



Clean Energy Regulator Act 2011

No. 163, 2011

Compilation No. 11

Compilation date:	30 August 2019
Includes amendments up to:	Act No. 57, 2019
Registered:	9 September 2019

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Clean Energy Regulator Act 2011* that shows the text of the law as amended and in force on 30 August 2019 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Simplified outline	2
4 Definitions	2
5 Vacancy in the office of a member of the Regulator	6
6 Crown to be bound	6
7 Extension to external Territories	6
8 Extension to exclusive economic zone and continental shelf	6
9 Extension to Greater Sunrise special regime area	6
10 Application to foreign ships	7
Part 2—Clean Energy Regulator	8
Division 1—Regulator’s establishment, functions, powers and liabilities	8
11 Clean Energy Regulator	8
12 Functions of the Regulator	8
13 Powers of the Regulator	9
15 Regulator has privileges and immunities of the Crown	9
Division 2—Membership of the Regulator	10
17 Membership of the Regulator	10
18 Appointment of members of the Regulator	10
19 Period of appointment for members of the Regulator	11
20 Acting members of the Regulator	11
Division 3—Terms and conditions for members of the Regulator	13
21 Remuneration	13
22 Disclosure of interests	13
24 Outside employment	13
25 Leave of absence	14
26 Resignation	14
27 Termination of appointment	14
28 Other terms and conditions	15
Division 4—Decision-making by the Regulator	16
29 Holding of meetings	16
30 Presiding at meetings	16
31 Quorum	16

32	Voting at meetings etc.	16
33	Conduct of meetings.....	16
34	Minutes.....	17
Division 5—Delegation		18
35	Delegation by the Regulator	18
Division 6—Staff of the Regulator etc.		19
36	Staff.....	19
37	Persons assisting the Regulator	19
38	Consultants	19
Division 7—Planning and reporting obligations		20
39	Corporate plan	20
40	Annual report.....	20
Division 8—Other matters		21
41	Minister may give directions to the Regulator	21
42	Chair of the Regulator not subject to direction by the Regulator on certain matters	21
Part 3—Secrecy		22
43	Secrecy	22
44	Disclosure or use for the purposes of a climate change law etc.	23
45	Disclosure to Ministers etc.	23
46	Disclosure to Secretaries etc.	23
47	Disclosure or use for purposes of development of methodology determinations	24
48	Disclosure to a Royal Commission.....	25
49	Disclosure to certain agencies, bodies and persons	25
50	Disclosure to certain financial bodies	28
51	Disclosure with consent.....	30
52	Disclosure to reduce threat to life or health	30
53	Disclosure of publicly available information.....	31
54	Disclosure of summaries or statistics.....	31
55	Disclosure for purposes of law enforcement.....	31
56	Delegation	33
56A	Authorisations	33
Part 4—Miscellaneous		34
57A	Proceedings in the name of the Regulator	34
57	Regulations.....	34

Endnotes	35
Endnote 1—About the endnotes	35
Endnote 2—Abbreviation key	37
Endnote 3—Legislation history	38
Endnote 4—Amendment history	40

An Act to establish the Clean Energy Regulator, and for other purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Clean Energy Regulator Act 2011*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Sections 3 to 57	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	2 April 2012

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.

Section 3

3 Simplified outline

The following is a simplified outline of this Act:

- This Act establishes the Clean Energy Regulator.
- The Regulator has such functions as are conferred on it by or under:
 - (a) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
 - (b) the *National Greenhouse and Energy Reporting Act 2007*; and
 - (c) the *Renewable Energy (Electricity) Act 2000*; and
 - (d) the *Australian National Registry of Emissions Units Act 2011*.

4 Definitions

In this Act:

Australian police force means:

- (a) the Australian Federal Police; or
- (b) a police force or police service of a State or Territory.

Climate Change Convention means the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2 ([1994] ATS 2). In 2013, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

climate change law means any of the following:

- (a) this Act or legislative instruments under this Act;
- (i) the *Carbon Credits (Carbon Farming Initiative) Act 2011* or legislative instruments under that Act;
- (j) the *National Greenhouse and Energy Reporting Act 2007* or legislative instruments under that Act;
- (k) the *Renewable Energy (Electricity) Act 2000* or legislative instruments under that Act;
- (l) the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;
- (m) the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;
- (n) the *Australian National Registry of Emissions Units Act 2011* or legislative instruments under that Act.

engage in conduct means:

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

foreign country includes a region where:

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

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

international agreement means an agreement whose parties are:

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

international climate change agreement means:

- (a) the Climate Change Convention; or

Section 4

- (b) any other international agreement, signed on behalf of Australia, that:
 - (i) relates to climate change; and
 - (ii) imposes obligations on Australia to take action to reduce greenhouse gas emissions; or
- (c) an international agreement, signed on behalf of Australia, that:
 - (i) relates to climate change; and
 - (ii) is specified in a legislative instrument made by the Minister for the purposes of this definition.

international climate change body means:

- (a) a body established under an international climate change agreement; or
- (b) a body established by a body mentioned in paragraph (a).

member of the Regulator includes the Chair of the Regulator.

methodology determination has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

objectives of the Regulator includes:

- (b) the specific objectives of the Regulator in relation to the *Carbon Credits (Carbon Farming Initiative) Act 2011* or legislative instruments under that Act; and
- (c) the specific objectives of the Regulator in relation to the *National Greenhouse and Energy Reporting Act 2007* or legislative instruments under that Act; and
- (d) the specific objectives of the Regulator in relation to the *Renewable Energy (Electricity) Act 2000* or legislative instruments under that Act; and
- (e) the specific objectives of the Regulator in relation to the *Australian National Registry of Emissions Units Act 2011* or legislative instruments under that Act.

official of the Regulator means:

- (a) a member of the Regulator; or

- (b) a member of the staff of the Regulator; or
- (c) a person whose services are made available to the Regulator under section 37; or
- (d) a person engaged as a consultant under section 38.

offsets project has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

prescribed eligible carbon unit has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

protected information means information that:

- (a) was obtained after the commencement of this section by a person in the person's capacity as an official of the Regulator; and
- (b) relates to the affairs of a person other than an official of the Regulator.

Regulator means the Clean Energy Regulator.

Royal Commission has the same meaning as in the *Royal Commissions Act 1902*.

Secretary means the Secretary of the Department.

staff of the Regulator means the staff described in section 36.

State/Territory government body means:

- (a) the government of a State or Territory; or
- (b) an agency or authority of a State or Territory.

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

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

Section 5

vacancy, in relation to the office of a member of the Regulator, has a meaning affected by section 5.

5 Vacancy in the office of a member of the Regulator

For the purposes of a reference in:

- (a) this Act to a ***vacancy*** in the office of a member of the Regulator; or
- (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body;

there are taken to be 4 offices of members of the Regulator in addition to the Chair of the Regulator.

6 Crown to be bound

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

7 Extension to external Territories

This Act extends to every external Territory.

8 Extension to exclusive economic zone and continental shelf

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

9 Extension to Greater Sunrise special regime area

- (1) Despite subsection 13AB(1) of the *Seas and Submerged Lands Act 1973*, this Act extends to acts, omissions, matters and things directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the

Section 10

Greater Sunrise special regime area (within the meaning of that Act).

(2) This section does not limit section 8.

10 Application to foreign ships

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

- (a) the territorial sea; or
- (b) the exclusive economic zone; or
- (c) waters of the continental shelf;

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

Part 2—Clean Energy Regulator

Division 1—Regulator's establishment, functions, powers and liabilities

11 Clean Energy Regulator

- (1) The Clean Energy Regulator is established by this section.

Note 1: The Regulator does not have a legal identity separate from the Commonwealth.

Note 2: In this Act, **Regulator** means the Clean Energy Regulator—see section 4.

- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
- (a) the Regulator is a listed entity; and
 - (b) the Chair of the Regulator is the accountable authority of the Regulator; and
 - (c) the following persons are officials of the Regulator:
 - (i) the Chair of the Regulator;
 - (ii) the other members of the Regulator;
 - (iii) the staff of the Regulator referred to in section 36;
 - (iv) persons whose services are made available to the Regulator under section 37;
 - (v) consultants engaged under section 38; and
 - (d) the purposes of the Regulator include the functions of the Regulator referred to in section 12.

12 Functions of the Regulator

The Regulator has the following functions:

- (a) such functions as are conferred on the Regulator by a climate change law;

- (b) such functions as are conferred on the Regulator by any other law of the Commonwealth;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

13 Powers of the Regulator

The Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Note: The Chair of the Regulator may enter into contracts and other arrangements on behalf of the Commonwealth. See section 23 of the *Public Governance, Performance and Accountability Act 2013*.

15 Regulator has privileges and immunities of the Crown

The Regulator has the privileges and immunities of the Crown in right of the Commonwealth.

Division 2—Membership of the Regulator

17 Membership of the Regulator

The Regulator consists of the following members:

- (a) a Chair;
- (b) at least 2, and not more than 4, other members.

18 Appointment of members of the Regulator

- (1) Each member of the Regulator is to be appointed by the Minister by written instrument.

Note: The member of the Regulator is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a member of the Regulator unless the Minister is satisfied that the person has:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in at least one of the following fields:

- (c) economics;
- (d) industry;
- (e) energy production and supply;
- (f) energy measurement and reporting;
- (g) greenhouse gas emissions measurement and reporting;
- (h) greenhouse gas abatement measures;
- (i) financial markets;
- (j) trading of environmental instruments;
- (k) land resource management;
- (l) public administration.

- (3) The Chair of the Regulator holds office on a full-time basis.
- (4) A member of the Regulator (other than the Chair) may hold office on either a full-time or a part-time basis.

19 Period of appointment for members of the Regulator

A member of the Regulator holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

20 Acting members of the Regulator

Acting Chair of the Regulator

- (1) The Minister may appoint a person to act as the Chair of the Regulator:
 - (a) during a vacancy in the office of the Chair of the Regulator (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair of the Regulator:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting member of the Regulator (other than the Chair of the Regulator)

- (2) The Minister may appoint a person to act as a member of the Regulator (other than the Chair of the Regulator):
 - (a) during a vacancy in the office of a member of the Regulator (other than the Chair of the Regulator), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a member of the Regulator (other than the Chair of the Regulator):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Section 20

Eligibility

- (3) A person is not eligible for appointment to act as:
- (a) the Chair of the Regulator; or
 - (b) a member of the Regulator (other than the Chair of the Regulator);
- unless the person is eligible for appointment as a member of the Regulator.

Note 1: See subsection 18(2).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions for members of the Regulator

21 Remuneration

- (1) A member of the Regulator is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a member of the Regulator is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Regulator is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

22 Disclosure of interests

- (1) A disclosure by a member of the Regulator under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, a member of the Regulator is taken not to have complied with section 29 of that Act if the member does not comply with subsection (1) of this section.

24 Outside employment

- (1) A full-time member of the Regulator must not engage in paid employment outside the duties of his or her office without the Minister's approval.

Section 25

- (2) A part-time member of the Regulator must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

25 Leave of absence

- (1) A full-time member of the Regulator has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant leave of absence, other than recreation leave, to a full-time member of the Regulator on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair of the Regulator may grant leave of absence to a part-time member of the Regulator on the terms and conditions that the Chair determines.

26 Resignation

- (1) A member of the Regulator may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

27 Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Regulator for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Regulator if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) if the member is a full-time member—the member engages, except with the Minister’s approval, in paid employment outside the duties of his or her office (see section 24); or
- (c) if the member is a part-time member—the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 24); or
- (d) the member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (e) the member is absent, except on leave of absence, from 3 consecutive meetings of the Regulator.

28 Other terms and conditions

A member of the Regulator holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 4—Decision-making by the Regulator

29 Holding of meetings

- (1) The Regulator is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the Regulator may convene a meeting at any time.

30 Presiding at meetings

- (1) The Chair of the Regulator presides at all meetings at which he or she is present.
- (2) If the Chair of the Regulator is not present at a meeting, the members of the Regulator present must appoint one of themselves to preside.

31 Quorum

At a meeting of the Regulator, 2 members of the Regulator constitute a quorum.

32 Voting at meetings etc.

- (1) At a meeting of the Regulator, a question is decided by a majority of the votes of members of the Regulator present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

33 Conduct of meetings

The Regulator may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

34 Minutes

The Regulator must keep minutes of its meetings.

Division 5—Delegation

35 Delegation by the Regulator

- (1) The Regulator may, by writing, delegate any or all of its functions and powers to:
- (a) a member of the Regulator; or
 - (b) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee; or
 - (c) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or
 - (d) a person who is:
 - (i) a person assisting the Regulator under section 37; and
 - (ii) an SES employee or acting SES employee in the Department; or
 - (e) a person who is:
 - (i) a person assisting the Regulator under section 37; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department.
- Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.
- (2) A delegate must comply with any written directions of the Regulator.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

Division 6—Staff of the Regulator etc.

36 Staff

- (1) The staff of the Regulator are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chair of the Regulator and the staff of the Regulator together constitute a Statutory Agency; and
 - (b) the Chair of the Regulator is the Head of that Statutory Agency.

37 Persons assisting the Regulator

The Regulator may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the Regulator in connection with the performance of any of its functions.

38 Consultants

- (1) The Regulator may engage persons having suitable qualifications and experience as consultants to the Regulator.
- (2) The consultants are to be engaged on the terms and conditions that the Regulator determines in writing.

Division 7—Planning and reporting obligations

39 Corporate plan

- (1) A corporate plan prepared by the Chair of the Regulator under section 35 of the *Public Governance, Performance and Accountability Act 2013* must include such matters (if any) as the Minister requires.
- (2) The Minister may give the Chair written guidelines that are to be used by the Chair in deciding whether a matter is covered by subsection (1).
- (3) A guideline given under subsection (2) is not a legislative instrument.

40 Annual report

- (1) An annual report prepared by the Chair of the Regulator and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* is in addition to a report under section 105 of the *Renewable Energy (Electricity) Act 2000* (the **REE Act**).
- (2) If a report (the **REE report**) under section 105 of the REE Act relating to a calendar year has been presented to the Parliament, the report prepared by the Chair and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period that ends after the end of the calendar year:
 - (a) need not deal comprehensively with the working of the REE Act during any part of that period that overlaps with the calendar year; and
 - (b) must include a summary of the REE report, to the extent that the REE report deals with the working of the REE Act during any part of that period that overlaps with the calendar year.

Division 8—Other matters

41 Minister may give directions to the Regulator

- (1) The Minister may, by legislative instrument, give directions to the Regulator in relation to the performance of its functions and the exercise of its powers.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

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

- (2) A direction under subsection (1) must be of a general nature only.
- (3) A direction under subsection (1) must not be inconsistent with the objects of:
- (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (c) the *National Greenhouse and Energy Reporting Act 2007*; or
 - (d) the *Renewable Energy (Electricity) Act 2000*.
- (4) The Regulator must comply with a direction under subsection (1).

42 Chair of the Regulator not subject to direction by the Regulator on certain matters

To avoid doubt, the Chair of the Regulator is not subject to direction by the Regulator in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Public Governance, Performance and Accountability Act 2013*; or
 - (b) the *Public Service Act 1999*;
- in relation to the Regulator.

Part 3—Secrecy

43 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Regulator; and
 - (b) the person has obtained protected information in the person's capacity as an official of the Regulator; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure or use is authorised by a provision of this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.
- Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (3) Except where it is necessary to do so for the purposes of giving effect to a climate change law, an official of the Regulator is not to be required:
- (a) to produce to a court or tribunal a document containing protected information; or
 - (b) to disclose protected information to a court or tribunal.

44 Disclosure or use for the purposes of a climate change law etc.

An official of the Regulator may disclose or use protected information if:

- (a) the disclosure or use is for the purposes of a climate change law; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Regulator under a climate change law; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Regulator.

45 Disclosure to Ministers etc.

- (1) An official of the Regulator may disclose protected information to the Minister.
- (2) An official of the Regulator may disclose protected information to a Minister if the Minister is responsible for administering a program, or collecting statistics, relating to:
 - (a) greenhouse gas emissions (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*); or
 - (b) energy consumption (within the meaning of that Act); or
 - (c) energy production (within the meaning of that Act).
- (3) An official of the Regulator may disclose protected information to a person employed, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of a Minister referred to in subsection (1) or (2).

46 Disclosure to Secretaries etc.

- (1) An official of the Regulator may disclose protected information to:
 - (a) the Secretary; or
 - (b) an officer of the Department who is authorised by the Secretary, in writing, for the purposes of this subsection;
 if the disclosure is for the purposes of:

Section 47

- (c) advising the Minister; or
 - (ca) monitoring the operation of a climate change law; or
 - (cb) evaluating the effectiveness of a climate change law; or
 - (d) facilitating the monitoring of Australia's compliance with its international obligations under an international climate change agreement; or
 - (e) facilitating the development of an international agreement that relates to climate change.
- (2) If a Minister is responsible for administering a program, or collecting statistics, relating to:
- (a) greenhouse gas emissions (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*); or
 - (b) energy consumption (within the meaning of that Act); or
 - (c) energy production (within the meaning of that Act);
- an official of the Regulator may disclose protected information to:
- (d) the Secretary of the Department administered by that Minister; or
 - (e) an officer of that Department who is authorised by that Secretary, in writing, for the purposes of this subsection;
- if the disclosure is for the purposes of:
- (f) advising that Minister; or
 - (g) administering that program, or collecting those statistics, as the case may be.

47 Disclosure or use for purposes of development of methodology determinations

- (1) The Regulator may disclose or use protected information that relates to a particular offsets project if:
- (a) under section 27 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the Regulator has declared the offsets project to be an eligible offsets project; and
 - (b) more than 7 years have passed since the application under section 22 of that Act was made for the declaration; and
 - (c) the information was:

- (i) contained in the application; or
 - (ii) given in connection with the application; or
 - (iii) contained in an offsets report about the project; and
 - (d) the disclosure or use is for the purposes of facilitating the development of one or more methodology determinations.
- (3) Subsection (1) does not apply to personal information (within the meaning of the *Privacy Act 1988*).

48 Disclosure to a Royal Commission

- (1) An official of the Regulator may disclose protected information to a Royal Commission.
- (2) The Chair of the Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (1).
- (3) An instrument under subsection (2) is not a legislative instrument.

49 Disclosure to certain agencies, bodies and persons

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that particular protected information, or a particular class of protected information, will enable or assist any of the following agencies, bodies or persons:
 - (aa) a Department (within the meaning of the *Freedom of Information Act 1982*);
 - (a) the Australian Bureau of Statistics;
 - (b) the Australian Communications and Media Authority;
 - (c) the Australian Competition and Consumer Commission;
 - (d) the Australian Prudential Regulation Authority;
 - (e) the Australian Securities and Investments Commission;
 - (f) the National Competition Council;
 - (g) the Productivity Commission;

Section 49

- (h) the Australian Energy Regulator;
 - (i) the Australian Statistician;
 - (j) the Commissioner of Taxation;
 - (k) the Australian Competition Tribunal;
 - (l) the Director of Public Prosecutions;
 - (m) the Australian Transaction Reports and Analysis Centre;
 - (n) the Reserve Bank of Australia;
 - (o) Australian Energy Market Operator Limited (ACN 072 010 327);
 - (p) the Australian Energy Market Commission established under the *Australian Energy Market Commission Establishment Act 2004* of South Australia;
 - (q) the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* of Western Australia;
 - (r) Low Carbon Australia Limited (ACN 141 478 748);
 - (s) the Climate Change Authority;
 - (sa) the Clean Energy Finance Corporation;
 - (t) the Land Sector Carbon and Biodiversity Board;
 - (ta) the Energy Security Council;
 - (u) the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*);
 - (ua) the Australian Renewable Energy Agency;
 - (ub) a prescribed agency or authority of the Commonwealth;
 - (v) a State/Territory government body whose functions include a function that corresponds to a function of the Regulator;
 - (w) a prescribed State/Territory government body;
 - (x) a prescribed international climate change body;
 - (y) a prescribed professional disciplinary body;
 - (z) a person or body responsible for the administration of a scheme that involves the issue or registration of prescribed eligible carbon units;
- to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

- (2) If an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected information, or protected information included in that class of protected information, as the case may be, to the agency, body or person concerned.
- (3) The Chair of the Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (4) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (3); 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.

- (5) An instrument under subsection (3) is not a legislative instrument.

Prescribed professional disciplinary bodies

- (6) A person commits an offence if:
 - (a) the person is:
 - (i) a prescribed professional disciplinary body; or
 - (ii) a member of a prescribed professional disciplinary body; and
 - (b) protected information has been disclosed under subsection (2) to the body; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (7) Subsection (6) does not apply if:

Section 50

- (a) the disclosure or use is with the consent of the Chair of the Regulator; and
- (b) the disclosure or use is for the purpose of:
 - (i) deciding whether or not to take disciplinary or other action; or
 - (ii) taking that action.

Note: A defendant bears an evidential burden in relation to a matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

50 Disclosure to certain financial bodies

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that particular protected information, or a particular class of protected information, will enable or assist a body corporate that:
 - (a) either:
 - (i) conducts, or is involved in the supervision of, a financial market; or
 - (ii) is a body corporate that holds an Australian CS facility licence or an Australian derivative trade repository licence, or that operates a prescribed derivative trade repository; and
 - (b) is specified in the regulations;to monitor compliance with, enforce, or perform functions or exercise powers under:
 - (c) the *Corporations Act 2001*; or
 - (d) the business law of a State or Territory; or
 - (e) the business law of a foreign country; or
 - (f) the operating rules (if any) of the body corporate.

Disclosure

- (2) If an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected information, or protected information

Section 50

included in that class of protected information, as the case may be, to the body corporate.

Conditions

- (3) The Chair of the Regulator may, by writing, impose conditions to be complied with by the body corporate and its officers, employees and agents in relation to protected information disclosed to the body corporate under subsection (2).
- (4) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (3); 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.

- (5) An instrument under subsection (3) is not a legislative instrument.

Secondary disclosure and use

- (6) A person commits an offence if:
 - (a) the person is:
 - (i) a body corporate; or
 - (ii) an officer, employee or agent of a body corporate; and
 - (b) protected information has been disclosed under subsection (2) to the body corporate; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (7) Each of the following is an exception to the prohibition in subsection (6):

Section 51

- (a) the disclosure or use is with the consent of the Chair of the Regulator;
- (b) the disclosure or use is for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under:
 - (i) the *Corporations Act 2001*; or
 - (ii) the business law of a State or Territory; or
 - (iii) the business law of a foreign country; or
 - (iv) the operating rules (if any) of the body corporate.

Note: A defendant bears an evidential burden in relation to a matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Meaning of expressions

- (8) In this section, the following expressions have the same meanings as in the *Corporations Act 2001*:
 - (a) ***Australian CS facility licence***;
 - (aa) ***Australian derivative trade repository licence***;
 - (b) ***financial market***;
 - (c) ***officer***;
 - (d) ***operating rules***;
 - (e) ***prescribed derivative trade repository***.

51 Disclosure with consent

An official of the Regulator may disclose protected information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

52 Disclosure to reduce threat to life or health

An official of the Regulator may disclose protected information if:

- (a) the official believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual; and

- (b) the disclosure is for the purposes of preventing or lessening that threat.

53 Disclosure of publicly available information

An official of the Regulator may disclose protected information if it has already been lawfully made available to the public.

54 Disclosure of summaries or statistics

An official of the Regulator may disclose:

- (a) summaries of protected information; or
 - (b) statistics derived from protected information;
- if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

55 Disclosure for purposes of law enforcement

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that disclosure of particular protected information is reasonably necessary for:
 - (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (2) The Chair of the Regulator may disclose that protected information to:
 - (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;

whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Section 55

- (3) If an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected information to:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Secondary disclosure and use

- (4) A person commits an offence if:
- (a) the person is, or has been, an employee or officer of:
 - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (ii) an Australian police force; and
 - (b) protected information has been disclosed under subsection (2) or (3) to the Department, agency, authority or police force, as the case may be; and
 - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
 - (d) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Chair of the Regulator; and
 - (b) the disclosure or use is for the purpose of:
 - (i) enforcing the criminal law; or
 - (ii) enforcing a law imposing a pecuniary penalty; or
 - (iii) protecting the public revenue.

Section 56

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Chair of the Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2) or (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); 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.

- (8) An instrument under subsection (6) is not a legislative instrument.

56 Delegation

- (1) The Chair of the Regulator may, by writing, delegate any or all of his or her functions and powers under this Part to a member of the Regulator.
- (2) A delegate must comply with any written directions of the Chair of the Regulator.

56A Authorisations

To avoid doubt, an authorisation under paragraph 46(1)(b) or (2)(e) or subsection 49(2), 50(2) or 55(3) may:

- (a) authorise a specified officer or official; or
- (b) authorise a person who holds, occupies or performs the duties of, a specified office or position.

Part 4—Miscellaneous

57A Proceedings in the name of the Regulator

- (1) Proceedings brought by the Commonwealth in relation to the functions or powers of the Regulator may be brought in the name of the Regulator.
- (2) Proceedings brought against the Commonwealth in relation to the functions or powers of the Regulator may be brought against the Commonwealth in the name of the Regulator.

57 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Clean Energy Regulator Act 2011	163, 2011	4 Dec 2011	s 3–57: 2 Apr 2012 (s 2(1) item 2) Remainder: 4 Dec 2011 (s 2(1) item 1)	
Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011	152, 2011	4 Dec 2011	Sch 1 (item 2): 1 July 2012 (s 2(1) item 3)	—
Clean Energy Legislation Amendment Act 2012	84, 2012	28 June 2012	Sch 5 (item 2): 3 Aug 2012 (s 2(1) item 5)	—
Corporations and Financial Sector Legislation Amendment Act 2013	59, 2013	21 June 2013	Sch 1 (items 36–38): 19 July 2013 (s 2(1) item 2)	—
Clean Energy Legislation (Carbon Tax Repeal) Act 2014	83, 2014	17 July 2014	Sch 1 (items 95–104, 333): 1 July 2014 (s 2(1) item 2)	Sch 1 (item 333)
Carbon Farming Initiative Amendment Act 2014	119, 2014	25 Nov 2014	Sch 1 (items 370–376E, 383–393, 397–399): 13 Dec 2014 (s 2(1) item 2)	Sch 1 (items 383–393, 397–399)
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 3 (items 1–5, 10), Sch 4 (items 1, 2), Sch 5 (items 20–24, 74–77) and Sch 7: 14 Apr 2014 (s 2)	Sch 3 (item 10), Sch 5 (items 74–77) and Sch 7

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 6 (items 16, 17) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 6 (item 17) and Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 122): 5 Mar 2016 (s 2(1) item 2)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 6, 7): 30 Aug 2019 (s 2(1) item 2)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 83, 2014
s 4	am No 83, 2014; No 57, 2019
s 9	rs No 57, 2019
Part 2	
Division 1	
s 11	am No 36, 2015
s 13	rs No 36, 2015
s 14	rep No 36, 2015
Division 2	
Division 2 heading.....	rs No 36, 2015
s 16	rep No 36, 2015
Division 3	
s 22	rs No 36, 2015
s 23	rep No 36, 2015
s 27	am No 36, 2015
Division 7	
Division 7	rs No 36, 2015
s 39	rs No 36, 2015
s 40	rs No 36, 2015
Division 8	
s 41	am No 83, 2014; No 126, 2015
s 42	am No 36, 2015
Part 3	
s 46	am No 119, 2014
s 47	am No 119, 2014
s 49	am No. 152, 2011; No. 84, 2012; No 83, 2014; No 119, 2014; No 41, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 50	am No. 59, 2013; No 119, 2014
s 56A	ad No 119, 2014
Part 4	
s 57A	ad No 36, 2015