due and payable

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

Compliance

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

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

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

Market value

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

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22XNJ Late payment penalty

Penalty

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

(a) 20% per annum; or

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

on the amount unpaid, computed from that time.

Power to remit

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

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

(b) the Regulator is satisfied:

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

(ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or

(c) the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.

(3) The Regulator may exercise the power conferred by subsection (2):

(a) on written application being made to the Regulator by a person; or

(b) on the Regulator's own initiative.

Refusal

(4) If:

(a) the Regulator decides to refuse to remit the whole or a part of an amount payable under subsection (1); and

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(b) the Regulator made the decision in response to an application;

the Regulator must give written notice of the decision to the applicant.

22XNK Recovery of penalties

An amount payable under section 22XNI or 22XNJ:

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

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

22XNL Set-off

If:

(a) an amount (the ***first amount***) is payable under section 22XNI or 22XNJ by a person; and

(b) the following conditions are satisfied in relation to another amount (the ***second amount***):

(i) the amount is payable by the Commonwealth to the person;

(ii) the amount is of a kind specified in the safeguard rules;

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

22XNM Refund of overpayments

Refund

(1) If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:

(a) an amount payable under section 22XNI;

(b) an amount payable under section 22XNJ.

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

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Interest on overpayment

(2) If:

(a) an amount overpaid by a person is refunded by the Commonwealth under subsection (1); and

(b) the overpayment is attributable, in whole or in part, to an error made by the Regulator;

interest calculated in accordance with subsection (3) is payable by the Commonwealth to the person in respect of the amount refunded.

(3) Interest payable to a person under subsection (2) in respect of an amount refunded to the person is to be calculated:

(a) in respect of the period that:

(i) began when the overpaid amount was paid to the Commonwealth; and

(ii) ended when the amount was refunded; and

(b) at the base interest rate (within the meaning of section 8AAD of the *Taxation Administration Act 1953*).

(4) The Consolidated Revenue Fund is appropriated for the purposes of making payments of interest under subsection (2).

22XNN Stay of proceedings for the recovery of an administrative penalty

Scope

(1) This section applies if:

(a) a notice was given to a person under section 22XNE; and

(b) the notice required the person to relinquish a particular number of relinquishable units; and

(c) the person did not comply with the requirement within 90 days after the notice was given; and

(d) proceedings for the recovery of the penalty payable under section 22XNI in respect of the non-compliance with the requirement (including any late payment penalty payable under section 22XNJ in relation to the section 22XNI penalty) are before a court; and

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(e) the decision to require the person to relinquish a specified number of relinquishable units is the subject of an application for review by the Administrative Appeals Tribunal.

Stay of proceedings

(2) The court may stay the proceedings until the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.

(3) This section does not limit the power of:
(a) a court; or
(b) a Judge; or
(c) a magistrate;
under any other law to order a stay of proceedings.

35 After subparagraph 22XR(3)(b)(v)

Insert:

and (va) section 22XNA;

36 Subsection 22XS(1)

Omit "subsection (2)", substitute "subsections (1A) and (2)".

37 After subsection 22XS(1)

Insert:

(1A) The Minister must not make safeguard rules unless the Minister is satisfied that those rules:
(a) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and
(b) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

(1B) If the Minister makes safeguard rules, the Minister must publish on the Department's website the Minister's reasons for being satisfied that the safeguard rules:
(a) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and
(b) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

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(1C) If safeguard rules are in force and the Minister receives advice under subsection 14(1) of the *Climate Change Act 2022* that:

(a) safeguard emissions, or net safeguard emissions, for a financial year are not declining consistently with a safeguard outcome in paragraph 3(2)(b), (c) or (d) of this Act; and

(b) the safeguard rules need to be amended in order to achieve each of those safeguard outcomes;

the Minister must:

(c) undertake public consultation in relation to whether the safeguard rules need to be amended in order to achieve the safeguard outcomes and the content of any such amendment; and

(d) if satisfied that the safeguard rules need to be amended in order to achieve the safeguard outcomes—amend the safeguard rules.

(1D) If safeguard rules are in force and the Secretary is satisfied, having regard to:

(a) an estimate given to the Secretary under section 15A of the *Climate Change Act 2022*; or

(b) information published under subsection 24(3B) of this Act; or

(c) information given to the Secretary, by an agency or authority of the Commonwealth, a State or a Territory, relating to the likely covered emissions of a designated large facility for a financial year;

that the safeguard rules need to be amended in order to achieve each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d) of this Act, then:

(d) the Secretary must advise the Minister that the Secretary is so satisfied; and

(e) the Minister must:

(i) undertake public consultation in relation to whether the safeguard rules need to be amended in order to achieve the safeguard outcomes and the content of any such amendment; and

(ii) if satisfied that the safeguard rules need to be amended in order to achieve the safeguard outcomes—amend the safeguard rules.

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(1E) Subsections (1C) and (1D) do not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instruments).

38 At the end of section 22XS

Add:

(4) Safeguard rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

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

(6) If safeguard rules make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.

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

38A After subsection 24(3)

Insert:

Publication relating to the safeguard mechanism

(3A) If the total amount of covered emissions of greenhouse gases from the operation of a designated large facility during a financial year is set out in a report under this Act for the financial year, the Regulator must publish on its website by 15 April next following the financial year:
  (a) that total amount; and
  (b) the amount of those covered emissions that were carbon dioxide, methane and nitrous oxide; and
  (c) the baseline emissions number for the facility for the financial year; and

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(d) if safeguard mechanism credit units have been issued in relation to the facility and the financial year—the number of those units; and

(e) if a monitoring period for the facility ended during, or at the end of, the financial year—the following:

(i) the net emissions number for the facility for that period;

(ii) the number and type of prescribed carbon units (if any) surrendered for the purpose of reducing the net emissions number for the facility for that period;

(iii) if any of those units were Australian carbon credit units issued in respect of an eligible offsets project for a reporting period (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) for the project—the methodology determination (within the meaning of that Act) that applied to the project for that period.

(3B) For each financial year between 1 July 2023 and 30 June 2030, the Regulator must publish on its website by 15 April next following the financial year:

(a) the safeguard emissions for the financial year; and

(b) the net safeguard emissions for the financial year; and

(c) the 5-year rolling average safeguard emissions for the financial year; and

(d) the total safeguard emissions for all of the financial years between 1 July 2020 and the end of the financial year.

(4) Subsections (3A) and (3B) do not limit the requirements that may be prescribed by the safeguard rules in relation to the publication of information.

38B Subsection 25(5)

Omit "subsection 24(1AF)", substitute "subsection 24(1AF), (3A) or (3B)".

39 Subsection 30(2A)

After "22X", insert ", 74AA".

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40 After subsection 30(2B)

Insert:

(2C) If, under section 22XF, a person is required to ensure that an excess emissions situation does not exist on a particular 1 April in relation to a facility for a monitoring period, and the person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply in the 2 year period beginning immediately after that 1 April.

Civil penalty: 100 penalty units per day.

41 Subsection 30(3)

Omit "such a requirement", substitute "a requirement covered by this section".

42 Section 41

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

43 Section 41

After "civil penalty provision", insert "(other than section 22XF)".

44 At the end of section 41

Add:

(2) The penalty to be specified in an infringement notice relating to a person's alleged contravention of section 22XF must be a pecuniary penalty equal to whichever is the lesser of the following amounts:

(a) one third of the maximum penalty that a Court could impose on the person for that contravention;

(b) 150,000 penalty units.

Note: To work out the maximum penalty mentioned in paragraph (a), see subsection 31(3).

45 Paragraph 49(1)(q)

Omit "subsection 22XF(1)", substitute "section 22XF".

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46 After section 54A

Insert:

54B Regulator may declare facility—anti-avoidance

(1) If:

(a) one or more persons enter into, begin to carry out, or carry out, a scheme; and

(b) an activity or a series of activities (including ancillary activities) (the ***relevant activities***) that form a single undertaking or enterprise would, but for this section, be a facility for the purposes of this Act; and

(c) but for the scheme, some or all of the relevant activities would or might reasonably be expected to form all or part of a different single undertaking or enterprise (the ***expected undertaking or enterprise***) that meets the requirements of the regulations (if any) made for the purposes of paragraph (1)(a) of the definition of ***facility*** in section 9; and

(d) having regard to the matters specified in subsection (2) of this section, it could reasonably be concluded that the person, or any of the persons, who enter into, begin to carry out, or carry out, the scheme are doing so (or did so) solely or substantially for the purpose of:

(i) achieving the result that, for the purposes of this Act, the relevant activities are a facility that is not a designated large facility (whether or not the relevant activities are or have previously been a designated large facility); or

(ii) achieving the result that, for the purposes of this Act, the relevant activities are a facility with a higher baseline emissions number, or fewer covered emissions, than the baseline emissions number or covered emissions (as the case may be) of the expected undertaking or enterprise; or

(iii) achieving the result that, for the purposes of this Act, the relevant activities are a facility that is attributable to an industry sector other than the industry sector to which the expected undertaking or enterprise is attributable;

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the Regulator may, on the Regulator's own initiative, declare that the expected undertaking or enterprise is a facility.

(2) The following matters are specified:

(a) the manner in which the scheme is entered into or carried out;

(b) the form and substance of the scheme;

(c) the time when the scheme is entered into and the length of the period during which the scheme is carried out;

(d) the result in relation to the operation of this Act (if any) that, but for this section, would or might reasonably be expected to be achieved by the scheme in addition to the results mentioned in paragraph (1)(d).

(3) If the Regulator makes a declaration under subsection (1), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

47 After paragraph 56(dc)

Insert:

(dca) issue, or refuse to issue, safeguard mechanism credit units under section 22XNA;

(dcb) require a relinquishment of relinquishable units under section 22XNE;

(dcc) refuse to remit the whole or a part of an amount under subsection 22XNJ(2);

48 After paragraph 56(gb)

Insert:

(gc) declare a facility under subsection 54B(1);

49 Subsection 71(1)

After "this Act", insert "or the associated provisions".

50 Subsection 73(1)

Omit "regulations", substitute "associated provisions".

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51 Paragraph 73(2)(b)

Omit "regulations", substitute "associated provisions".

52 Subsection 73A(1)

Omit "regulations", substitute "associated provisions".

53 Paragraph 73A(2)(b)

Omit "regulations", substitute "associated provisions".

54 Subsection 74(1)

Omit "regulations", substitute "associated provisions".

55 After section 74

Insert:

74AA Audit of persons providing reports under section 19, 22G, 22X or 22XB

Scope

(1) This section applies if:

(a) a person is required to provide a report (the ***regulatory report***) under section 19, 22G, 22X or 22XB for a financial year in relation to one or more facilities; and

(b) for that financial year, the facility, or at least one of those facilities, was:

(i) a designated large facility; or

(ii) a facility of a kind specified by the safeguard rules for the purposes of this subparagraph; and

(c) the conditions set out in the safeguard rules are satisfied.

Audit

(2) The person must:

(a) appoint as an audit team leader a registered greenhouse and energy auditor of the person's choice; and

(b) arrange for the audit team leader to carry out an audit of:

(i) the regulatory report; and

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(ii) such other matters (if any) relating to the regulatory report as are specified in the safeguard rules; and

(iii) if the regulatory report was under section 19—the person's compliance with section 22 (about record-keeping) in relation to the financial year and so much of the report as relates to facilities to which paragraph (1)(b) of this section applies; and

(iv) if the regulatory report was under section 22G—the person's compliance with section 22H (about record-keeping) in relation to the financial year; and

(v) if the regulatory report was under section 22X—the person's compliance with section 22XA (about record-keeping) in relation to the financial year; and

(vi) if the regulatory report was under section 22XB—the person's compliance with section 22XC (about record-keeping) in relation to the financial year; and

(c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report:

(i) on the day on which the regulatory report is provided to the Regulator; and

(ii) in the manner specified in the safeguard rules.

Civil penalty:

(a) for an individual—200 penalty units; or

(b) otherwise—1,000 penalty units.

(3) The safeguard rules may specify:

(a) the type of audit to be carried out; and

(b) the matters to be covered by the audit; and

(c) the form of the audit report and the kinds of details it is to contain.

(4) The person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or

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(b) otherwise—250 penalty units.

56 Subsection 74A(1)

Omit "regulations", substitute "associated provisions".

57 Paragraph 74B(1)(a)

Repeal the paragraph, substitute:

(a) either:

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

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

58 Paragraphs 74B(1)(c) and (2)(b)

Omit "regulations", substitute "associated provisions".

59 Paragraph 74C(1)(a)

Repeal the paragraph, substitute:

(a) either:

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

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

60 Subsection 74C(2)

Omit "regulations", substitute "associated provisions".

61 After paragraph 75A(5)(i)

Insert:

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

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

62 Section 77

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

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63 At the end of section 77

Add:

(2) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

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

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

(3) Subsection (2) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(4) If the regulations make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.

(5) Subsection (4) does not apply if the publication would infringe copyright.

(6) The regulations may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

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Part 2—Amendment of the Income Tax Assessment Act 1997

Income Tax Assessment Act 1997

64 After paragraph 420-10(d)

Insert:

or (e) a *safeguard mechanism credit unit;

65 After subparagraph 420-52(a)(iii)

Insert:

or (iv) *safeguard mechanism credit units;

66 Subsection 995-1(1)

Insert:

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

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Part 2A—Amendment of the Climate Change Act 2022

Climate Change Act 2022

66A Section 5

Insert:

Climate Change Secretary means the Secretary of the Department responsible for the administration of the *National Greenhouse and Energy Reporting Act 2007*.

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

Environment Minister means the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999*.

expanded designated large facility: a facility is an ***expanded designated large facility*** for a financial year if:

(a) the activity, or series of activities, that constitutes the facility is carried on to a greater extent in the financial year than in earlier financial years; or

(b) during the financial year, an activity, or series of activities, is included in the activity, or series of activities, that constitutes the facility for the first time.

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

net safeguard emissions, for a financial year, has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

new designated large facility, for a financial year, means a designated large facility for the financial year that was not a designated large facility for any previous financial year.

safeguard emissions, for a financial year, has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

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

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

scope 1 emission of greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

66B Paragraph 12(1)(d)

After "those policies", insert "and in particular whether safeguard emissions and net safeguard emissions are declining consistently with the safeguard outcomes".

66C Part 4 (heading)

After "**Authority**", insert "**etc.**".

66D At the end of section 13

Add:

- The Environment Minister is to give the Minister, the Climate Change Secretary and the Climate Change Authority certain emissions estimates.

66E After subsection 14(1)

Insert:

(1A) Advice given to the Minister under subsection (1) must include advice about:

(a) whether safeguard emissions and net safeguard emissions for the financial year to which the annual climate change statement relates are declining consistently with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d) of the *National Greenhouse and Energy Reporting Act 2007*, taking into account:

(i) the impact of any expanded designated large facilities, or new designated large facilities, for the financial year; and

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(ii) the impact of any expected expanded designated large facilities, or expected new designated large facilities, for future financial years; and

(iii) any emissions estimates that are given to the Climate Change Authority under section 15A of this Act; and

(b) if safeguard emissions, or net safeguard emissions, for the financial year are not so declining—whether any amendments to the safeguard rules are needed in order to achieve each of those safeguard outcomes.

66F At the end of Part 4

Add:

15A Environment Minister to give Minister, Climate Change Secretary and Climate Change Authority certain emissions estimates

If, in a financial year:

(a) the Environment Minister approves, under the *Environment Protection and Biodiversity Conservation Act 1999*, the taking of an action for the purposes of a controlling provision (within the meaning of that Act); and

(b) the Environment Minister is satisfied that the action is likely to result in:

(i) an increase, in the financial year or future financial years, of scope 1 emissions of greenhouse gases from the operation of a designated large facility for the financial year; or

(ii) a new designated large facility for the financial year or a future financial year; and

(c) the Environment Minister has been given an estimate of the scope 1 emissions of greenhouse gases from the taking of the action in one or more financial years for which an entity covered by subparagraph (b)(i) or (ii) is, or is likely to be, a designated large facility;

the Environment Minister must give the estimate to the Minister, the Climate Change Secretary and the Climate Change Authority as soon as practicable after approving the taking of the action.

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Part 2B—Amendment of the Industry Research and Development Act 1986

Industry Research and Development Act 1986

66G Subsection 33(2)

Repeal the subsection, substitute:

(2) A program may only be prescribed under subsection (1):

(a) to the extent that it is with respect to one or more legislative powers of the Parliament; and

(b) if it is not a program to subsidise the extraction of coal or natural gas.

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Part 3—Application of amendments

67 Application of amendments

(1) Despite the repeal of the definition of ***1 March*** in section 7 of the *National Greenhouse and Energy Reporting Act 2007* by Part 1 of this Schedule, that definition continues to apply, for the purposes of section 22XF of that Act, in relation to a monitoring period ending before 1 July 2023.

(2) Despite the repeal of subsection 22XF(2) of the *National Greenhouse and Energy Reporting Act 2007* by Part 1 of this Schedule, the regulations made for the purposes of that subsection, as in force immediately before that repeal, continue to apply in relation to a contravention of section 22XF of that Act that relates to a monitoring period ending before 1 July 2023.

(3) The amendments of section 22XF of the *National Greenhouse and Energy Reporting Act 2007* made by Part 1 of this Schedule apply in relation to monitoring periods ending on or after 1 July 2023.

(3A) Subsection 24(3A) of the *National Greenhouse and Energy Reporting Act 2007*, as inserted by Part 1 of this Schedule, applies in relation to the financial year beginning on 1 July 2023 and later financial years.

(4) The amendments of section 30 of the *National Greenhouse and Energy Reporting Act 2007* made by Part 1 of this Schedule apply in relation to a contravention of section 22XF of that Act, as amended by that Part, that relates to a monitoring period ending on or after 1 July 2023.

(5) The amendments of section 41 of the *National Greenhouse and Energy Reporting Act 2007* made by Part 1 of this Schedule apply in relation to an alleged contravention of section 22XF of that Act, as amended by that Part, that relates to a monitoring period ending on or after 1 July 2023.

(6) Section 54B of the *National Greenhouse and Energy Reporting Act 2007*, as inserted by Part 1 of this Schedule, applies in relation to a scheme that is entered into, begun to be carried out, or carried out on or after the day the Bill for this Act was introduced into the House of Representatives.

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

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

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

(10) Section 74AA of the *National Greenhouse and Energy Reporting Act 2007*, as inserted by Part 1 of this Schedule, applies in relation to the financial year beginning on 1 July 2023 and later financial years.

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

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

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

(14) The amendments of the *Climate Change Act 2022* made by Part 2A of this Schedule apply in relation to the financial year beginning on 1 July 2023 and later financial years.

(15) The amendment of section 33 of the *Industry Research and Development Act 1986* made by Part 2B of this Schedule applies in relation to a program prescribed under subsection (1) of that section after the commencement of this item.

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Schedule 2—Australian National Registry of Emissions Units

Australian National Registry of Emissions Units Act 2011

1 Section 3

Omit:

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

substitute:

> • Entries may be made in Registry accounts for:
> (a) Australian carbon credit units; and
> (b) Kyoto units; and
> (c) safeguard mechanism credit units.
>
> • This Act sets out rules about dealings with:
> (a) Kyoto units; and
> (b) safeguard mechanism credit units.

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

Omit "rules.", substitute "rules; or".

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

Insert:

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

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4 Section 4 (definition of *issue*)

Repeal the definition, substitute:

issue:

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

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

5 Section 4

Insert:

legislative rules means rules made under section 94A.

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

6 Section 4 (definition of *registered holder*)

Repeal the definition, substitute:

registered holder, in relation to:

(a) an Australian carbon credit unit; or

(b) a Kyoto unit; or

(c) a safeguard mechanism credit unit;

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

7 Section 4

Insert:

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

8 Section 4 (definition of *transfer*)

Repeal the definition, substitute:

transfer:

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(a) in relation to a Kyoto unit—has the meaning given by section 33; or

(b) in relation to a safeguard mechanism credit unit—has the meaning given by section 48C.

9 Paragraph 9(4)(a)

Repeal the paragraph, substitute:

(a) to be a registry for:

(i) Australian carbon credit units; and

(ii) safeguard mechanism credit units;

10 Paragraph 11(5)(a)

Repeal the paragraph, substitute:

(a) issue to the account any:

(i) Australian carbon credit units; or

(ii) safeguard mechanism credit units; or

11 At the end of subsection 15(2)

Add:

; and (d) there are no entries for any safeguard mechanism credit units in the account.

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

Add:

; and (iii) setting out the effect of any legislative rules made for the purposes of subsection (5).

13 After subsection 16(4)

Insert:

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

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14 At the end of subsection 16(7)

Add:

; and (c) each action taken under legislative rules made for the purposes of subsection (5).

15 At the end of section 17

Add:

Safeguard mechanism credit units

(3) An entry for a safeguard mechanism credit unit in a Registry account may be made in accordance with this Act.

16 After paragraph 19(3A)(a)

Insert:

(aa) section 48A of this Act; or

17 After paragraph 22(4A)(a)

Insert:

(aa) section 48A of this Act; or

18 Subsection 26(3) (heading)

Repeal the heading, substitute:

Exceptions

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

Insert:

or (iii) safeguard mechanism credit units;

20 After paragraph 28A(1)(b)

Insert:

or (c) safeguard mechanism credit units;

21 After paragraph 28B(1)(b)

Insert:

or (c) safeguard mechanism credit units;

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

After "Australian carbon credit units", insert "or safeguard mechanism credit units".

23 At the end of subsection 28D(5)

Add:

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

24 At the end of subsection 28D(16)

Add:

; or (c) anything in the *National Greenhouse and Energy Reporting Act 2007*.

25 After Part 3

Insert:

Part 4—Safeguard mechanism credit units

48 Simplified outline of this Part

- This Part sets out rules about the ownership, transfer and transmission of safeguard mechanism credit units.

48A A safeguard mechanism credit unit is personal property

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

48B Ownership of safeguard mechanism credit units

(1) The registered holder of a safeguard mechanism credit unit:

(a) is the legal owner of the unit; and

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(b) may, subject to this Act and the *National Greenhouse and Energy Reporting Act 2007*, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

(2) Subsection (1) only protects a person who deals with the registered holder of the unit as a purchaser:

(a) in good faith for value; and

(b) without notice of any defect in the title of the registered holder.

48C Transfer of safeguard mechanism credit units

For the purposes of this Act, if there is an entry for a safeguard mechanism credit unit in a Registry account (the ***first Registry account***) kept by a person (the ***first person***):

(a) a ***transfer*** of the unit from the first Registry account to a Registry account kept by another person consists of:

(i) the removal of the entry for the unit from the first Registry account; and

(ii) the making of an entry for the unit in the Registry account kept by the other person; and

(b) a ***transfer*** of the unit from the first Registry account to another Registry account kept by the first person consists of:

(i) the removal of the entry for the unit from the first Registry account; and

(ii) the making of an entry for the unit in the other Registry account kept by the first person.

48D Transmission of safeguard mechanism credit units by assignment

(1) A transmission by assignment of a safeguard mechanism credit unit for which there is an entry in a Registry account is of no force until:

(a) the transferor, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee; and

(b) the Regulator complies with that instruction.

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(2) An instruction under paragraph (1)(a) must set out:
   (a) the account number of the transferor's Registry account; and
   (b) the account number of the transferee's Registry account.

(3) If the Regulator receives an instruction under paragraph (1)(a), the Regulator must comply with the instruction as soon as practicable after receiving it.

(4) The Registry must set out a record of each instruction under paragraph (1)(a).

(5) If the transferor is the Commonwealth, the Minister may give an instruction under paragraph (1)(a) on behalf of the transferor.

48E Transmission of safeguard mechanism credit units by operation of law etc.

Scope

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

Effect of transmission

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

Declaration of transmission

(3) The transferee must, within 90 days after the transmission, give the Regulator:
   (a) a declaration of transmission; and
   (b) such evidence of transmission as is specified in the legislative rules.

(4) A declaration of transmission must be made in accordance with the legislative rules.

(5) If the transferee does not already have a Registry account, the declaration of transmission must be accompanied by a request,

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under regulations made for the purposes of subsection 10(1), for the Regulator to open a Registry account in the name of the transferee.

(6) If the Regulator is satisfied that special circumstances warrant the extension of the 90-day period mentioned in subsection (3), the Regulator may extend that period.

(7) The Regulator may exercise the power conferred by subsection (6):
  (a) on written application being made to the Regulator by the transferee; or
  (b) on the Regulator's own initiative.

Transfer of unit—transferee already has a Registry account

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

Transfer of unit—transferee does not have a Registry account

(9) If:
  (a) the transferee does not already have a Registry account; and
  (b) in accordance with the request under regulations made for the purposes of subsection 10(1), the Regulator has opened a Registry account in the name of the transferee;

the Regulator must, as soon as practicable after opening the Registry account, transfer the unit from the relevant Registry account kept by the transferor to the Registry account kept by the transferee.

Record

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

When the transferee is the Commonwealth

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

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on behalf of the transferee.

Notification

(12) If:

(a) the Regulator decides to:

(i) extend the 90-day period mentioned in subsection (3); or

(ii) refuse to extend the 90-day period mentioned in subsection (3); and

(b) the Regulator made the decision in response to an application;

the Regulator must give written notice of the decision to the applicant.

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

Scope

(1) This section applies if:

(a) a person keeps a Registry account (the ***first Registry account***) in which there is an entry for a safeguard mechanism credit unit; and

(b) the person, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the first Registry account to another Registry account kept by the person; and

(c) the instruction sets out:

(i) the account number of the first Registry account; and

(ii) the account number of the other Registry account.

Compliance with instruction

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

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

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

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

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

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

(1) This Act does not affect:

(a) the creation of; or

(b) any dealings with; or

(c) the enforcement of;

equitable interests in relation to a safeguard mechanism credit unit.

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

48J Legislative rules about safeguard mechanism credit units

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

26 Section 58

Omit:

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

substitute:

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

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(c) Australian carbon credit units; and
(d) safeguard mechanism credit units.

27 After section 60

Insert:

60A Information about Australian carbon credit units

The legislative rules may require the Regulator to:

(a) publish on the Regulator's website specified information about:
  (i) Australian carbon credit units for which there are entries in Registry accounts; and
  (ii) the registered holders of such units; and
(b) do so in accordance with specified requirements.

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

60B Information about safeguard mechanism credit units

The legislative rules may require the Regulator to:

(a) publish on the Regulator's website specified information about:
  (i) safeguard mechanism credit units for which there are entries in Registry accounts; and
  (ii) the registered holders of such units; and
(b) do so in accordance with specified requirements.

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

28 At the end of Part 5

Add:

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63 Information about number of voluntarily cancelled safeguard mechanism credit units

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

(a) the name of the person; and

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

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

29 At the end of subsection 65(2)

Add:

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

30 At the end of Part 6

Add:

66 Voluntary cancellation of safeguard mechanism credit units

(1) If:

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

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

the person may, by electronic notice transmitted to the Regulator, request the Regulator to cancel any or all of those units.

(2) A notice under subsection (1) must:

(a) specify the safeguard mechanism credit unit or units that are to be cancelled; and

(b) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the safeguard mechanism credit unit or units that are to be cancelled; and

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

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(3) If the Regulator receives a notice under subsection (1) in relation to a safeguard mechanism credit unit:
  (a) if the legislative rules require the Regulator to cancel the unit—the Regulator must cancel the unit; and
  (b) if the legislative rules require the Regulator to take specified action in relation to the unit—the Regulator must take that action; and
  (c) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

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

(5) The Minister may, by legislative instrument, determine that any person who is the registered holder of one or more safeguard mechanism credit units may request the Regulator to cancel any or all of those units.

31 Section 82 (table item 1)

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

32 After section 94

Insert:

94A Legislative rules

(1) The Minister may, by legislative instrument, make rules (***legislative rules***) prescribing matters:
  (a) required or permitted by this Act to be prescribed by the rules; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the legislative rules may not do the following:
  (a) create an offence or civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;

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(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(3) Legislative rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but legislative rules are taken to be consistent with the regulations to the extent that legislative rules are capable of operating concurrently with the regulations.

(4) Legislative rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

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

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

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

(6) If legislative rules make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.

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

33 Section 95 (heading)

Omit "**Prescribing**", substitute "**Regulations may prescribe**".

Carbon Credits (Carbon Farming Initiative) Act 2011

34 Paragraph 51(1)(b)

After "regulations", insert "or legislative rules".

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Schedule 3—Clean Energy Regulator

Clean Energy (Consequential Amendments) Act 2011

1 Items 219 to 220A of Schedule 1

Repeal the items.

Clean Energy Regulator Act 2011

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

Add:

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

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

Omit "was obtained after the commencement of this section", substitute "is held".

National Greenhouse and Energy Reporting Act 2007

4 Section 7

Insert:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

5 Section 7 (definition of *protected information*)

Repeal the definition.

6 Section 23 (at the end of the heading)

Add "**—audit information**".

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7 Paragraph 23(1)(a)

Omit "greenhouse and energy information or".

8 Paragraph 23(1)(aa)

Repeal the paragraph.

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

Omit "Commonwealth; or", substitute "Commonwealth.".

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

Repeal the subparagraphs.

11 Paragraph 23(2)(c)

Repeal the paragraph.

12 Paragraph 23(2)(da)

Omit "member; or", substitute "member.".

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

Repeal the paragraphs.

14 Subsection 23(2) (note)

Omit "See also", substitute "For the protection of other information, see".

15 Paragraph 27(1)(a)

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

16 At the end of section 27

Add:

(3) A person commits an offence if:

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

(b) the person engages in conduct; and

(c) the person's conduct breaches the condition.

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

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17 Application provision

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

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Schedule 4—Other amendments

Part 1—Amendments commencing day after Royal Assent

Carbon Credits (Carbon Farming Initiative) Act 2011

1A Section 5

Insert:

carbon estimation area, in relation to an area-based offsets project, has the meaning given by the applicable methodology determination for the project.

1 At the end of section 20C

Add:

(3) The Regulator must not enter into a carbon abatement contract under section 20B (otherwise than by way of novation) if any of the eligible carbon credit units to be purchased under the contract:

(a) were issued; or

(b) at the time of purchase, would have been issued;

in respect of an eligible offsets project of a kind specified in the legislative rules.

2 After subsection 20G(2)

Insert:

(2A) Without limiting paragraph (2)(b), the legislative rules may provide that the Regulator must exclude from one or more carbon abatement purchasing processes carbon abatement that results, or is to result, from the carrying out of an offsets project of a specified kind.

3 Paragraph 20H(1)(a)

After "units to", insert "or from".

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4 After paragraph 20H(1)(a)

Insert:

(aa) selling units held in such an account;

5 Subparagraph 27(4A)(b)(i)

Omit "(other than the *National Greenhouse and Energy Reporting Act 2007*)".

6 After subsection 106(4)

Insert:

(4AA) The Minister must not make a methodology determination unless the Minister is satisfied that the determination complies with the offsets integrity standards.

7 After subsection 114(2)

Insert:

(2AA) The Minister must not vary a methodology determination unless the Minister is satisfied that the varied determination complies with the offsets integrity standards.

8 After Division 4 of Part 12

Insert:

Division 4A—Information about Australia's international obligations

166A Information about Australia's international obligations

(1) The Regulator must publish on the Regulator's website any information that is:

(a) held by the Regulator; and

(b) specified in the legislative rules for the purposes of subsection (2).

(2) The legislative rules may specify information that is relevant to Australia meeting its obligations under any or all of the following:

(a) the Climate Change Convention;

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(b) the Kyoto Protocol;
(c) the Paris Agreement;
(d) any other international agreement.

9 Paragraph 168(1)(b)

Omit "the project area or project areas; and", substitute:

the following:

(i) the project area or project areas;
(ii) the carbon estimation area, or carbon estimation areas, for the project; and

10 Subsection 168(2)

Repeal the subsection.

11 Subsection 168(2A)

Omit "of this section".

12 Section 169

Repeal the section.

13 Section 240 (table item 21)

Repeal the item.

14 Application and transitional provisions

Definitions

(1) In this item:

Act means the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

commencement means the commencement of this item.

existing project means an area-based offsets project that, at commencement, is an eligible offsets project because of a declaration made before commencement.

grace period means the 30-day period beginning at commencement.

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grace period request, in relation to a carbon estimation area, means a request made within the grace period in relation to the carbon estimation area under subsection 169(1) of the Act as continued in force and modified by subitem (6) of this item.

Register not to set out certain project areas

(2) Despite the repeal of section 169 of the Act made by this Schedule, the Emissions Reduction Fund Register must not set out the project area or project areas for an area-based offsets project if:

(a) immediately before commencement, the Emissions Reduction Fund Register did not set out the project area or project areas because the Regulator had granted a request under that section in relation to the project area or project areas; or

(b) the Regulator grants a request of a kind referred to in subitem (3) or (4) of this item in relation to the project area or project areas.

Pending requests relating to project areas

(3) Despite the repeal of section 169 of the Act made by this Schedule, that section (as in force immediately before commencement) continues to apply, after commencement, in relation to a request under that section that has not been finally determined at commencement.

Requests relating to project areas made within grace period

(4) Despite the repeal of section 169 of the Act made by this Schedule, the project proponent for an existing project may, within the grace period, make a request under subsection 169(1) (as in force immediately before commencement) in relation to the project area or project areas for the project.

Register not to set out certain carbon estimation areas

(5) Despite the amendment of section 168 of the Act made by this Schedule, the Emissions Reduction Fund Register must not set out the carbon estimation area or carbon estimation areas for an existing project if:

(a) the grace period has not ended; or

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(b) the project proponent for the project makes a grace period request in relation to the carbon estimation area or carbon estimation areas and the request has not been finally determined; or

(c) the project proponent for the project makes a grace period request in relation to the carbon estimation area or carbon estimation areas and the Regulator grants the request.

Grace period requests in relation to carbon estimation areas

(6) Despite the repeal of section 169 of the Act made by this Schedule, that section (as in force immediately before commencement) continues to apply, during the grace period, in relation to an existing project as if a reference in that section to the project area or project areas for the project were also a reference to the carbon estimation area or carbon estimation areas for the project.

(7) A decision of the Regulator to refuse a grace period request in relation to the carbon estimation area or carbon estimation areas for a project is taken to be a reviewable decision for the purposes of the Act.

Extension of time for considering requests made within grace period

(8) If the project proponent for an existing project makes a request that is:

(a) a request of a kind referred to in subitem (4) in relation to the project area or project areas for the project; or

(b) a grace period request in relation the carbon estimation area or carbon estimation areas for the project;

subsection 169(3) of the Act (as continued in force by subitems (4) and (6) of this item) has effect, in relation to the request, as if the reference in that subsection to 30 days were instead a reference to 60 days.

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Part 2—Amendments commencing later

Carbon Credits (Carbon Farming Initiative) Act 2011

15 Section 5

Insert:

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

16 Subsections 257(3) and (4)

Repeal the subsections.

17 After subsection 257(6)

Insert:

(6A) The Chair of the Emissions Reduction Assurance Committee holds office on a full-time basis.

18 Subsection 257(7)

After "member", insert "(other than the Chair of the Emissions Reduction Assurance Committee)".

19 Section 263 (after the heading)

Insert:

(1) The Chair of the Emissions Reduction Assurance Committee must not engage in paid work outside the duties of the Chair of the Emissions Reduction Assurance Committee without the Minister's approval.

20 Section 263

Before "An", insert "(2)".

21 Section 263

After "member", insert "(other than the Chair of the Emissions Reduction Assurance Committee)".

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22 Subsection 265(1)

Repeal the subsection, substitute:

(1) The Chair of the Emissions Reduction Assurance Committee has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(1A) The Minister may grant the Chair of the Emissions Reduction Assurance Committee leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

23 Paragraph 267(2)(c)

Repeal the paragraph.

24 Subsection 267(3)

Repeal the subsection.

25 At the end of section 267

Add:

(5) The Minister may terminate the appointment of the Chair of the Emissions Reduction Assurance Committee if the Chair of the Emissions Reduction Assurance Committee engages, except with the Minister's approval, in paid work outside the duties of the Chair of the Emissions Reduction Assurance Committee's office (see subsection 263(1)).

(6) The Minister may terminate the appointment of an Emissions Reduction Assurance Committee member (other than the Chair of the Emissions Reduction Assurance Committee) if the member engages in paid employment that conflicts or may conflict with the proper performance of the member's duties (see subsection 263(2)).

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[*Minister's second reading speech made in—*
House of Representatives on 30 November 2022
Senate on 28 March 2023]

(136/22)

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