THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 63

THURSDAY, 30 OCTOBER 2014

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1 **MEETING OF SENATE**
The Senate met at 9.30 am. The President (Senator the Honourable Stephen Parry) took the chair, read prayers and made an acknowledgement of country.

2 **DOCUMENTS**
The following documents were tabled by the Clerk pursuant to statute:

*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.*

- **Australian Communications and Media Authority Act 2005**—Radiocommunications (Charges) Amendment Determination 2014 (No. 1) [F2014L01406].
- **Civil Aviation Act 1988**—Civil Aviation Safety Regulations 1998—Repeal — exemptions for helicopters used in certain off-shore operations—CASA EX137/14 [F2014L01418].
- Commissioner of Taxation—Public Rulings—
  - Class Rulings—
- **Currency Act 1965**—Currency (Royal Australian Mint) Determination 2014 (No. 7) [F2014L01422].
- **Customs Act 1901**—Customs Regulations 1926—CEO Instrument of Approval—No. 2 of 2014 [F2014L01405].
- **Higher Education Support Act 2003**—VET Provider Approval—No. 57 of 2014 [F2014L01409].
- **Horticulture Marketing and Research and Development Services Act 2000**—
- **Migration Act 1958**—Migration Regulations 1994—
  - Payment of Visa Application Charges and Fees in Foreign Currencies (Conversion Instrument)—IMMI 14/101 [F2014L01411].
  - Places and Currencies for Paying of Fees (Places and Currencies Instrument)—IMMI 14/102 [F2014L01413].
Military Rehabilitation and Compensation Act 2004—
Military Rehabilitation and Compensation (Non-warlike Service) Determination 2014 (No. 3) [F2014L01407].
Military Rehabilitation and Compensation (Warlike Service) Determination 2014 (No. 3) [F2014L01408].
Veterans’ Entitlements Act 1986—

3 COMMITTEES—LEAVE TO MEET DURING SITTING
Committees were authorised to meet during the sitting of the Senate today, as follows:
Environment and Communications Legislation Committee—public meeting, from 3.30 pm, for the consideration of the supplementary Budget estimates 2014-15.
Environment and Communications References Committee—private briefing, from 1.10 pm, relating to the committee’s inquiry into the National Landcare Program.

4 TRANSFER OF NOTICE OF MOTION
Senator Dastyari, pursuant to standing order 78, indicated his objection to the withdrawal of the following notice of motion:
Business of the Senate notice of motion no. 1 standing in the name of the Chair of the Standing Committee on Regulations and Ordinances (Senator Williams) for 7 sitting days after today, for the disallowance of the Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014, as contained in Select Legislative Instrument 2014 No. 102 and made under the Corporations Act 2001.
Senator Dastyari’s name was put on the notice of motion.

5 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION
Leave refused: The Minister for Finance (Senator Cormann) sought leave to move a motion relating to the hours of meeting and routine of business for today.
An objection was raised and leave was not granted.
Suspension of standing orders: Senator Cormann, at the request of the Leader of the Government in the Senate (Senator Abetz) and pursuant to contingent notice, moved—that so much of the standing orders be suspended as would prevent a minister moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion relating to the hours of meeting and routine of business for today.
Debate ensued.
Question put.
The Senate divided—

AYES, 33

Senators—

Bernardi  Fierravanti-Wells  Muir  Ryan
Birmingham  Heffernan  Nash  Scullion
Bushby (Teller)  Johnston  O’Sullivan  Seselja
Canavan  Lambie  Parry  Sinodinos
Cash  Lazarus  Payne  Smith
Colbeck  Madigan  Reynolds  Wang
Cormann  Mason  Ronaldson  Williams
Edwards  McGrath  Ruston  Xenophon
Fawcett

NOES, 31

Senators—

Bilyk  Faulkner  Marshall  Siewert
Bullock  Gallacher  McLucas  Singh
Cameron  Hansson-Young  Milne  Sterle
Collins  Ketter  Moore  Urquhart (Teller)
Conroy  Leyonhjelm  O’Neill  Waters
Dastyari  Lines  Polley  Whish-Wilson
Day  Ludlam  Rhiannon  Weight
Di Natale  Lundy  Rice

Question agreed to.
Senator Cormann moved—That a motion relating to the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today until determined.

Closure: Senator Cormann moved—that the question be now put.

Question—that the question be now put—put and passed.

Main question put.

The Senate divided—

AYES, 33

Senators—

Bernardi  Fierravanti-Wells  Muir  Ryan
Birmingham  Heffernan  Nash  Scullion
Bushby (Teller)  Johnston  O’Sullivan  Seselja
Canavan  Lambie  Parry  Sinodinos
Cash  Lazarus  Payne  Smith
Colbeck  Madigan  Reynolds  Wang
Cormann  Mason  Ronaldson  Williams
Edwards  McGrath  Ruston  Xenophon
Fawcett
Question agreed to.

Senator Cormann moved—that on Thursday, 30 October 2014:

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) the routine of business from not later than 8 pm shall be consideration of the government business order of the day relating to the Carbon Farming Initiative Amendment Bill 2014;

(c) the adjournment of the Senate shall be proposed:
(i) after it has finally considered the bill listed in paragraph (b), or
(ii) when a motion for the adjournment is moved by a minister, whichever is the earlier; and

(d) divisions may take place after 4.30 pm.

Closure: Senator Cormann moved—that the question be now put.

Question—that the question be now put—put and passed.

Main question put and passed.

6 **Trade and Foreign Investment (Protecting the Public Interest) Bill 2014**

Order of the day read for the adjourned debate on the motion of Senator Whish-Wilson—that this bill be now read a second time.

Debate resumed.

*Time expired:* The time for general business orders of the day for the consideration of bills reached the limit of 2 hours 20 minutes.

Debate adjourned till the next day of sitting, Senator Dastyari in continuation.

7 **Petition**

The following petition, lodged with the Clerk by Senator Madigan, was received:

From 1993 petitioners, requesting that the Senate review the child support system and consider a system that ensures individual case assessments.

8 **Notices**

Senator Cameron: To move on the next day of sitting—that the Fair Entitlements Guarantee Amendment Regulation 2014 (No. 1), as contained in Select Legislative Instrument 2014 No. 147 and made under the *Fair Entitlements Guarantee Act 2012*, be disallowed.
Senator Rice: To move on the next day of sitting—That the Senate—

(a) notes that:

(i) discussions about East Coast High Speed Rail (HSR) have been going on for many years, and

(ii) under this Government there has been no meaningful action to progress East Coast HSR, and that ongoing delays raise the possibility of a proposed route being developed by other interests; and

(b) calls on the Government to immediately establish a High Speed Rail Authority in legislation to formalise discussions with state, territory and local governments, as well as industry and the community, to commence work on preserving the HSR corridor and progress other early planning, so that environmental and social impact studies can commence in 2015. (general business notice of motion no. 499)

Senator Di Natale: To move on the next day of sitting—That there be laid on the table by the Assistant Minister for Health, no later than 3 pm on 26 November 2014, a copy of the advice which has informed the Minister for Health’s decision to not send Australian personnel to West Africa in response to the Ebola epidemic. (general business notice of motion no. 500)

Senator O’Sullivan: To move on the next day of sitting—That the Senate acknowledges the fact that, according to the Bureau of Resources and Energy Economics, over the past 12 months over $50 billion worth of resource projects have been finalised across the nation, with increases in production, including over 200 million tonnes of iron ore, 40 million tonnes of coal and more than 1 000 petajoules of gas, creating jobs and boosting the economy of thousands of small businesses and by extension, nourishing the nation’s economy. (general business notice of motion no. 501)

9 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 14 OF 2014

The Chair of the Selection of Bills Committee (Senator Bushby) tabled the following report:

SELECTION OF BILLS COMMITTEE
REPORT NO. 14 OF 2014

1. The committee met in private session on Wednesday, 29 October 2014 at 7.21 pm.

2. The committee resolved to recommend—That—

(a) the provisions of the Acts and Instruments (Framework Reform) Bill 2014 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 25 November 2014;

(b) the provisions of the Australian Citizenship and Other Legislation Amendment Bill 2014 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 1 December 2014;

(c) the provisions of the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 9 February 2015;
(d) the provisions of the Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 and the Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 27 November 2014;

(e) the provisions of the Freedom of Information Amendment (New Arrangements) Bill 2014 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 25 November 2014;

(f) contingent upon its introduction in the House of Representatives, the provisions of the Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014 be referred immediately to the Economics Legislation Committee for inquiry and report by 25 November 2014; and

(g) the provisions of the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 9 February 2015.

3. The committee resolved to recommend—that the following bills not be referred to committees:
   - Albury-Wodonga Development Corporation (Abolition) Bill 2014
   - Building Energy Efficiency Disclosure Amendment Bill 2014
   - Omnibus Repeal Day (Spring 2014) Bill 2014
   - Statute Law Revision Bill (No. 2) 2014.

The committee recommends accordingly.

4. The committee considered the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 but was unable to reach agreement.

5. The committee deferred consideration of the following bills to its next meeting:
   - Australian War Memorial Amendment Bill 2014
   - Civil Law and Justice Legislation Amendment Bill 2014
   - Corporations Amendment (Publish What You Pay) Bill 2014
   - Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014
   - Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014
   - Mining Subsidies Legislation Amendment (Raising Revenue) Bill 2014
   - Motor Vehicle Standards (Cheaper Transport) Bill 2014
   - Save Our Sharks Bill 2014
   - Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2014
   - Treasury Legislation Amendment (Repeal Day) Bill 2014.

David Bushby
Chair
30 October 2014.

Senator Bushby moved—that the report be adopted.
The Assistant Minister for Social Services (Senator Fifield) moved the following amendment:

At the end of the motion, add “and that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 not be referred to a committee”.

Debate ensued.

Question—That the amendment be agreed to—put and passed.

Main question, as amended, put and passed.

10 ORDER OF BUSINESS—REARRANGEMENT

The Assistant Minister for Social Services (Senator Fifield) moved—That—

(a) the following government business orders of the day be considered from 12.45 pm today:

No. 3 Dental Benefits Legislation Amendment Bill 2014
No. 4 Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2014
No. 5 Albury-Wodonga Development Corporation (Abolition) Bill 2014;

and

(b) government business be called on after consideration of the bills listed in paragraph (a) and considered till not later than 2 pm today.

Question put and passed.

Senator Fifield moved—That the order of general business for consideration today be as follows:

(a) general business notice of motion no. 494 standing in the name of Senator Moore relating to indexation of fuel excise; and

(b) orders of the day relating to documents.

Question put and passed.

11 LEAVE OF ABSENCE

Senator McEwen, by leave, moved—That leave of absence be granted to Senator Carr for today, for personal reasons.

Question put and passed.

12 COMMITTEE—EXTENSION OF TIME TO REPORT

The following committee was granted an extension of time to report:

Foreign Affairs, Defence and Trade References Committee—Abuse in Defence, extended to 31 October 2014.

13 DAYS OF MEETING—ESTIMATES HEARINGS—PROPOSED VARIATION

Motion determined as not formal: The Assistant Minister for Social Services (Senator Fifield) requested that government business notice of motion no. 1 standing in his name for today, relating to the days of meeting and estimates hearings, be taken as formal.

An objection was raised and the motion was not proceeded with as a formal motion.
Proposed suspension of standing orders: Senator Fifield, at the request of the Leader of the Government in the Senate (Senator Abetz) and pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent a minister moving a motion to provide for the consideration of a matter, namely a motion to give precedence to government business notice of motion no. 1.

Debate ensued.

Closure: Senator Macdonald moved—That the question be now put.

Ruling of Deputy President: The Deputy President (Senator Marshall) ruled that, in accordance with standing order 199(3), it was not in order for Senator Macdonald to move the motion as he had spoken in the debate.

Debate continued.

At 12.45 pm: Debate was interrupted.

14 **DENTAL BENEFITS LEGISLATION AMENDMENT BILL 2014**

Order of the day read for the adjourned debate on the motion of the Assistant Minister for Health (Senator Nash)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Education (Senator Ryan) the bill was read a third time.

15 **MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW AMENDMENT BILL 2014**

Order of the day read for the adjourned debate on the motion of the Assistant Minister for Social Services (Senator Fifield)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Education (Senator Ryan) the bill was read a third time.

16 **ALBURY-WODONGA DEVELOPMENT CORPORATION (ABOLITION) BILL 2014**

Order of the day read for the adjourned debate on the motion of the Assistant Minister for Health (Senator Nash)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Education (Senator Ryan) the bill was read a third time.
17 **SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (2014 BUDGET MEASURES NO. 6) BILL 2014**

Order of the day read for the adjourned debate on the motion of the Assistant Minister for Social Services (Senator Fifield)—That this bill be now read a second time.

Debate resumed.

*At 2 pm: Debate was interrupted while Senator Cameron was speaking.*

18 **QUESTIONS**

Questions without notice were answered.

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*Documents:* Senator Conroy, by leave, tabled the following documents:

- Defence—Defence force pay—
  *Defence Act 1903*—Copy of section 58B.
- Extract from Foreign Affairs, Defence and Trade Legislation Committee *Hansard* of 22 October 2014, page 36.

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A further question without notice was answered.

*Leave refused:* Senator Lambie sought leave to table a document.

An objection was raised and leave was not granted.

Further questions without notice were answered.

19 **DAYS OF MEETING—ESTIMATES HEARINGS—VARIATION**

*Leave refused:* The Minister for Employment (Senator Abetz) sought leave to move government business notice of motion no. 1 standing in the name of the Assistant Minister for Social Services (Senator Fifield) for today, relating to the days of meeting and estimates hearings.

An objection was raised and leave was not granted.

*Suspension of standing orders:* Senator Abetz, pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent him moving a motion to provide for the consideration of a matter, namely a motion to give precedence to government business notice of motion no. 1.

*Closure:* Senator Abetz moved—That the question be now put.

Question—That the question be now put—put.
The Senate divided—
AYES, 47

Senator Abetz moved—That government business notice of motion no. 1 may be moved immediately and have precedence over all other business today till determined.

Closure: Senator Abetz moved—that the question be now put.

Main question put and passed.

Senator Abetz, at the request of the Assistant Minister for Social Services (Senator Fifield), moved government business notice of motion no. 1—

1. That the Senate meet from Monday, 17 November to Wednesday, 19 November 2014,

2. That the following government business orders of the day be considered:

Aged Care and Other Legislation Amendment Bill 2014
Health and Other Services (Compensation) Care Charges (Amendment) Bill 2014
Australian Citizenship Amendment (Intercountry Adoption) Bill 2014
Australian Education Amendment Bill 2014
Australian National Preventive Health Agency (Abolition) Bill 2014
Australian Sports Anti-Doping Authority Amendment Bill 2014
Business Services Wage Assessment Tool Payment Scheme Bill 2014
Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014
Carbon Farming Initiative Amendment Bill 2014
Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014
Counter-Terrorism Legislation Amendment Bill (No. 1) 2014
No. 63—30 October 2014

Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014
Fair Work Amendment Bill 2014
Freedom of Information Amendment (New Arrangements) Bill 2014
Higher Education and Research Reform Amendment Bill 2014
Private Health Insurance Amendment Bill (No. 1) 2014
Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Bill 2014
Social Services and Other Legislation Amendment (Seniors Supplement Cessation) Bill 2014
Social Services and Other Legislation Amendment (Student Measures) Bill 2014
Tax Laws Amendment (Research and Development) Bill 2013.

(3) That on Monday, 17 November 2014, the sitting of the Senate shall be suspended at 3.20 pm till the ringing of the bells to enable senators to attend the address by His Excellency Mr Xi Jinping, President of the People’s Republic of China.

(4) That—

(a) the estimates hearings by legislation committees which did not proceed on Tuesday, 21 October 2014, be rescheduled as follows:

2014-15 Budget estimates:
Thursday, 20 November 2014 (supplementary hearings—Group A); and

(b) the following committees meet:
Environment and Communications
Finance and Public Administration
Legal and Constitutional Affairs
Rural and Regional Affairs and Transport.

Closure: Senator Abetz moved—That the question be now put.
Question—That the question be now put—put and passed.
Main question put and passed.
Statement by leave: Senator Siewert, by leave, made a statement relating to the motion.

20 IMMIGRATION—HUMANITARIAN INTAKE FROM EBOLA-AFFECTED COUNTRIES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The Assistant Minister for Immigration and Border Protection (Senator Cash) tabled the following document:

Immigration—Humanitarian intake from Ebola-affected countries—Letter from the Assistant Minister for Immigration and Border Protection (Senator Cash) to the Clerk of the Senate (Dr Laing), dated 30 October 2014, responding to the order of the Senate of 29 October 2014 and raising public interest immunity claims.

21 MOTIONS TO TAKE NOTE OF ANSWERS

Senator Gallacher moved—That the Senate take note of the answers given by the Minister for Employment (Senator Abetz) and the Minister for Defence (Senator Johnston) to questions without notice asked by Senators Collins and Gallacher today relating to indexation of fuel excise and to the manufacture of the next fleet of Australian submarines.
Debate ensued.
Question put and passed.
Senator Rhiannon moved—that the Senate take note of the answer given by the Minister for Human Services (Senator Payne) to a question without notice asked by Senator Rhiannon today relating to higher education reforms.
Question put and passed.

22 Senator Peris—Personal Explanation
Senator Peris, by leave, made a personal explanation relating to recent media reports concerning a number of private matters.

23 Leave of Absence
Senator McEwen, by leave, moved—that leave of absence be granted to Senator Brown for today, for personal reasons.
Question put and passed.

24 Committee Reports and Government Responses—Tabling and Consideration Pursuant to Standing Order 62(4)
Senator Bushby, at the request of the Chair of the Standing Committee on Publications (Senator O’Sullivan), tabled the following report:

PUBLICATIONS COMMITTEE
10TH REPORT
The Publications Committee reports that it has met in conference with the Publications Committee of the House of Representatives.
The Committee, having considered documents presented to the Parliament since 2 October 2014, recommends that the following be printed:
Australian Aged Care Quality Agency—Report for the period 1 January to 30 June 2014, including financial statements for the Aged Care Standards and Accreditation Agency Limited for the period 1 July to 31 December 2013.
Australian Centre for International Agricultural Research (ACIAR)—Report for 2013-14.
Australian Communications and Media Authority (ACMA)—Report for 2013-14.
Australian Competition and Consumer Commission (ACCC)—Report for 2013-14, including report of the Australian Energy Regulator (AER).
Australian Federal Police (AFP)—Report for 2013-14, including reports on assumed identities and the National Witness Protection Program.
Australian Film, Television and Radio School (AFTRS)—Report for 2013-14.
Australian Human Rights Commission—Reports—
No. 73—Mai v Commonwealth of Australia (Department of Immigration and Border Protection).
No. 74—MC and Hassan Ghanbari v Commonwealth of Australia (Department of Immigration and Border Protection).
No. 75—Arif v Commonwealth of Australia (Department of Immigration and Border Protection).
No. 76—Mordechai v Commonwealth of Australia (Department of Immigration and Border Protection).
Australian Pesticides and Veterinary Medicines Authority (APVMA)—Report for 2013-14.
Australian Public Service Commission—Report of the Australian Public Service Commissioner for 2013-14, including report of the Merit Protection Commissioner.
Australian Research Council (ARC)—Report for 2013-14.
Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2013-14.
Civil Aviation Safety Authority (CASA)—Report for 2013-14.
Classification Board and Classification Review Board—Reports for 2013-14.
Commonwealth Director of Public Prosecutions (CDPP)—Report for 2013-14.
Department of Communications—Report for 2013-14.
Department of Finance—
  Report for 2010-11—Erratum.
Department of Foreign Affairs and Trade—Report for 2013-14.
Department of Health—Report for 2013-14 (2 volumes), including the Pharmaceutical Benefits Advisory Committee annual report on processes, and financial statements for the Therapeutic Goods Administration.
Department of Industry—Report for 2013-14, including reports of Geoscience Australia and IP Australia.
Department of Social Services—Report for 2013-14.
Department of the Prime Minister and Cabinet—Report for 2013-14, including financial statements for the Aboriginal Benefit Account and the Aboriginal and Torres Strait Islander Land Account.
Department of the Senate—Report for 2013-14.
Federal Court of Australia—Report for 2013-14, including report of the National Native Title Tribunal.
Gene Technology Regulator—Report for 2013-14
Senator Bushby moved—that the report be adopted.

Question put and passed.

Senator Bushby, at the request of the chairs of the respective committees, tabled the following documents:

- Budget estimates 2014-15—
  - Community Affairs Legislation Committee—Additional information received between 26 September and 30 October 2014—Social Services portfolio.
Environment and Communications Legislation Committee—Additional information received between 4 September and 20 October 2014—Communications portfolio.

Finance and Public Administration Legislation Committee—Additional information received between—3 September and 28 October 2014—Prime Minister and Cabinet portfolio.

Finance portfolio.

Budget estimates 2014-15 (Supplementary)—Community Affairs Legislation Committee—Additional information received between—22 and 30 October 2014—Department of Human Services.

Health portfolio.

23 and 30 October 2014—Social Services portfolio.

Senator McEwen, at the request of the Chair of the Environment and Communications References Committee (Senator Urquhart), tabled the following documents:


The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) tabled the following document:


The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) tabled the following document:


The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) tabled the following document:


25 **INDIGENOUS AUSTRALIANS—EDUCATION FUNDING—DOCUMENT**

Senator Siewert, by leave, tabled the following document:

Indigenous Australians—Education funding—Petitioning document from 4758 signatories calling for the continuation of funding for the Indigenous Tutorial Assistance Scheme.
26 **INDUSTRY—INFRASTRUCTURE—MINISTERIAL STATEMENT—DOCUMENT**

The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) tabled the following document:

*Industry—Infrastructure—Ministerial statement by the Prime Minister (Mr Abbott), dated 30 October 2014.*

27 **FREEDOM OF INFORMATION AMENDMENT (NEW ARRANGEMENTS) BILL 2014**

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

*Message no. 258, dated 29 October 2014—A Bill for an Act to amend the law relating to freedom of information and privacy, and for other purposes.*

The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Colbeck moved—That this bill be now read a second time.

Explanatory memorandum: Senator Colbeck tabled a revised explanatory memorandum relating to the bill.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the day fixed for the Legal and Constitutional Affairs Legislation Committee to report on the bill, 25 November 2014.

28 **SOCIAL SECURITY LEGISLATION AMENDMENT (STRENGTHENING THE JOB SEEKER COMPLIANCE FRAMEWORK) BILL 2014**

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

*Message no. 261, dated 29 October 2014—A Bill for an Act to amend the law relating to social security, and for related purposes.*

The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Colbeck moved—That this bill be now read a second time.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the day fixed for the Education and Employment Legislation Committee to report on the bill, 24 November 2014.
29 Omnibus Repeal Day (Spring 2014) Bill 2014
Amending Acts 1970 to 1979 Repeal Bill 2014
Statute Law Revision Bill (No. 2) 2014

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:


The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

Senator Colbeck moved—That these bills be now read a second time.

On the motion of Senator Colbeck the debate was adjourned till the next day of sitting.

30 Committee Membership

The Deputy President (Senator Marshall) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Parliamentary Secretary to the Minister for Agriculture (Senator Colbeck), by leave, moved—That senators be discharged from and appointed to committees as follows:

Economics Legislation Committee—

Appointed—
Substitute member: Senator Carr to replace Senator Dastyari for the committee’s inquiry into the provisions of the Automotive Transformation Scheme Amendment Bill 2014, from 13 November 2014
Participating member: Senator Dastyari

Legal and Constitutional Affairs References Committee—

Appointed—
Substitute member: Senator McKenzie to replace Senator Macdonald on 31 October 2014, from 11 am
Participating member: Senator Macdonald

Trade and Investment Growth—Joint Select Committee—

Appointed—Senator Lazarus.

Question put and passed.
31 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—REFERENCE

Senator Lines, at the request of the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Sterle) and pursuant to notice, moved business of the Senate notice of motion no. 1—That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 9 September 2015:

Aspects of road safety in Australia, having particular regard to:

(a) the social and economic cost of road-related injury and death;
(b) the importance of design standards on imported vehicles, as Australian vehicle manufacturing winds down;
(c) the impact of new technologies and advancements in understanding of vehicle design and road safety;
(d) the different considerations affecting road safety in urban, regional and rural areas; and
(e) other associated matters.

Debate ensued.

Question put.

The Senate divided—

AYES, 35

Senators—
Bilyk
Bullock
Collins
Conroy
Dastyari
Di Natale
Dault
Faulkner
Gallacher
Hanson-Young
Ketter
Lambie
Lazarus
Lines
Ludlam
Lundy
Madigan
Marshall
McEwen (Teller)
McLucas
Milne
Moore
Muir
O’Neill
Peris
Polley
Rhiannon
Rice
Siewert
Singh
Sterle
Wang
Whish-Wilson
Wong
Wright
Xenophon

NOES, 29

Senators—
Abetz
Bernardi
Birmingham
Bushby (Teller)
Canavan
Cash
Colbeck
Day
Edwards
Fawcett
Fifield
Heffernan
Johnston
Leyonhjelm
Macdonald
Mason
McGrath
McKenzie
Nash
O’Sullivan
Parry
Payne
Reynolds
Ronaldson
Ruston
Ryan
Seselja
Sinodinos
Williams

Question agreed to.
32 **ECONOMICS REFERENCES COMMITTEE—REFERENCE**

Senator Dastyari, pursuant to notice, moved business of the Senate notice of motion no. 2—That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 2 March 2015:

Incentives to privatise state or territory assets and recycle the proceeds into new infrastructure, with particular reference to:

(a) the role of the Commonwealth in working with states and territories to fund nation-building infrastructure, including:
   (i) the appropriateness of the Commonwealth providing funding, and
   (ii) the capacity of the Commonwealth to contribute an additional 15 per cent, or alternative amounts, of reinvested sale proceeds;

(b) the economics of incentives to privatise assets;

(c) what safeguards would be necessary to ensure any privatisations were in the interests of the state or territory, the Commonwealth and the public;

(d) the process for evaluating potential projects and for making recommendations about grants payments, including the application of cost-benefit analyses and measurement of productivity and other benefits;

(e) parliamentary scrutiny;

(f) alternative mechanisms for funding infrastructure development in states and territories;

(g) equity impacts between states and territories arising from Commonwealth incentives for future asset sales; and

(h) any related matter.

Senator Whish-Wilson moved the following amendment:

Omit “Rural and Regional Affairs and Transport References Committee”, substitute “Economics References Committee”.

Question—That the amendment be agreed to—put and passed.

Main question, as amended, put and passed.

*General business was called on.*

33 **TAXATION—INDEXATION OF FUEL EXCISE**

Senator Bullock, at the request of Senator Moore and pursuant to notice, moved general business notice of motion no. 494—That the Senate notes the Abbott Government’s petrol tax ambush and its negative impact on cost pressures facing Australian households and businesses.

Debate ensued.

The Leader of the Palmer United Party in the Senate (Senator Lazarus) moved the following amendment:

Omit all words after “That”, substitute:

(a) the Senate notes the Abbott Government has broken another pre-election promise with their petrol tax ambush in bypassing parliamentary processes to increase the cost of petrol through a ‘tariff proposal’, effectively raising the tax before having parliamentary approval;
(b) this underhanded act to increase petrol prices will have a negative impact on Australian families, pensioners, low income earners, single parents, retirees, the sick and disadvantaged, and businesses, including small business owners; and
(c) the Senate calls on the Abbott Government to reverse this decision and instead proceed to put the proposal to the Senate where it can be properly debated and the will of the people delivered.

Debate ensued.
At 6 pm: Debate was interrupted while Senator Macdonald was speaking.

34 RULES FOR QUESTIONS—STATEMENT BY PRESIDENT
The President made a statement relating to a point of order raised by Senator Bernardi after question time today concerning the inclusion of quotations in questions without notice.

35 DOCUMENTS—ORDERS OF THE DAY—CONSIDERATION
The following orders of the day relating to documents were considered:
Australian Charities and Not-for-profits Commission (ACNC)—Report for 2013-14. Motion of Senator St ur to take note of document called on. On the motion of Senator Bilyk the debate was adjourned till Thursday at general business.

General business concluded.

36 COMMITTEE REPORTS AND GOVERNMENT RESPONSES—ORDERS OF THE DAY—CONSIDERATION
The following orders of the day relating to committee reports and government responses were considered:
Foreign Affairs, Defence and Trade—Joint Standing Committee—Review of the Defence annual report 2012-13—Report. Motion of Senator O’Sullivan to take note of report called on. On the motion of Senator Bilyk the debate was adjourned till the next day of sitting.
National Capital and External Territories—Joint Standing Committee—Same country: different world – The future of Norfolk Island—Report. Motion of Senator Bilyk to take note of report agreed to.
Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples—Joint Select Committee—Progress report. Motion of the deputy chair of the committee (Senator Peris) to take note of report agreed to.
Foreign Affairs, Defence and Trade References Committee—Australia’s future activities and responsibilities in the Southern Ocean and Antarctic waters—Report. Motion of the chair of the committee (Senator Gallacher) to take note of report agreed to.
Community Affairs References Committee—Grandparents who take primary responsibility for raising their grandchildren—Report. Motion of the chair of the committee (Senator Siewert) to take note of report agreed to.

Education, Employment and Workplace Relations References Committee—Report—Higher education and skills training to support agriculture and agribusiness in Australia—Government response. Motion of Senator Carr to take note of document called on. On the motion of Senator Fawcett the debate was adjourned till the next day of sitting.

Environment and Communications Legislation Committee—Performance, importance and role of Australia Post in Australian communities and its operations in relation to licensed post offices—Final report. Motion of the chair of the committee (Senator Ruston) to take note of report called on. On the motion of Senator Fawcett the debate was adjourned till the next day of sitting.


Rural and Regional Affairs and Transport References Committee—Industry structures and systems governing levies on grass-fed cattle—Report. Motion of Senator Back to take note of report agreed to.

Northern Australia—Joint Select Committee—Pivot north: Inquiry into the development of northern Australia—Final report. Motion of Senator Macdonald to take note of report agreed to.

Economics References Committee—Future of Australia’s naval shipbuilding industry: Tender process for the navy’s new supply ships (part 1)—Report. Motion of the chair of the committee (Senator Dastyari) to take note of report called on. Debate adjourned till the next day of sitting, Senator Fawcett in continuation.

National Broadband Network—Select Committee—Interim report—Government response. Motion of Senator Ludlam to take note of document called on. Debate adjourned till the next day of sitting, Senator Bilyk in continuation.

Community Affairs References Committee—Out-of-pocket costs in Australian healthcare—Interim and final reports. Motion of Senator Di Natale to take note of reports called on. Debate adjourned till the next day of sitting, Senator Bilyk in continuation.

School Funding—Select Committee—Equity and excellence in Australian schools—Report. Motion of the chair of the committee (Senator Collins) to take note of report called on. Debate adjourned till the next day of sitting, Senator Bilyk in continuation.

Education and Employment References Committee—Technical and further education system in Australia—Report. Motion of Senator Bilyk to take note of report agreed to.
37 **CARBON FARMING INITIATIVE AMENDMENT BILL 2014**

Order of the day read for the adjourned debate on the motion of the Minister for Human Services (Senator Payne)—That this bill be now read a second time.

Debate resumed.

Senator Singh moved the following amendment:

> At the end of the motion, add “but the Senate notes:
> (a) that since the election of the Abbott Government in 2013, Australia’s international reputation on climate change action has been profoundly damaged by Australia becoming the first nation to move backwards on climate change while the rest of the world, including China and the United States of America, is moving forward;
> (b) the need for the Abbott Government to establish an emissions trading scheme to place a cap on carbon pollution and drive a clean energy future for Australia, instead of its current policy of an emissions reductions fund paid for by taxpayers rather than big polluters;
> (c) the need to fully examine the range of changes proposed to the Carbon Farming Initiative (CFI) and the impact this will have on the existing land sector projects; and
> (d) the lack of robust and defensible assurance from the Government about the ability of the CFI amendment and the emissions reduction fund to achieve Australia’s emissions reduction target”.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

**AYES, 27**

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NOES, 33

Senators—
Abetz  Edwards  Macdonald  Payne
Bernardi  Fawcett  Madigan  Ronaldson
Birmingham  Fifield  Mason  Ruston
Bushby (Teller)  Heffernan  McKenzie  Seselja
Canavan  Johnston  Muir  Sinodinos
Cash  Lambie  Nash  Wang
Colbeck  Lazarus  O’Sullivan  Williams
Cormann  Leyonhjelm  Parry  Xenophon
Day

Question negatived.

The Leader of the Australian Greens (Senator Milne) moved the following amendment:

At the end of the motion, add “but the Senate:

(a) notes that if we continue without change Australia will use its entire 2050 emissions budget within sixteen years and the world will warm by at least 4 degrees by 2100, destroying Australia’s Great Barrier Reef, agricultural industries and creating massive vulnerabilities in public health and national security; and

(b) is of the opinion that there is no time to waste on an ineffective, expensive ‘direct action’ policy that allows unlimited pollution, will hurt our global competitiveness and will give taxpayers’ money to the biggest polluters with no guarantee of emissions reductions”.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 27

Senators—
Bilyk (Teller)  Faulkner  McEwen  Siewert
Bullock  Gallacher  McLucas  Singh
Cameron  Hanson-Young  Milne  Urquhart
Collins  Ketter  Moore  Whish-Wilson
Conroy  Lines  O’Neill  Wong
Dastyari  Ludlam  Rhiannon  Wright
Di Natale  Marshall  Rice

NOES, 33

Senators—
Abetz  Edwards  Macdonald  Payne
Bernardi  Fawcett  Madigan  Ronaldson
Birmingham  Fifield  Mason  Ruston
Bushby (Teller)  Heffernan  McKenzie  Seselja
Canavan  Johnston  Muir  Sinodinos
Cash  Lambie  Nash  Wang
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Cormann  Leyonhjelm  Parry  Xenophon
Day

Question negatived.

Main question put.
The Senate divided—

AYES, 31

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Question agreed to.

Bill read a second time.

The Senate resolved itself into committee for the consideration of the bill.

In the committee

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Finance (Senator Cormann) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Leave refused: Senator Cormann sought leave to move all government amendments to the bill together.

An objection was raised and leave was not granted.

Senator Cormann moved the following amendment:

Schedule 1, item 393, page 105 (after line 17), after paragraph (1)(a), insert:

(aa) the Committee or the Department published on the Department’s website:

(i) a draft of the methodology determination; and
(ii) a notice inviting the public to make a submission on the draft by a specified time limit (being a time limit of at least 14 days after the notice is published); and

(ab) the Committee considered any submissions that were received within that time limit; and

Question—That the amendment be agreed to—put.
The committee divided—

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Question agreed to.

Bill, as amended, debated.

Leave refused: Senator Cormann sought leave to move amendments together.
An objection was raised and leave was not granted.

Senator Cormann moved the following amendment:

<table>
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<tr>
<th>Schedule 1, item 393, page 105 (after line 27), after subitem (2), insert:</th>
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<td>(2A) Section 123D of the new law does not apply to that advice.</td>
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Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

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Question agreed to.

Senator Cormann moved the following amendment:

Schedule 1, page 106 (after line 4), after item 393, insert:

393A Transitional—advice request given to the Interim Emissions Reduction Assurance Committee

Scope

(1) This item applies if, before the commencement of this item:

(a) the Minister requested the Interim Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should make a methodology determination; and

(b) the Committee had not given that advice to the Minister; and

(c) the Committee or the Department published on the Department’s website:

(i) a draft of the methodology determination; and

(ii) a notice inviting the public to make a submission on the draft by a specified time limit (being a time limit of at least 14 days after the notice is published).

Effect of request

(2) The new law has effect as if the Minister had, immediately after the commencement of this item, made that request to the Emissions Reduction Assurance Committee under subsection 106(10) of the new law.

Consultation

(3) The Emissions Reduction Assurance Committee:

(a) is not required to comply with section 123D in relation to the requested advice; and

(b) must not advise the Minister to make the methodology determination unless the Committee has considered any submissions mentioned in subparagraph (1)(c)(ii) of this item that were received within the time limit mentioned in that subparagraph; and

(c) must publish on the Department’s website any submissions received within that time limit.

(4) However, the Emissions Reduction Assurance Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice the commercial interests of the person or another person.
(5) A request under subitem (4) must:
(a) be in writing; and
(b) be in a form approved, in writing, by the Emissions Reduction Assurance Committee.

Definition

(6) In this item:
Interim Emissions Reduction Assurance Committee means the committee that was:
(a) established under the executive power of the Commonwealth before the commencement of this item; and
(b) known as the Interim Emissions Reduction Assurance Committee.

Debate ensued.
Question—That the amendment be agreed to—put.
The committee divided—

AYES, 33

Senators—
Abetz Day Leyonhjelm Payne
Bernardi Edwards Macdonald Ronaldson
Birmingham Fawcett Madigan Ruston (Teller)
Brandis Fifield Mason Seselja
Bushby Heffernan McKenzie Simodinos
Canavan Johnston Muir Wang
Cash Lamble O’Sullivan Williams
Colbeck Lazarus Parry Xenophon
Cormann

NOES, 27

Senators—
Bilyk Gallacher McLucas Siewert
Bullock Hanson-Young Milne Singh
Cameron Ketter Moore Sterle
Collins Lines O’Neill Urquhart (Teller)
Conroy Ludlam Polley Whish-Wilson
Dastyari Marshall Rhiannon Wright
Di Natale McEwen Rice

Question agreed to.

Senator Cormann moved the following amendment:

Schedule 1, item 387, page 92 (lines 18 to 22), omit subitem (1), substitute:

(1) This item applies if an eligible offsets project is a native forest protection project (within the meaning of the old law), and:
(a) the following conditions are satisfied:
(i) the project existed immediately before the commencement of this item;
(ii) the applicable methodology determination includes one or more provisions covered by paragraph 106(1)(d) of the old law; or
(b) the following conditions are satisfied:

(i) the project became an eligible offsets project after the commencement of this item as the result of an ERF transitional application;

(ii) the project is covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*;

(iii) that determination includes one or more provisions covered by paragraph 106(1)(d) of the old law.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 33**

Abetz  Bernardi  Birmingham  Brandis  Bushby  Canavan  Cash  Colbeck  Cormann

Day  Edwards  Fawcett  Fifield  Heffernan  Johnston  Lambie  Lazarus  

Leyonhjelm  Macdonald  Madigan  Mason  McKenzie  Muir  O’Sullivan  Parry  

Payne  Ronaldson  Ruston (Teller)  Rseselja  Sinodinos  Wang  Williams  Xenophon  

**NOES, 27**

Bilyk  Bullock  Cameron  Conroy  Dustyari  Di Natale

Gallacher  Hanson-Young  Ketter  Ludlam  Marshall  McEwen

McLucas  Milne  Moore  Polley  Rhiannon  Rice

Siewert  Singh  Sterle  Whish-Wilson  Wright

Question agreed to.

Senator Cormann moved the following amendment:

Schedule 1, item 152, page 47 (lines 6 to 10), omit subsection 71(2), substitute:

**Crediting period**

(2) Despite any other provision of this Part, the crediting period for the project is:

(a) the first crediting period for the project worked out under section 69 as it stood immediately before the commencement of this Part; or

(b) if another period is specified in the applicable methodology determination for the project—that other period that began when the declaration of the project under section 27 took effect.

Debate ensued.

Question—That the amendment be agreed to—put.
The committee divided—

**AYES, 33**

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**NOES, 27**

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Question agreed to.

Senator Cormann moved the following amendment:

Schedule 1, item 203, page 58 (line 26), omit “and 70”, substitute “, 70 and 71”.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 33**

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Question agreed to.

Senator Cormann moved the following amendment:

Schedule 1, item 107, page 31 (lines 22 and 23), omit “methodology determination that covers the project specifies”, substitute “legislative rules specify”.

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Debate ensued.
Question—That the amendment be agreed to—put.
The committee divided—

AYS3, 33

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Question agreed to.
Senator Xenophon moved the following amendment:

Schedule 1, page 3 (before line 6), before item 1, insert:

1A Subsection 3(2) (heading)
Repeal the heading, substitute:

*Climate Change Convention and Kyoto Protocol etc.*

1B Subsection 3(2)
Omit “to implement certain obligations that Australia has under”, substitute “to remove greenhouse gases from the atmosphere, and avoid emissions of greenhouse gases, in order to meet Australia’s obligations under any or all of the following”.

1C Paragraph 3(2)(a)
Omit “and”.

1D At the end of subsection 3(2)
Add:

; (c) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

Debate ensued.
Question—That the amendment be agreed to—put.
The committee divided—

**AYES, 31**

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Question agreed to.

Senator Xenophon moved the following amendment:

Schedule 1, item 5, page 6 (after line 22), after section 20C, insert:

**20CA Duration of carbon abatement contracts**

1. In setting the duration of a proposed carbon abatement contract, the Regulator must have regard to the following matters:
   (a) such matters as are specified in the legislative rules;
   (b) such other matters (if any) as the Regulator considers relevant.

2. In exercising the power to make legislative rules for the purposes of paragraph (1)(a), the Minister must have regard to the following matters:
   (a) the principle that, in general, the duration of a carbon abatement contract for the purchase of Australian carbon credit units should not be longer than 7 years;
   (b) the principle that a longer duration of a carbon abatement contract for the purchase of Australian carbon credit units may be appropriate if the units are, or are to be, derived from an eligible offsets project that has a crediting period of more than 7 years;
   (c) such other matters (if any) as the Minister considers relevant.

Debate ensued.

Question—That the amendment be agreed to—put.
The committee divided—

AYES, 40

Senators—

Abetz
Bernardi
Birmingham
Brandis
Bushby (Teller)
Canavan
Cash
Colbeck
Cormann
Di Natale

Ayres
Edwards
Fawcett
Fifield
Hanson-Young
Heffernan
Johnston
Lambie
Lazarus
Ludlam
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Ruston
Seselja
Siewert
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Wang
Whish-Wilson
Williams
Wright
Xenophon

NOES, 18

Senators—

Bilyk (Teller)
Bullock
Cameron
Collins
Conroy

Dastyari
Day
Gallacher
Ketter
Leyonhjelm

Lines
Marshall
McEwen
McLucas

Moore
O’Neill
Polley
Sterle

Question agreed to.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 38A, page 17 (before line 11), before the definition of designated savanna project, insert:

crediting period extension review has the meaning given by section 255A.

Schedule 1, item 210, page 61 (after line 20), after subsection 114(7), insert:

(7A) The Minister must not vary a methodology determination so as to extend the crediting periods for the eligible offsets projects covered by the determination unless:

(a) the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should be made; and

(b) the Emissions Reduction Assurance Committee has not previously advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should not be made; and

(c) the determination has not previously been varied so as to extend the crediting periods.

Schedule 1, item 278, page 75 (after line 12), after paragraph 255(h), insert:

(ha) to undertake crediting period extension reviews;

(hb) to undertake public consultation in relation to crediting period extension reviews;

(hc) to advise the Minister in relation to the outcomes of crediting period extension reviews and any related public consultation;

(hd) to advise the Secretary in relation to the outcomes of crediting period extension reviews and any related public consultation;
Schedule 1, page 75 (after line 14), after item 278, insert:

**278A At the end of Division 1 of Part 26**

Add:

**255A Crediting period extension reviews**

(1) For the purposes of this Act, a *crediting period extension review* means a review of whether a methodology determination should be varied so as to extend the crediting periods for the eligible offsets projects covered by the determination.

(2) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must have regard to whether the relevant eligible offsets projects would still comply with the offsets integrity standard set out in paragraph 133(1)(a).

(3) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must conduct such public consultation as it considers appropriate.

(4) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must ensure that, for each methodology determination, the Committee completes a crediting period extension review before the first point in time when an eligible offsets project covered by the determination starts the last 12 months of its last crediting period.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 40

NOES, 18

Question agreed to.
Senator Xenophon moved the following amendments together by leave:

Schedule 1, page 106 (after line 32), after Part 2, insert:

**Part 2A—Amendments relating to the strategic reserve of emissions units**

**Division 1—Strategic reserve of emissions units**

*Carbon Credits (Carbon Farming Initiative) Act 2011*

399A At the end of section 3

Add:

*Purchase of international emissions units by the Commonwealth*

(6) The fifth object of this Act is to authorise the purchase by the Commonwealth of international emissions units to assist Australia to meet its international climate change targets.

399B Section 5

Insert:

*international climate change agreement* means:

(a) the Climate Change Convention; or

(b) the Kyoto Protocol; or

(c) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of *Kyoto Protocol* to paragraph (b), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

*strategic reserve contract* has the meaning given by section 284B.

*strategic reserve unit* means a Kyoto unit, but does not include a unit specified in the legislative rules.

399C After Part 27

Insert:

**Part 27A—Purchase and sale of strategic reserve units by the Commonwealth**

284A Simplified outline of this Part

- Kyoto units may be purchased or sold by the Commonwealth.

284B Purchase and sale of strategic reserve units

(1) The Regulator may, on behalf of the Commonwealth, enter into contracts for the purchase or sale by the Commonwealth of strategic reserve units.

(2) For the purposes of this Act, a contract entered into under subsection (1) is to be known as a *strategic reserve contract*. 
Ministerial directions

(3) The Regulator must not enter into a strategic reserve contract, or a series of strategic reserve contracts, unless directed to do so by the Minister under subsection 284F(1).

(4) In exercising the power to give a direction of a kind mentioned in subsection (3), the Minister must have regard to the following matters:

(a) Australia’s obligations under international climate change agreements;

(b) Australia’s undertakings that:
   (i) concern the reduction of greenhouse gas emissions; and
   (ii) are given under international climate change agreements;

(c) the total amount of domestic carbon abatement that would result from the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts;

(d) Australia’s current and future climate change targets;

(e) the need to ensure the value for money of expenditure incurred by the Commonwealth in purchasing strategic reserve units under strategic reserve contracts;

(f) such other matters (if any) as the Minister considers relevant.

Spending limit

(5) The total amount of expenditure incurred by the Commonwealth in purchasing strategic reserve units under strategic reserve contracts must not exceed $500 million.

284C When the Regulator has powers etc. of the Commonwealth

(1) The Regulator, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth’s capacity as a party to a strategic reserve contract.

(2) Without limiting subsection (1):

(a) an amount payable by the Commonwealth under a strategic reserve contract is to be paid by the Regulator on behalf of the Commonwealth; and

(b) an amount payable to the Commonwealth under a strategic reserve contract is to be paid to the Regulator on behalf of the Commonwealth; and

(c) the Regulator may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a strategic reserve contract.

(3) The Regulator may exercise a power conferred on the Regulator by a strategic reserve contract.

284D Legislative rules may provide for certain matters relating to strategic reserve units etc.

The legislative rules may make provision for and in relation to any or all of the following matters in respect of strategic reserve units purchased by the Commonwealth under strategic reserve contracts:

(a) transferring purchased units to a specified Commonwealth Registry account;
(b) prohibiting or restricting the transfer of units from such an account.

Note: For designation of Commonwealth Registry accounts, see section 12 of the Australian National Registry of Emissions Units Act 2011.

284E Strategic reserve contracts are not instruments made under this Act

To avoid doubt, a strategic reserve contract is taken not to be an instrument made under this Act.

284F Minister may give directions

(1) The Minister may, by legislative instrument, give directions to the Regulator in relation to the exercise of the Regulator’s powers under this Part.

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

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the Legislative Instruments Act 2003 do not apply to the direction (see sections 44 and 54 of that Act).

(2) The Regulator must comply with a direction under subsection (1).

284G Annual reports about management of the strategic reserve of emissions units

(1) After the end of each financial year, the Regulator must prepare a report setting out:

(a) the total number of strategic reserve units that were purchased by the Commonwealth during the financial year under strategic reserve contracts; and

(b) the total number of strategic reserve units that were sold by the Commonwealth during the financial year under strategic reserve contracts; and

(c) such other information relating to strategic reserve units held by the Commonwealth as is specified in the legislative rules.

(2) A report under subsection (1) of this section for a financial year must be included in the annual report prepared by the Regulator and given to the Minister under section 40 of the Clean Energy Regulator Act 2011 for the financial year.

Division 2—Consequential amendments

Australian National Registry of Emissions Units Act 2011

399D Section 4

Insert:

Commonwealth foreign registry account has the meaning given by section 86A.

399E Before section 87

Insert:

86A Commonwealth foreign registry accounts

(1) The Commonwealth may:

(a) open and operate an account within a foreign registry; and
1722

No. 63—30 and 31 October 2014

(b) do anything incidental to, or ancillary to, the opening or operation of such an account.

(2) An account opened under subsection (1) is to be known as a **Commonwealth foreign registry account**.

Regulator’s power to act on behalf of the Commonwealth

(3) The Regulator may act on behalf of the Commonwealth in relation to the powers conferred by subsection (1).

(4) The Minister may, by legislative instrument, give directions to the Regulator in relation to the Regulator’s powers under subsection (3).

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

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the Legislative Instruments Act 2003 do not apply to the direction (see sections 44 and 54 of that Act).

(5) The Regulator must comply with a direction under subsection (4).

Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Schedule 1, Parts 1 and 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.

2A. Schedule 1, Part 2A
    Immediately after the commencement of Part 1 of Schedule 1.

2B. Schedule 1, Part 3
    At the same time as the provisions covered by table item 2.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Xenophon, in respect of Schedule 1, items 51A and 68A.

Schedule 1, items 51A and 68A agreed to.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Milne, in respect of Schedule 1, items 55, 58, 85, 92, 147 and 148.

Schedule 1, items 55, 58, 85, 92, 147 and 148 debated.

Question—That Schedule 1, items 55, 58, 85, 92, 147 and 148 stand as printed—put.

The Senate continued to sit till midnight—
FRIDAY, 31 OCTOBER 2014 AM
The committee divided—

**AYES, 40**

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**NOES, 9**

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Items agreed to.

Senator Milne moved the following amendments together by leave:

Schedule 1, item 105, page 30 (line 22), omit “(j)”. Question—That the amendments be agreed to—put and negatived.

Schedule 1, item 108, page 32 (line 22), omit “(6),”. Question—That the bill, as amended, be agreed to—divided, at the request of Senator Lambie, in respect of Schedule 1, items 65, 161 and 267.

Schedule 1, items 65, 161 and 267 debated.

Question—That Schedule 1, items 65, 161 and 267 stand as printed—put and negatived.

On the motion of Senator Lambie the following amendments, taken together by leave, were agreed to:

Schedule 1, page 29 (after line 12), after item 96, insert:

**96A Before paragraph 23(1)(h)**

Insert:

**(ga) if:**

(i) the project is an area-based offsets project; and

(ii) the project area, or any of the project areas, for the project is covered by a regional natural resource management plan;

be accompanied by a statement about whether the project is consistent with the plan; and

Schedule 1, page 52 (before line 14), before item 162, insert:

**161A After paragraph 83(1)(a)**

Insert:

**(aa) the project is an area-based offsets project; and**
Schedule 1, page 71 (after line 11), after item 246, insert:

**246A Before paragraph 168(1)(k)**

Insert:

(ja) if:

(i) the project is an area-based offsets project; and
(ii) the project area, or any of the project areas, is covered by a regional natural resource management plan;
whether the project is consistent with the plan; and

Schedule 1, page 75 (before line 15), before item 279, insert:

**278B After section 255**

Insert:

**255AA Request for review of methodology determinations**

(1) A person may, by written notice given to the Emissions Reduction Assurance Committee, request the Committee to review one or more methodology determinations under paragraph 255(e).

(2) A request under subsection (1) must be accompanied by a statement that sets out:

(a) the reasons why the methodology determinations should be reviewed; and

(b) if there are any inconsistencies between the methodology determinations and the offsets integrity standards—an explanation of those inconsistencies.

(3) If the Emissions Reduction Assurance Committee receives a request under subsection (1), the Committee must consider whether to undertake a review in response to the request.

On the motion of the Leader of the Palmer United Party in the Senate (Senator Lazarus) the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, page 33 (after line 10), after item 114, insert:

**114A After section 27**

Insert:

**27A Suspension of processing of applications for declarations of eligible offsets projects**

Order

(1) The Emissions Reduction Assurance Committee may, by legislative instrument, order that, if:

(a) an application is made under section 22 during a specified period; and

(b) the application relates to an offsets project that is covered by a specified methodology determination;

the Regulator must not:

(c) consider the application during that period; or

(d) make a decision on the application during that period.

(2) A period specified in an order under subsection (1):

(a) must start at the commencement of the order; and

(b) must not be longer than 12 months.
(3) The Emissions Reduction Assurance Committee must not make an order under subsection (1) that relates to a methodology determination unless the Committee is satisfied that there is reasonable evidence that the methodology determination does not comply with one or more of the offsets integrity standards.

(4) Before making an order under subsection (1), the Emissions Reduction Assurance Committee must inform the Minister of the Committee’s proposal to make the order.

Compliance with order

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

Timing of decision on application

(6) If an application made under section 22 is or was covered by an order under subsection (1) of this section, subsection 27(14) does not apply to the application.

Note: Subsection 27(14) deals with the timing of decisions on applications.

Schedule 1, item 204, page 59 (after line 23), after subsection 106(4A), insert:

(4B) The Minister must not make a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the determination does not comply with one or more of the offsets integrity standards.

Schedule 1, item 210, page 61 (before line 21), before subsection 114(8), insert:

(7B) The Minister must not vary a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the varied determination does not comply with one or more of the offsets integrity standards.

Schedule 1, item 210, page 61 (line 30), after “(7)”, insert “, (7B)”.

Schedule 1, item 218, page 63 (line 23), omit “standard set out in paragraph 133(1)(a)”, substitute “standards”.

Schedule 1, item 218, page 63 (line 28), omit “standard set out in paragraph 133(1)(a)”, substitute “standards”.

On the motion of Senator Wang the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, item 152, page 43 (line 6), at the end of the heading to subsection 69(2), add “or designated savanna project”.

Schedule 1, item 152, page 43 (line 7), after “sequestration offsets project”, insert “or a designated savanna project”.

Schedule 1, item 152, page 43 (line 14), after “emissions avoidance offsets project”, insert “(other than a designated savanna project)”.

Schedule 1, item 152, page 46 (line 16), omit “7”, substitute “25”.

Senator Milne moved the following amendment:

Schedule 1, item 5, page 6 (line 22), omit “passes the fit and proper person test”, substitute “is a recognised offsets entity. A recognised offsets entity must be a fit and proper person (see section 64)”.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.
Question—That the bill, as amended, be agreed to—divided, at the request of Senator Milne, in respect of Schedule 1, Division 1, as amended; items 382 to 386 and 388; and item 387, as amended; and Part 3.

Schedule 1, Division 1, as amended; items 382 to 386 and 388; and item 387, as amended; and Part 3 agreed to.

Senator Milne moved the following amendments together by leave:

Schedule 1, item 388A, page 93 (line 30), omit “new law”, substitute “Carbon Credits (Carbon Farming Initiative) Act 2011”.

Schedule 1, item 388A, page 94 (line 6), omit “new law”, substitute “Carbon Credits (Carbon Farming Initiative) Act 2011”.

Schedule 1, item 388A, page 94 (line 8), omit “and subsection 27(4A) of the new law do”, substitute “of the Carbon Credits (Carbon Farming Initiative) Act 2011 does”.

Schedule 1, item 388A, page 94 (line 19), omit “new law”, substitute “Carbon Credits (Carbon Farming Initiative) Act 2011”.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Milne, in respect of Schedule 1, items 388B to 392 and 394 to 399; and item 393, as amended.

Schedule 1, items 388B to 392 and 394 to 399; and item 393, as amended, agreed to.

Senator Milne moved the following amendment:

Schedule 1, page 120 (after line 12), at the end of the Schedule, add:

Part 4—Amendments relating to excluded offsets projects

Carbon Credits (Carbon Farming Initiative) Act 2011

548 Section 5 (definition of excluded offsets project)

Omit “section 56”, substitute “sections 56, 56B and 56C”.

549 Subsection 27(4) (note 3)

Omit “section 56”, substitute “sections 56, 56B and 56C”.

550 After Division 12 of Part 3

Insert:

Division 12A—Other excluded offsets projects

56A Definitions

In this Division:

2006 IPCC Guidelines for National Greenhouse Gas Inventories

means the report titled IPCC 2006, 2006 IPCC Guidelines for National Greenhouse Gas Inventories, prepared by the National Greenhouse Gas Inventories Programme, as in force from time to time.

Note: The report is, in 2014, accessible at www.ipcc.ch.
CFI rainfall map means the map:
(a) that shows long-term average annual rainfall; and
(b) that uses data that is:
   (i) collected by the Commonwealth Bureau of Meteorology for the period from at least 1921 to 2010; and
   (ii) processed by the Department; and
(c) published on the Department’s website; and
(d) as in force from time to time.

clearing means the conversion, caused by people, of native forest to cropland, grassland or settlements (within the meaning of “cropland”, “grassland” and “settlements” in the 2006 IPCC Guidelines for National Greenhouse Gas Inventories).

consent means approval to commence clearing or conversion to a plantation, required by Commonwealth, State or Territory law, issued by the relevant Commonwealth, State, Territory or local regulatory authority responsible for giving the approval.

dryland salinity means a build-up of salt in soil occurring on land not subject to irrigation.

environmental planting means a planting that consists of species that:
(a) are native to the local area of the planting; and
(b) are sourced from seeds:
   (i) from within the natural distribution of the species; and
   (ii) that are appropriate to the biophysical characteristics of the area of the planting; and
(c) may be a mix of trees, shrubs, and understorey species where the mix reflects the structure and composition of the local native vegetation community.

forest means land of a minimum area of 0.2 of a hectare on which trees:
(a) have attained, or have the potential to attain, a crown cover of at least 20% across the area of land; and
(b) have reached, or have the potential to reach, a height of at least 2 metres.

known weed species means a plant species which:
(a) is on the Weeds of National Significance list or another list produced by the Australian Government for the purpose of identifying weeds; or
(b) is declared under any of the following Acts:
   (i) the Noxious Weeds Act 1993 of New South Wales;
   (ii) the Catchment and Land Protection Act 1994 of Victoria;
   (iii) the Land Protection (Pest and Stock Route Management) Act 2002 of Queensland;
   (iv) the Plant Diseases Act 1914 of Western Australia;
   (v) the Agriculture and Related Resources Protection Act 1976 of Western Australia;
   (vi) the Natural Resources Management Act 2004 of South Australia;
   (vii) the Weed Management Act 1999 of Tasmania;
(viii) the *Pest Plants and Animals Act 2005* of the Australian Capital Territory;
(ix) the *Weeds Management Act 2001* of the Northern Territory.


**National Water Commission** has the meaning given by section 4 of the *National Water Commission Act 2004*.

**National Water Initiative** has the meaning given by section 4 of the *National Water Commission Act 2004*.

**permanent planting** means a planting:
(a) that is not harvested other than:
   (i) for thinning for ecological purposes; or
   (ii) to remove debris for fire management; or
   (iii) to remove firewood, fruits, nuts, seeds, or material used for fencing or as craft materials, if those things are not removed for sale; or
   (iv) in accordance with traditional indigenous practices or native title rights; and
(b) that is not a landscape planting.

**plantation** means a forest established for harvest.

**Salinity Guidelines** means the guidelines, published on the Department’s website and as in force from time to time, to assist project proponents to determine whether the planting of trees is an excluded offsets project for the purposes of a provision of this Act or the regulations.

**specified tree planting** means the planting of trees in an area that, according to the CFI rainfall map, receives more than 600 mm long-term average annual rainfall.

**tree** means a perennial plant that has primary supporting structures consisting of secondary xylem.

**water access entitlement** means an entitlement to water held in accordance with the relevant law in the jurisdiction in which the project area is located.

**water interception** means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir.

**wetlands** are areas of marsh, fen, peatland or water:
(a) that are either temporary or permanent; and
(b) which have water that can be static or flowing, fresh, brackish or salty;
and includes areas of marine water the depth of which at low tide is not more than 6 metres.
56B Other excluded offsets projects

(1) Without limiting section 56, the following kinds of projects are excluded offsets projects for the purposes of this Act:
   (a) a project that involves an activity that:
      (i) was mandatory under a Commonwealth, State or Territory law; and
      (ii) is no longer mandatory because the law was repealed, or amended to be less onerous, after 24 March 2011;
   (b) the planting of a species in an area where it is a known weed species;
   (c) the establishment of a forest under a forestry managed investment scheme for the purposes of Division 394 of Part 3-45 of the *Income Tax Assessment Act 1997*;
   (d) the cessation or avoidance of the harvest of a plantation;
   (e) the establishment of vegetation on land that has been subject to illegal clearing of a native forest, or illegal draining of a wetland;
   (f) the establishment of vegetation on land that has been subject to clearing of a native forest, or draining of a wetland (that was not an illegal clearing or draining), within:
      (i) 7 years of the lodgement of an application for the project to be declared an eligible offsets project; or
      (ii) 5 years of the lodgement of an application for the project to be declared an eligible offsets project, if there is a change in ownership of the land that constitutes the project area after the clearing or the draining;
   (g) a project that protects native forest on freehold or leasehold land, for which a clearing consent or harvest approval plan was granted on the basis that the clearing or harvesting of the native forest:
      (i) would lead to an environmental improvement or benefit, or would maintain an environmental outcome; or
      (ii) was for fire management purposes.

(2) Paragraph (1)(a) does not apply to a project which involves an activity that is required to be carried out under a State or Territory law that is made after 24 March 2011 and that implements an agreement between the Commonwealth and a State or Territory Government:
   (a) to establish new reserves or reduce annual native forest harvest; and
   (b) that recognises the potential for carbon offset opportunities for areas protected by the agreement.

(3) Subparagraph (1)(g)(i) does not apply to a project if:
   (a) the clearing consent or harvest approval plan provides options for vegetation management; and
   (b) the project provides active and on-going management of the project area in accordance with one of those options.

56C Other excluded offsets projects—specified tree planting

(1) Without limiting section 56, specified tree planting is an excluded offsets project unless it is covered by any of subsections (2) to (5) or by subsection (8).
Specified tree planting is not an excluded offsets project if the planting is a permanent planting that is also an environmental planting.

(3) Specified tree planting is not an excluded offsets project if the project proponent demonstrates that the planting contributes to the mitigation of dryland salinity in accordance with the Salinity Guidelines.

(4) Specified tree planting is not an excluded offsets project if the project area is in a region in relation to which the National Water Commission has determined that the commitments by the relevant State or Territory government under the National Water Initiative to manage water interception by plantations have been adequately implemented.

(5) Specified tree planting is not an excluded offsets project if the project proponent holds a water access entitlement that:
   (a) grants or confers an entitlement to water in the project area; and
   (b) relates to either groundwater or surface water, or both, depending on the water resource management arrangements applicable in the project area; and
   (c) is held from the date that is no later than 2 years after the forest is first planted for the duration of the project; and
   (d) provides a long-term average yield, per year, of at least 90% of the volume of water required as an offset, calculated in accordance with the formula in subsection (7).

(6) However, subsection (5) does not apply if the water to which the water access entitlement relates is held, taken, intercepted, stored or used for any purpose other than to offset the water intercepted by the forest.

(7) The volume of water (in megalitres) required as an offset per year for the life of the project is to be calculated using the following formula:

\[
A \times 0.9 + B \times 1.2 + C \times 1.5 + D \times 1.8 + E \times 2.1
\]

where:
- \( A \) is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 600–700 mm long-term average annual rainfall.
- \( B \) is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 700–800 mm long-term average annual rainfall.
- \( C \) is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 800–900 mm long-term average annual rainfall.
- \( D \) is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 900–1,000 mm long-term average annual rainfall.
- \( E \) is the area (in hectares) of the project area that, according to the CFI rainfall map, receives more than 1,000 mm long-term average annual rainfall.
Note: The figures in the formula are based on the following volumes of water required as an offset per hectare per year in each of the areas of long-term average annual rainfall as indicated by the CFI rainfall map:

- 0.9 ML of water—600-700 mm of rain
- 1.2 ML of water—700-800 mm of rain
- 1.5 ML of water—800-900 mm of rain
- 1.8 ML of water—900-1,000 mm of rain
- 2.1 ML of water—greater than 1,000 mm of rain.

(8) Specified tree planting is not an excluded offsets project if:

(a) the project area is in a region in which it is not possible to obtain a water access entitlement; and

(b) the Regulator, after seeking the advice of the relevant State or Territory agency that manages the water resource and other expert advice as necessary, is satisfied that there is no material impact on water availability, or on the reliability of existing water access entitlements, in or near the project area, for the duration of the project.

(9) However, paragraph (8)(a) does not apply to a project in relation to which it is not possible to obtain a water access entitlement because the relevant catchment is fully allocated.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Senator Xenophon moved the following amendments together by leave:

Page 120 (after line 12), at the end of the bill, add:

Schedule 2—Emissions reduction safeguard mechanism
Part 1—Main amendments

National Greenhouse and Energy Reporting Act 2007

1 Section 3 (heading)
Repeal the heading, substitute:

3 Objects

2 Section 3
Omit “The object”, substitute “(1) The first object”.

3 At the end of section 3
Add:

(2) The second object of this Act is to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.

4 Section 6A
Before “This Act”, insert “(1)”.
5 At the end of section 6A
Add:
(2) Despite subsection (1), the safeguard provisions do not apply to a facility in:
(a) the Greater Sunrise unit area; or
(b) the Joint Petroleum Development Area.

6 Section 6B
After “This Act”, insert “(other than the safeguard provisions)”.

7 Section 7
Insert:

1 March, when used in the safeguard provisions, means:
(a) if the 1 March concerned is a business day—that 1 March; or
(b) if the 1 March concerned is not a business day—the first business day after that 1 March.

account number, in relation to a Registry account, has the same meaning as in the Australian National Registry of Emissions Units Act 2011.

Australian carbon credit unit has the same meaning as in the Carbon Credits (Carbon Farming Initiative) Act 2011.

avoid, in relation to emissions of greenhouse gases, includes reduce or eliminate.

baseline emissions number has the meaning given by section 22XL.

business day means a day that is not:
(a) a Saturday; or
(b) a Sunday; or
(c) a public holiday in the Australian Capital Territory.

carbon abatement means:
(a) the removal of one or more greenhouse gases from the atmosphere; or
(b) the avoidance of emissions of one or more greenhouse gases.

carbon abatement contract has the same meaning as in the Carbon Credits (Carbon Farming Initiative) Act 2011.

covered emissions has the meaning given by section 22XI.

designated large facility has the meaning given by section 22XJ.

Doha Amendment means the amendments to the Kyoto Protocol that:
(a) were adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, in Decision 1/CMP.8; and
(b) are set out in Annex I to that Decision.

Note 1: The Doha Amendment was adopted in Doha, Qatar, in December 2012.

electronic notice transmitted to the Regulator has the same meaning as in the Australian National Registry of Emissions Units Act 2011.

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

excess emissions situation has the meaning given by section 22XE.

financial year, when used in the safeguard provisions, means a financial year that began on or after the safeguard commencement day.

Greater Sunrise unit area has the same meaning as in the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

international agreement means an agreement whose parties are:
(a) Australia and a foreign country; or
(b) Australia and 2 or more foreign countries.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The Kyoto Protocol is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

monitoring period has the meaning given by section 22XG.

net emissions number has the meaning given by section 22XK.

prescribed carbon unit has the meaning given by section 22XM.

registered holder, in relation to a prescribed carbon unit, means the person in whose Registry account there is an entry for the unit.

Registry means the Australian National Registry of Emissions Units continued in existence under the Australian National Registry of Emissions Units Act 2011.

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

responsible emitter has the meaning given by section 22XH.

safeguard commencement day means the day on which Part 3H commences.

safeguard provisions means the following provisions:
(a) subsection 3(2);
(b) section 15B;
(c) section 18AA;
(d) Part 3G;
(e) Part 3H.

safeguard rules means rules made under section 22XS.

surrender, in relation to a prescribed carbon unit, means surrender under section 22XN.
8 Before section 12

Insert:

Subdivision A—Application by a controlling corporation

9 At the end of Division 1 of Part 2

Add:

Subdivision B—Application by a responsible emitter for a designated large facility etc.

15B Application by a responsible emitter for a designated large facility etc.

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year; and

(b) the facility is a designated large facility for the financial year; and

(c) the person is not a controlling corporation;

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

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

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

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

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

(a) be made to the Regulator; and

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

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

10 After Division 3 of Part 2

Insert:

Division 4—Registration of other persons

18AA Registration of other persons

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

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

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

11 After paragraph 18B(3)(a)

Insert:

(b) if the person was registered under section 18AA—the person is not likely to be required to give a report to the Regulator under section 22XB at any time during the next 4 financial years; and
12 After Part 3F

Insert:

Part 3G—Reporting obligations of responsible emitters of designated large facilities etc.

22XB Report to be given to Regulator

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the relevant financial year); and
(b) at least one day in the relevant financial year is included in a monitoring period for the facility in relation to the person; and
(c) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X; and
(d) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X;

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

(e) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or
(f) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year.

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

(2) A report under this section must:

(a) be given in a manner and form approved by the Regulator; and
(b) set out the information specified by the safeguard rules for the purposes of this paragraph; and
(c) be given to the Regulator before the end of 4 months after the end of the relevant financial year.

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

22XC Records to be kept

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the relevant financial year); and
(b) the person is or was required by section 22XB to provide a report to the Regulator relating to:
   (i) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or
   (ii) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year;
the person must keep records of the person’s activities that:
   (c) allow the person to report accurately under section 22XB; and
   (d) enable the Regulator to ascertain whether the person has complied with the person’s obligations under section 22XB; and
   (e) comply with the requirements of subsection (2) and the safeguard rules made for the purposes of subsection (3).

(2) The person must retain the records for 5 years from the end of the relevant financial year.

(3) The safeguard rules may specify requirements relating to:
   (a) the kinds of records; and
   (b) the form of records;
that must be kept under subsection (1).

Part 3H—Emissions reduction safeguard mechanism

Division 1—Introduction

22XD  Simplified outline of this Part

- This Part sets up a mechanism to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.
- The mechanism starts on the safeguard commencement day.
- A facility is a designated large facility for a financial year if the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the year exceeds the number specified in the safeguard rules.
- The net emissions number for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period:
  (a) reduced by surrendered prescribed carbon units (for this purpose, Australian carbon credit units purchased by the Commonwealth are taken to have been surrendered); and
  (b) increased by Australian carbon credit units that were issued in relation to the facility.
Each designated large facility will be subject to a monitoring period. If, at the end of a monitoring period, the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring period, an excess emissions situation exists in relation to the facility.

If a person is the responsible emitter for a facility, the person must ensure that an excess emissions situation does not exist in relation to the facility.

Division 2—Limit on emissions

22XE Excess emissions situation

1 For the purposes of this Act, if:
   (a) there is a monitoring period for a facility in relation to a person; and
   (b) the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring period;

an excess emissions situation exists in relation to the facility for the monitoring period, unless an exemption declaration mentioned in subsection (2) is in force in relation to the facility and the monitoring period.

Note 1: For monitoring period, see section 22XG.
Note 2: For net emissions number, see section 22XK.
Note 3: For baseline emissions number, see section 22XL.

Exemption declaration

2 The safeguard rules may empower the Regulator to declare in writing that an excess emissions situation does not exist in relation to a specified facility for a specified monitoring period. The declaration is to be known as an exemption declaration.

3 The safeguard rules must provide that the Regulator may only make an exemption declaration on the application of the person who was the responsible emitter for the relevant facility during the relevant monitoring period.

4 The safeguard rules must provide that the Regulator must not make an exemption declaration unless the Regulator is satisfied that:
   (a) disregarding subsections 22XK(2) and (3), the net emissions number for the relevant facility for the relevant monitoring period exceeds the baseline emissions number for the facility for the monitoring period; and
   (b) that excess is the direct result of any or all of the following:
      (i) a natural disaster;
      (ii) criminal activity;
      (iii) circumstances that, under the safeguard rules, are taken to be exceptional circumstances for the purposes of this subsection; and
(c) the responsible emitter:
   (i) has taken reasonable steps to mitigate risks of the relevant circumstance referred to in subparagraph (b)(i), (ii) or (iii) resulting in the situation described in paragraph (a); and
   (ii) has done so both before and after the occurrence of the circumstance; and
(d) such other conditions (if any) as are set out in the safeguard rules are satisfied.

22XF  Duty to ensure that excess emissions situation does not exist
(1) If:
   (a) a person is or was the responsible emitter for a facility; and
   (b) there is a monitoring period for the facility in relation to the person;
the person must ensure that an excess emissions situation does not exist in relation to the facility for the monitoring period at any time on or after:
   (c) if the monitoring period ends at the end of a financial year—1 March next following the financial year; or
   (d) if the monitoring period ends during a financial year—1 March next following the financial year.
Civil penalty:
   (e) for an individual—one-fifth of the prescribed number of penalty units; or
   (f) otherwise—the prescribed number of penalty units.
(2) For the purposes of paragraphs (1)(e) and (f), prescribed number means the number prescribed by the regulations.
(3) In recommending to the Governor-General the regulations that should be made for the purposes of subsection (2), the Minister must have regard to:
   (a) the principle that a responsible emitter must not be allowed to benefit from non-compliance, having regard to the financial advantage the responsible emitter could reasonably be expected to derive from an excess emissions situation; and
   (b) such other matters (if any) as the Minister considers relevant.
(4) The Minister must take all reasonable steps to ensure that regulations are in force for the purposes of subsection (2) at all times on and after the safeguard commencement day.

Division 3—Key concepts
22XG  Monitoring periods
Monitoring period—single financial year
(1) For the purposes of this Act, if:
   (a) a person is the responsible emitter for a facility throughout a financial year; and
   (b) the financial year is not included in a declared multi-year period for the facility; and
   (c) the facility is a designated large facility for the financial year;
the financial year is a monitoring period for the facility in relation to the person.

Note: For declared multi-year period, see subsection (5).

Monitoring period—part of a single financial year

(2) For the purposes of this Act, if:
(a) a person is the responsible emitter for a facility throughout a part of a financial year; and
(b) the financial year is not included in a declared multi-year period for the facility; and
(c) the facility is a designated large facility for the financial year;
the part of the financial year is a monitoring period for the facility in relation to the person.

Note: For declared multi-year period, see subsection (5).

Monitoring period—declared multi-year period

(3) For the purposes of this Act, if:
(a) there is a declared multi-year period for a facility; and
(b) a person is the responsible emitter for the facility throughout the declared multi-year period; and
(c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;
the declared multi-year period is a monitoring period for the facility in relation to the person.

Note: For declared multi-year period, see subsection (5).

Monitoring period—part of a declared multi-year period

(4) For the purposes of this Act, if:
(a) there is a declared multi-year period for a facility; and
(b) a person is the responsible emitter for the facility throughout a part of the declared multi-year period; and
(c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;
the part of the declared multi-year period is a monitoring period for the facility in relation to the person.

Note: For declared multi-year period, see subsection (5).

Declared multi-year period

(5) The safeguard rules may empower the Regulator to declare in writing that, for the purposes of this section, a specified period is a declared multi-year period for a specified facility.

(6) The specified period must consist of 2 or more consecutive financial years.

22XH Responsible emitter

For the purposes of this Act, a person is the responsible emitter for a facility at a particular time if:
(a) the person has operational control of the facility at that time; and
(b) that time occurs on or after the safeguard commencement day.
Covered emissions

For the purposes of this Act, **covered emissions** of greenhouse gases means scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the safeguard rules.

Designated large facility

(1) For the purposes of this Act, a facility is a **designated large facility** for a financial year if:
   (a) the total amount of covered emissions of greenhouse gases from the operation of the facility during the financial year has a carbon dioxide equivalence of a particular number of tonnes; and
   (b) that number exceeds the number specified in the safeguard rules.

(2) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of paragraph (1)(b) at all times on and after the safeguard commencement day.

Net emissions number

(1) For the purposes of this Act, the **net emissions number** for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period.

Reduction—surrender of prescribed carbon units

(2) If:
   (a) a number of prescribed carbon units are surrendered on a particular occasion; and
   (b) the notice surrendering the units contains a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for a facility for a period;

the **net emissions number** for the facility for the period is reduced (but not below zero) by the number of prescribed carbon units surrendered.

Note: For surrender of prescribed carbon units, see section 22XN.

(3) If:
   (a) a person surrendered a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period; and
   (b) under the safeguard rules:
      (i) there is taken to be an excess surrender situation of the person in relation to the facility for the period; and
      (ii) one or more of those units are taken to be covered by the excess surrender situation;

the safeguard rules may provide that this section has effect as if:
   (c) the person had not surrendered the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for the period; and
(d) the person had, at a time ascertained in accordance with the safeguard rules, surrendered, in relation to a later period ascertained in accordance with the safeguard rules, some or all of the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for that later period.

Increase—Australian carbon credit units that were issued in relation to the facility

(4) If:

(a) a person (the relevant person) was the responsible emitter for a facility throughout a particular period; and

(b) during that period, one or more Australian carbon credit units were issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project; and

(c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and

(d) if the units covered by paragraph (c) were issued to another person:

(i) the relevant person consented to the other person carrying out the project; and

(ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*;

the net emissions number for the facility for the period is increased by the total number of those Australian carbon credit units.

### 22XL Baseline emissions number

(1) The baseline emissions number for a facility for a financial year is the number ascertained in relation to the facility in accordance with the safeguard rules.

Note: See also section 22XQ.

(2) The baseline emissions number for a facility for a period other than a financial year is the number worked out using the formula:

\[
\text{Baseline emissions number for the facility for a financial year} = \frac{\text{Baseline emissions number for the facility for the period}}{365} \times \text{Number of days in the period}
\]

(3) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of subsection (1) at all times on and after the safeguard commencement day.

### 22XM Prescribed carbon unit

(1) For the purposes of this Act, prescribed carbon unit means:

(a) an Australian carbon credit unit; or

(b) a unit that is specified in the safeguard rules.

It is immaterial whether a unit specified in the safeguard rules was issued in or outside Australia.
A unit must not be specified in safeguard rules made for the purposes of paragraph (1)(b) unless:

(a) the unit was issued under a scheme relating to either or both of the following:
   (i) the removal of one or more greenhouse gases from the atmosphere;
   (ii) the avoidance of emissions of one or more greenhouse gases; and

(b) the unit represents carbon abatement that is able to be used to meet Australia’s climate change targets under:
   (i) the Kyoto Protocol; or
   (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of Kyoto Protocol to paragraph (b)(ii), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

Division 4—Surrender of prescribed carbon units

**22XN How prescribed carbon units are surrendered**

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

(2) A notice under subsection (1) must:
   (a) specify the prescribed carbon unit or units that are being surrendered; and
   (b) set out a statement to the effect that the prescribed carbon unit or units are being surrendered for the purpose of reducing the net emissions number for a specified facility for a specified period; and
   (c) 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 prescribed carbon unit or units that are being surrendered.

(3) If an Australian carbon credit unit is surrendered by a person for the purposes of reducing the net emissions number for a facility for a period:
   (a) the unit is cancelled; and
   (b) the Regulator must remove the entry for the unit from the person’s Registry account in which there is an entry for the unit.

(4) If a prescribed carbon unit (other than an Australian carbon credit unit) is surrendered by a person:
   (a) the Regulator must take such action in relation to the unit as is specified in the safeguard rules; and
   (b) the Regulator must remove the entry for the unit from the person’s Registry account in which there is an entry for the unit.

(5) The Registry must set out a record of each notice under subsection (1).
Deemed surrender—purchased Australian carbon credit units

(6) If:

(a) a person (the relevant person) was the responsible emitter for a facility throughout a particular period; and

(b) during that period, one or more Australian carbon credit units were issued under the Carbon Credits (Carbon Farming Initiative) Act 2011 in respect of an eligible offsets project; and

(c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and

(d) if the units covered by paragraph (c) were issued to another person:

(i) the relevant person consented to the other person carrying out the project; and

(ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the Carbon Credits (Carbon Farming Initiative) Act 2011; and

(e) some or all of the units covered by paragraph (c) were purchased by the Commonwealth under a carbon abatement contract;

section 22XK has effect as if:

(f) the units covered by paragraph (e) had been surrendered by electronic notice transmitted to the Regulator under subsection (1) of this section instead of being purchased by the Commonwealth under a carbon abatement contract; and

(g) the notice surrendering the units had contained a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for the facility for the period.

Division 5—Other matters

22XO Concurrent operation of State and Territory laws

(1) The safeguard provisions and the safeguard rules are not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the safeguard provisions and those rules.

(2) Subsection (1) of this section has effect subject to section 5.

22XP Administrative decisions under the safeguard rules etc.

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

(2) The safeguard rules may empower the Regulator to give advisory notices.

(3) Subsection (2) does not limit subsection (1).

22XQ Baseline determinations made under the safeguard rules etc.

Scope

(1) This section applies to a determination that:

(a) is made by the Regulator under the safeguard rules; and

(b) relates to the ascertainment of the baseline emissions number for a facility for a financial year.
Commencement of determination

(2) The safeguard rules may provide that a determination comes into force:

(a) when it is made; or

(b) if:

(i) an earlier day is specified in the determination; and
(ii) that day is not earlier than the financial year in which the determination was made;

on the day specified; or

(c) if:

(i) an earlier day is specified in the determination; and
(ii) that day is not earlier than the financial year preceding the financial year in which the determination was made; and
(iii) the effect of the determination is to increase the baseline emissions number for a facility for a financial year;

on the day specified.

Audit

(3) The safeguard rules may provide that an application for a determination is to be accompanied by an audit report that is:

(a) prescribed by the safeguard rules; and

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

22XR Alternative constitutional basis

(1) Without limiting their effect apart from this section, the safeguard provisions also have effect as provided by this section.

External affairs

(2) The safeguard provisions also have the effect they would have if:

(a) subsection (3) had not been enacted; and

(b) the safeguard provisions did not apply except to the extent to which they relate to:

(i) matters of international concern; or
(ii) matters external to Australia.

Limited types of responsible emitters

(3) The safeguard provisions also have the effect they would have if:

(a) subsection (2) had not been enacted; and

(b) each reference in:

(i) section 15B; and
(ii) section 18AA; and
(iii) section 22XB; and
(iv) section 22XC; and
(v) section 22XF;

to a person were, by express provision, confined to a person who is:

(vi) a constitutional corporation; or
(vii) an authority of the Commonwealth.
22XS Safeguard rules

(1) The Minister may, by legislative instrument (and subject to subsection (2)), make rules (safeguard rules) prescribing matters:
   (a) required or permitted by this Act to be prescribed by the safeguard rules; or
   (b) necessary or convenient to be prescribed for carrying out or giving effect to the safeguard provisions.

(2) To avoid doubt, the safeguard rules may not do the following:
   (a) create an offence or civil penalty;
   (b) provide powers of:
       (i) arrest or detention;
       (ii) entry, search or seizure;
   (c) impose a tax;
   (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
   (e) amend this Act.

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

Part 2—Consequential amendments

Carbon Credits (Carbon Farming Initiative) Act 2011

12A Subparagraph 27(4A)(b)(i)

After “Territory”, insert “(other than the National Greenhouse and Energy Reporting Act 2007)”.

National Greenhouse and Energy Reporting Act 2007

13 Section 7 (at the end of the definition of audit team leader)

Add “or a safeguard audit”.

14 Section 7 (definition of audit team member)

After “energy audit”, insert “or a safeguard audit”.

14A Section 7 (definition of foreign corporation)

Repeal the definition.

15 Section 7

Insert:

foreign person means any of the following:
   (a) an individual who is not ordinarily resident in Australia;
   (b) a body corporate that:
       (i) is incorporated outside Australia; or
       (ii) is an authority of a foreign country;
   (c) a corporation sole that:
       (i) is incorporated outside Australia; or
       (ii) is an authority of a foreign country;
   (d) a body politic of a foreign country;
   (e) a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.
16 Section 7 (definition of greenhouse and energy information)  
After “Regulator under this Act”, insert “or the safeguard rules,“.

17 Section 7 (definition of greenhouse and energy information)  
Omit “under this Act or the regulations”, substitute “under this Act, the regulations or the safeguard rules”.

18 Section 7  
Insert:  
local governing body means a local governing body established by or under a law of a State or Territory.  
non-group entity means a person who is not a member of a controlling corporation’s group.

19 Section 7 (definition of operational control)  
Omit “11A or 11B”, substitute “11A, 11B or 11C”.

20 Section 7  
Insert:  
person means any of the following:  
(a) an individual;  
(b) a body corporate;  
(c) a trust;  
(d) a corporation sole;  
(e) a body politic;  
(f) a local governing body.  
safeguard audit means an audit carried out for the purposes of preparing an audit report prescribed by safeguard rules made for the purposes of subsection 22XQ(3).  
safeguard audit report means an audit report prescribed by safeguard rules made for the purposes of subsection 22XQ(3).  
trust means a person in the capacity of trustee or, as the case requires, a trust estate.  
trustee has the same meaning as in the Income Tax Assessment Act 1997.  
trust estate has the same meaning as in the Income Tax Assessment Act 1997.

21 At the end of paragraph 9(1)(b)  
Add “or 54A”.

22 Subsection 11(1)  
Omit “group entity” (wherever occurring), substitute “person”.

23 At the end of paragraph 11(1)(b)  
Add “or 55A”.

24 Subsection 11(3)  
Omit “group entity”, substitute “person”.
25 Subsection 11(4)
Omit “11A and 11B”, substitute “11A, 11B and 11C”.

26 Section 11A (heading)
Repeal the heading, substitute:

11A Operational control—person with greatest authority

27 Paragraph 11A(1)(a)
Omit “group entities”, substitute “persons”.

28 Paragraph 11A(1)(b)
Omit “group entity”, substitute “person”.

29 Paragraph 11A(1)(c)
After “55”, insert “or 55A”.

30 Subsection 11A(2)
Omit “group entity”, substitute “person”.

31 Section 11B (heading)
Repeal the heading, substitute:

11B Operational control—nominated person

32 Paragraph 11B(1)(a)
Omit “more group entities”, substitute “more persons”.

33 Paragraph 11B(1)(a)
Omit “relevant group entities”, substitute “relevant persons”.

34 Paragraph 11B(1)(b)
Omit “group entity”, substitute “person”.

35 Paragraph 11B(1)(c)
After “55”, insert “or 55A”.

36 Subsection 11B(2)
Omit “group entities”, substitute “persons”.

37 Subsection 11B(2)
Omit “group entity”, substitute “person”.

38 Paragraph 11B(4)(a)
Omit “group entities is a foreign corporation”, substitute “persons is a foreign person”.

39 Paragraph 11B(4)(b)
Omit “group entities is not a foreign corporation”, substitute “persons is not a foreign person”.

40 Subsection 11B(4)
Omit “foreign corporation cannot”, substitute “foreign person cannot”.

41 Paragraph 11B(5)(b)
Omit “group entities”, substitute “persons”.

42 Subsection 11B(10)
Omit “group entity” (wherever occurring), substitute “person”.
43 Subsection 11B(15)

Omit “group entity”, substitute “person”.

44 Subsection 11B(17)

Omit “group entities”, substitute “persons”.

45 Subsection 11B(21)

Omit “group entity”, substitute “person”.

46 Subsection 11B(22)

Omit “group entity”, substitute “person”.

47 At the end of subsection 11B(22)

Add “or 55A”.

48 After section 11B

Insert:

11C Operational control—trust with multiple trustees

Eligible nomination test

(1) For the purposes of this section, a facility passes the eligible nomination test at a particular time if:

(a) because of section 11, 11A or 11B, a trust has operational control of the facility at that time; and

(b) at that time, there are 2 or more trustees (the relevant trustees) of the trust; and

(c) no declaration under section 55 or 55A applies in relation to the facility at that time; and

(d) that time occurs in a designated financial year.

Nomination

(2) 2 or more trustees may jointly nominate one of them to be the nominated trustee in relation to a facility throughout the period:

(a) beginning at the start of the day specified in the nomination as the day on which the nomination is to come into force (the start day); and

(b) ending at a later time specified in the nomination.

(3) The nomination must:

(a) be in writing; and

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

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

(d) be accompanied by such documents (if any) as are specified in the regulations.

(4) If:

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

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

a foreign person cannot be nominated.

(5) The nomination has no effect unless, at the beginning of the start day:

(a) the facility passes the eligible nomination test; and

(b) the nominators are the relevant trustees.
(6) The start day may occur before the nomination is made.

(7) If the start day occurs during a particular designated financial year, the nomination must not be made after 31 August next following the designated financial year.

(8) The start day may be later than the day on which the nomination is made, so long as:
   (a) the start day occurs in the same financial year as the day on which the nomination is made; or
   (b) the start day occurs in the financial year next following the financial year in which the nomination is made.

Cancellation of nomination

(9) The Regulator may cancel a nomination that relates to a facility if the Regulator is satisfied that:
   (a) the facility passes the eligible nomination test, but the nominated trustee is not a relevant trustee; or
   (b) the facility does not pass the eligible nomination test; or
   (c) the nominated trustee has become an externally-administered body corporate; or
   (d) the nominated trustee has become an insolvent under administration; or
   (e) the nominated trustee has an unsatisfactory compliance record.

Note: For unsatisfactory compliance record, see section 11D.

(10) A cancellation of a nomination takes effect on the day specified in the notice of cancellation as the day on which the cancellation is to take effect.

(11) If the Regulator cancels a nomination, the Regulator must give written notice of the cancellation to each nominator.

Replacement nomination

(12) If:
   (a) a nomination (the original nomination) is in force in relation to a facility; and
   (b) another nomination is made in relation to the facility;
   the other nomination has no effect unless it is expressed to replace the original nomination.

Revocation of nomination

(13) If:
   (a) a nomination (the original nomination) is in force in relation to a facility; and
   (b) another nomination is made in relation to the facility; and
   (c) the other nomination is expressed to replace the original nomination;
   the original nomination is taken to have been revoked at the beginning of the start day for the other nomination.
Operational control—nomination made

(14) If:
   (a) a nomination is in force in relation to a facility throughout a particular period; and
   (b) the facility passes the eligible nomination test at all times during the period;

the nominated trustee is taken, for the purposes of this Act, to have operational control of the facility throughout the period.

Operational control—nomination not made

(15) If:
   (a) no nomination is in force in relation to a facility at any time during a particular period; and
   (b) the facility passes the eligible nomination test at all times during the period;

each relevant trustee is taken, for the purposes of this Act, to have operational control of the facility throughout the period.

Notification

(16) If:
   (a) a nomination is in force in relation to a facility; and
   (b) the facility ceases to pass the eligible nomination test;

each nominator must, within 30 days after the cessation, notify the cessation to the Regulator unless the cessation has previously been notified to the Regulator.

Exceptions

(17) A trustee is not required to comply with subsection (16) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under this Act.

(18) A trustee is not required to comply with subsection (16) if the facility ceases to pass the eligible nomination test because of the making of a declaration under section 55 or 55A.

Definition

(19) In this section:

nomination means a nomination under subsection (2).

48A At the end of paragraph 16(1)(b)

Add:
   ; (vi) the safeguard provisions.

49 After subparagraph 23(1)(b)(i)

Insert:
   (ia) the safeguard rules or the performance of duties in relation to the safeguard rules; or

50 Subsection 25(1)

Omit “or 22X”, substitute “, 22X or 22XB”.

51 Subsection 45(1)

Omit “or the regulations” (wherever occurring), substitute “, the regulations or the safeguard rules”.
51A At the end of Part 5

Add:

**Division 5—Injunctions**

49 Injunctions

*Scope*

(1) This section applies to each of the following provisions:

(a) subsection 11B(20);
(b) subsection 11C(16);
(c) subsection 12(1);
(d) subsection 15B(1);
(e) subsection 19(1);
(f) subsection 20(4);
(g) subsection 21(4);
(h) subsection 21A(2);
(i) subsection 22(1);
(j) subsection 22(2);
(k) subsection 22G(1);
(l) subsection 22H(1);
(m) subsection 22X(2);
(n) subsection 22XA(1);
(o) subsection 22XB(1);
(p) subsection 22XC(1);
(q) subsection 22XF(1).

*Enforceable provisions*


*Authorised person*

(3) The Regulator is an authorised person in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Relevant court*

(4) The Federal Court of Australia is a relevant court in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Extension to external Territories etc.*

(5) A reference to this Act in sections 6 to 6C of this Act includes a reference to Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies in relation to the provision.

52 After section 54

Insert:

54A Regulator may declare facility—non-group entity

(1) The Regulator may declare that an activity or series of activities (including ancillary activities) are a facility:

(a) on application by a non-group entity; or
(b) on the Regulator’s own initiative.
An application must:
(a) identify the facility for which a declaration is sought; and
(b) include any other information required by the regulations; and
(c) be given in a manner and form approved by the Regulator.

In considering making a declaration that an activity or series of activities are a facility, the Regulator must have regard to:
(a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
(b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.

The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare a facility or to refuse the application.

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

After section 55

55A Regulator may declare non-group entity has operational control

(1) The Regulator may declare that a non-group entity has operational control of a facility:
(a) on application by the non-group entity; or
(b) on the Regulator’s own initiative.

(2) An application must:
(a) identify the facility for which a declaration of operational control is sought; and
(b) include any other information required by the regulations; and
(c) be given in a manner and form approved by the Regulator.

In considering making a declaration that a non-group entity has operational control of a facility, the Regulator must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.

The Regulator must not declare that a non-group entity has operational control of a facility unless the Regulator is satisfied that the non-group entity has substantial authority to introduce and implement either or both of the following for the facility:
(a) operating policies;
(b) environmental policies.

The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare the non-group entity to have operational control of the facility or to refuse the application.

If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the non-group entity which the Regulator has declared to have operational control of the facility to which the declaration relates.
54 After paragraph 56(aaa)
Insert:
(aab) cancel a nomination under section 11C;

55 After paragraph 56(a)
Insert:
(ab) not register a person under section 18AA;

56 After paragraph 56(dc)
Insert:
(dd) refuse to make a determination under the safeguard rules;
(de) make a determination under the safeguard rules;
(df) refuse to make a declaration under the safeguard rules;
(dg) make a declaration under the safeguard rules;

57 After paragraph 56(g)
Insert:
(ga) refuse an application under section 54A;
(gb) declare a facility under paragraph 54A(1)(b);

58 After paragraph 56(i)
Insert:
(ia) refuse an application under section 55A;
(ib) declare that a non-group entity has operational control of a facility under paragraph 55A(1)(b);

59 At the end of subsection 75(1)
Add:
; and (e) preparing for and carrying out safeguard audits; and
(f) preparing safeguard audit reports.

Part 3—Transitional provisions
60 Regulations—civil penalty
The Minister must take all reasonable steps to ensure that:
(a) regulations are made for the purposes of subsection 22XF(2) of the National Greenhouse and Energy Reporting Act 2007 (as amended by this Schedule), in accordance with section 4 of the Acts Interpretation Act 1901; and
(b) those regulations are so made before 1 October 2015.

61 Safeguard rules—designated large facility and baseline emissions number
(1) The Minister must take all reasonable steps to ensure that:
(a) safeguard rules are made for the purposes of paragraph 22XJ(1)(b) and subsection 22XL(1) of the National Greenhouse and Energy Reporting Act 2007 (as amended by this Schedule), in accordance with section 4 of the Acts Interpretation Act 1901; and
(b) those safeguard rules are so made before 1 October 2015.
(2) The Minister must cause to be published on the Department’s website a statement that explains how safeguard rules made as mentioned in subitem (1) give effect to the second object of the *National Greenhouse and Energy Reporting Act 2007* (as amended by this Schedule).

Clause 2, page 2 (at the end of the table), add:

<table>
<thead>
<tr>
<th>3. Schedule 2,</th>
<th>1 July 2016.</th>
<th>1 July 2016</th>
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<tbody>
<tr>
<td>Parts 1 and 2</td>
<td>The day after this Act receives the</td>
<td>Royal Assent.</td>
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</tbody>
</table>

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

**AYES, 31**

Senators—

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<tr>
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Senators—

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Question agreed to.

Question—That the bill, as amended, be agreed to—put.

The committee divided—

**AYES, 31**

Senators—

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Question agreed to.
Bill to be reported with amendments.

The President resumed the chair and the Chair of Committees (Senator Marshall) reported accordingly.

On the motion of Senator Cormann the report from the committee was adopted.

Senator Cormann moved—That this bill be now read a third time.

Debate ensued.

Question put.

The Senate divided—

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Question agreed to.
Bill read a third time.

**38 ADJOURNMENT**

The President proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 2.17 am till Monday, 17 November 2014 at 10 am.
39 ATTENDANCE

ROSEMARY LAING
Clerk of the Senate