(Amendments to be moved by Senator Xenophon in committee of the whole)

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

<p>| | | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>3. Schedule 2, Parts 1 and 2</td>
<td>1 July 2016.</td>
<td>1 July 2016</td>
</tr>
<tr>
<td>4. Schedule 2, Part 3</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

[emissions reduction safeguard mechanism]

(2) 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 18AAA;
   (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).

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**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.

22XI 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.

22XJ 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.

22XK 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:

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

(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.

(2) 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”.

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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;
then 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;
then 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


Relevant court


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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

53 After section 55

Insert:

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.

(3) 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.

(4) 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.

(5) 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.
(6) 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).

[emissions reduction safeguard mechanism]