

Nature Repair Market team  
Department of Climate Change, Energy, the Environment and Water  
Online submission, cc: [naturerepairmarket@dcceew.gov.au](mailto:naturerepairmarket@dcceew.gov.au)

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Dear Nature Repair Market team,

**RE: Nature Repair Market Exposure Draft**

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Government on its consultation on the exposure draft of the *Nature Repair Market Bill* (the 'Bill').

Please note that ALCA is happy for this submission to be published in full.

## About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia. Our eleven members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- Greening Australia
- Landcare Australia
- Nature Foundation
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)

ALCA land conservation efforts stretch across over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$260 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance and funding, and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spillover effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.

## Delivering a high-quality market

ALCA continues to welcome a national biodiversity market that can deliver high-quality, high-integrity, and positive outcomes for the environment, and which sits alongside stronger environmental laws that protect much more of Australia's remaining natural habitat.

With further strengthening, the Bill has the potential to deliver a successful nature repair market.

In seeking to realise this greater ambition for biodiversity, ALCA stands by our earlier submission (enclosed) which detailed 12 principles for the nature repair market and, by extension, its legislative design, namely:

- Principle 1: High-quality, high-integrity outcomes for the environment
- Principle 2: Directed towards nationally strategic biodiversity investments
- Principle 3: Clear positive outcomes for the environment
- Principle 4: Ensures a premium for in-perpetuity protection
- Principle 5: Prefer longer term environmental outcomes
- Principle 6: Enhance accountability and transparency
- Principle 7: Non-discriminatory market access
- Principle 8: Governance at arms-length from political intervention
- Principle 9: Direct Federal Government participation
- Principle 10: Reduce complexity without compromising on integrity
- Principle 11: Incorporate lessons from the carbon market review
- Principle 12: Hasten slowly

These principles continue to provide the public policy framework that guides ALCA's recommendations for specific amendments to the Bill and have been provided as an Annex to this submission.

The submission is thus split into four parts:

1. **General issues**, which are narratively described and broad in nature, which the Government is strongly urged to address and seek internal Government guidance on how to draft legislative solutions (note, ALCA has not provided detailed drafting solutions to these issues).
2. Early guidance on **priorities for methodology development**, including that this itself be subject to public consultation.
3. **Detailed legislative amendments**, which are catalogued in detail and accompanied by supporting arguments, further cross-referenced to a **marked-up copy of the exposure draft of the Bill** which is enclosed with this submission.
4. An annex that reproduces **ALCA's 12 guiding principles** in detail from its September 2022 submission to the consultation on the national biodiversity market.

## General issues

### Policy intent

ALCA supports the development of a high-quality, high integrity Market that can facilitate financial support to maintain and expand on the important work of the private land conservation sector. ALCA's policy intent is to deliver quality biodiversity outcomes, in accordance with our 12 principles for a national biodiversity market, ALCA's 2030 Strategy: *Protecting and stewarding for nature*<sup>1</sup>, and in service of the vision and ambitions of our member organisations' own strategic goals for nature. **The private land conservation sector has a key role to play in the effective delivery of outcomes for biodiversity under the Nature Repair Market.**

However, the policy intent of the Bill and the Nature Repair Market that it creates are not clearly articulated. Whilst the Bill clearly seeks to establish a market mechanism that can help finance Australian biodiversity projects and Australia's international environmental commitments, it is unclear what specific policy intentions or priorities that the Government intends for the market to deliver upon. The Nature Repair Market Factsheet gives an indication as to its policy intent:

*"The Australian Government has committed to protecting 30% of Australia's land and seas by 2030. The same goals have been adopted globally under the United Nations Convention on Biological Diversity.*

*These goals reinforce the findings of the 2021 State of the Environment Report, which confirmed that significant investment in conservation and restoration is needed to reverse the decline in Australia's environment."*<sup>2</sup>

Yet, whilst this policy framing is outlined in the summary Factsheet, it is not reproduced in similar or additional detail within the Bill itself.

Further, whilst the potential for direct Government participation is clearly described in the Bill, there is no guidance on how the Government could or would intend to use the market to further its priorities, nor any clear mechanism on how those policy priorities would be transmitted in practice from elsewhere in the environment portfolio (or indeed, other portfolios) into direction for Government participation in the market.

It is also unclear if the Government intends to use the Nature Repair Market to augment its other policy aims and portfolio funding, or to substitute them with private financial flows.

In short, the Nature Repair Market appears broadly framed as 'a good idea for biodiversity', but without any clear signal or statement in the Bill as to specifically what good outcomes for biodiversity it will leverage and deliver in practice.

ALCA's approach to resolving this vacuum is to recommend two elements:

1. Strengthening the Objects of the Act;
2. The addition of a *Biodiversity Investment Strategy instrument* to provide guidance on intended Government policy priorities when participating in the market.

Specifically, the purpose of the legislative instrument would be to allow the Government to:

- Provide additional clarity regarding public policy intentions;
- Provide forward guidance regarding potential Government purchases of certificates, providing lead in times for projects to be proofed up ahead of an approach to market;

<sup>1</sup> See: <https://alca.org.au/2030-strategy-protecting-and-stewarding-for-nature/>

<sup>2</sup> [https://storage.googleapis.com/files-au-climate/climate-au/p/prj23a6fb56d20875fa57e91/public\\_assets/Factsheet%20-%20Overview%20of%20the%20Nature%20Repair%20Market%20Bill.pdf](https://storage.googleapis.com/files-au-climate/climate-au/p/prj23a6fb56d20875fa57e91/public_assets/Factsheet%20-%20Overview%20of%20the%20Nature%20Repair%20Market%20Bill.pdf)

- Provide the Government with some capacity to shape the direction of the market via its signalling effect – e.g. what investments the Government perceives as more or less valuable, or lower and higher priority; and
- By virtue of being a legislative instrument rather than being enacted in the head legislation, maintaining the Government’s ability to be responsive and flexible.

More details can be found below [see: ‘Detailed legislative amendments’; ‘Objects of the Act’ and ‘*Biodiversity Investment Strategy* instrument’].

## Offsets

Environmental offsets are compensatory mechanisms and are used to facilitate land clearance and destruction of native vegetation and habitat. They are fundamentally inconsistent with Objects of the Act, and with the assumed intent of a market focused on ‘nature repair’.

For these primary reasons, **ALCA does not support the inclusion of environmental offsets in the Nature Repair Market.**

ALCA notes that the Government has not yet issued a clear statement of intent regarding the proposed interplay between the nature repair market and environmental offsets markets.

However, the apparent intention to allow – at minimum – Commonwealth environmental offsets within the Nature Repair Market is a cause of serious concern. As noted in ALCA’s September 2022 submission to consultation on the national biodiversity market:

*“Offsets markets are not always designed to deliver net positive outcomes for the environment and thus the inclusion of offset arrangements within the biodiversity market may run contrary to the delivery of high-quality, high-integrity, and positive outcomes for the environment.”*

This is especially the case because the *Nature Repair Market Bill* itself is completely silent on the issue of offsets. If offsets are included – **a position ALCA does not support** – specific provisions relating to offsets need to be added, including:

- clear and legislated guidance on the intended legislative interaction between the Market, the *EPBC Act*, and (expected) environmental offsets standards – it would be opaque and misleading for the final Bill to remain wholly silent on offsets;
- ensuring that where a biodiversity certificate is being used as an environmental offset it is listed on the Biodiversity Market register, including the jurisdiction of that offset (i.e. Commonwealth, State or Territory jurisdiction, or an international jurisdiction), and when the offset was retired;
- a legislative requirement for transparency on whether a buyer intends to use a certificate for an offset;
- the means to retire a biodiversity certificate being used for a biodiversity offset;
- the means to prevent the on-selling of offsets where it is required to maintain the integrity of the scheme;
- the inclusion of ‘landholder sovereignty’ on offsets, namely, the ability of a landholder upon whose land a biodiversity project is occurring to choose to prevent (or allow) biodiversity certificates related to their land being used for biodiversity offsets; this is especially important of enterprises and NGOs that are seeking to ensure the highest level of integrity for certificates they sell and also to safeguard their reputations;
- the prevention of the Government from purchasing biodiversity certificates connected with – or for the purpose of – environmental offsetting;
- likely provisions to regulate secondary markets with regards to offsets.

ALCA has considerable concern that if, by design or default, offsets are allowed and invited to dominate the Market, they may significantly skew both the purpose the market serves, and the biodiversity outcomes that the market delivers.

Assuming that the Government decides to proceed with allowing environmental offsets within the Market, ALCA recommends:

- that the name of the Bill (and the relevant terms within it) be revised to the National Biodiversity Market Bill to more accurately reflect the market that this would create<sup>3</sup>;
- a delay in implementing environmental offsets in the Market for at least 3 years to allow teething problems – especially regarding any concerns with integrity – the chance to resolve first, as well as the opportunity for impending reforms to the *EPBC Act* to settle out, especially as they may significantly alter the context for offsets;
- Public consultation on exposure draft environmental offsets standards before they are promulgated, including how the Government intends for any like-for-like hierarchy to be implemented in the Market; and
- Noting the general policy failure of offsets markets to deliver on their promise of achieving even a status quo outcome for nature, a serious premium requirement for offsets to ensure that the Nature Repair Market genuinely facilitates a net positive outcome for nature. This premium should take into account the issues in other environmental offsets markets related to delays between land clearance and restoration outcomes, policy slippage, and other distinctly sub-optimal outcomes for nature created by offsets markets.

### Independent Review on ACCUs

ALCA welcomed the recommendations from the Independent Review on ACCUs<sup>4</sup>. Three areas from that review – methodology compliance with integrity standards, co-benefits, and market participation – are particularly relevant to the *Nature Repair Market Bill* and should be addressed in the next revision of the Bill.

Specifically, the Government should ensure that the Bill fully adopts and transposes Recommendation 5 (especially 5.2 through 5.4) for biodiversity integrity standards; that there is clear articulation – and where relevant, clear separation – of the regulation co-benefits between the *Carbon Credits (Carbon Farming Initiative) Act 2011* and the eventual *Nature Repair Market Act*; and that the regulator is given clear powers to encourage participation, including from smaller operators and for First Nations peoples [for participation in particular, see: ‘Detailed legislative amendments’ below].

#### *Must be satisfied of compliance with integrity standards*

In relation to the advice of the Nature Repair Market Committee and how the Minister acts on that advice, ALCA notes that the Bill adopts a different construction to the *Carbon Credits (Carbon Farming Initiative) Act 2011*. In particular, the Minister’s decision has been constructed to be less legally proximate to the Committee’s advice than is recommended by the Independent Review on ACCUs under Recommendation 5 (i.e. the Committee must be satisfied and the Minister must not make or vary unless the Committee is satisfied, as opposed to the Minister must be satisfied that it complies with the Integrity Standards).

<sup>3</sup> Also in alignment with Government policy as regulated by ASIC, see: *Information Sheet 271*; <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>

<sup>4</sup> See: <https://www.dcceew.gov.au/climate-change/emissions-reduction/independent-review-accus>

The Minister should not be insulated in this way from the requirements to uphold the integrity of the market – **whilst it is appropriate to for the Minister to outsource advice on integrity, it is not appropriate to outsource the legal requirement to uphold that integrity. ALCA strongly urges the Government to adopt the stronger language and approach as recommended in the Independent Review on ACCUs.**

Whilst ALCA has attempted to strengthen the existing relevant language in the Bill on these issues [see: 'Detailed legislative amendments' below], the approach in the Bill on the Minister's compliance with integrity standards – and the role of the Committee in that process – fundamentally needs to be rewritten to properly accord with the recommendations of the Independent Review of ACCUs.

### *Co-benefits*

Regarding co-benefits (Recommendation 13), one possibility is the *Carbon Credits (Carbon Farming Initiative) Act 2011* could be amended to allow for delegated legislation that would regulate the verification framework for co-benefits, including environmental co-benefits.

The following paragraphs from the Independent Review are particularly pertinent here:

*“Recommendation 13. The CER, in consultation with market participants and stakeholders, should develop procedures to support transparency of different project characteristics and types of co-benefits associated with ACCUs...”*

*“Where a co-benefit is claimed, the proponent should use an appropriate method, verifying the claims made in relation to the co-benefit, and provide evidence to the CER before the claim can be published.”*

As articulated in the Independent Review, that verification framework would focus upon ensuring transparency regarding proponents' methods, co-benefit claims, and any supporting evidence, but would not go so far as to design or formally detail co-benefit methodologies, nor provide any explicit or implicit Government guarantee of the claimed outcomes, thus letting the market decide based on the evidence these transparency requirements would help provide.

If carefully handled, biodiversity certificates under the nature repair market could be a recognised tool for delivering transparency for environmental co-benefits under a verification framework. The Government needs to think carefully about whether biodiversity certificates should be formally stapled to ACCUs (such as through their registries), noting the practical difficulties of managing two interdependent registers with separate real property.

Another issue for the Government to closely contemplate in this space is the difference between stacking and bundling, where activities to deliver carbon and biodiversity claims may overlap rather than be easily separable. In particular, the potential for 'double-dipping' should be avoided, e.g. it should not be possible to sell an ACCU for a premium due to an environmental co-benefit, but then also being paid for that environmental outcome again under a biodiversity certificate via the Nature Repair Market.

### *Participation*

Recommendations 14 and 15 from the Chubb review should be adopted in the operation of the Nature Repair Market. ALCA recommends the addition of a 'participation' function for the Regulator [as outlined below under: 'Detailed legislative amendments', 'Encouraging participation'].

## Mitigating perverse effects upon permanent protection

The Market is expected to facilitate potential income generation for biodiversity projects over a shorter period of duration than the permanent protection currently afforded under conservation covenants.

Insofar as is possible, the legislation needs to be designed to mitigate the potential perverse outcomes that this creates for uptake of permanent protection by landholders engaged in private land conservation, especially in light of the Government's commitment to '30 by 30' (protecting 30% of Australia's lands (and seas) by 2030<sup>5</sup>) which will require permanent protection to deliver.

As noted in ALCA's September 2022 submission to the National Biodiversity Market consultation:

*The biodiversity market should be designed to ensure that it does not create a perverse disincentive for landholders to eschew in-perpetuity environmental protection that is currently delivered under conservation covenants (and their equivalents) across all State, Territory, and Federal jurisdictions.*

*In-perpetuity agreements on private land contribute to the Australia's international obligations for establishing a national reserve system and provide long term high-integrity public benefits.*

***If applied, a metric for biodiversity conservation outcomes should reflect both the added value and security of in-perpetuity protection, as provided by conservation covenants.***

If this perverse outcome is not actively mitigated, there is the significant potential for the policy ambitions of the Government from the Nature Repair Market and its '30 by 30' commitments to operate at cross-purposes.

A partial, albeit incomplete mitigation is to ensure that a methodology determination related to enhanced (permanent) protection – as can be afforded by conservation covenants and conservation agreements under the *EPBC Act*, and other mechanisms that deliver private protected areas for inclusion in the National Reserve System – should be developed as a matter of high priority. The Biodiversity Investment Strategy Instrument [see below: 'Detailed legislative amendments', '*Biodiversity Investment Strategy* instrument'] could also be used to supplement a policy focus upon permanent protection.

A further reassurance would be to ensure there is a specifically legislative reference to conservation agreements and conservation covenants (and other mechanisms for private protected areas) as modes of protection of biodiversity, which would also provide added weight to the potential for the Nature Repair Market to assist in delivering the Government's '30 by 30' commitment [see below: 'Detailed legislative amendments', 'Conservation agreements and covenants'].

## Existing conservation covenant holders / private protected area landholders

Existing holders of conservation covenants and other private protected area landholders should be provided with avenues to participate in the Market; the experiences of the Victorian and NSW Governments provide case studies on how to enable participation for existing conservation covenants holders in emerging biodiversity markets.

As per ALCA's September 2022 submission to the National Biodiversity Market consultation:

*Existing conservation covenant holders [and other private protected area landholders] should be able to access the market for management and restoration activities.*

***If existing covenantors are excluded from the market merely on the basis of additionality, this will have a serious chilling effect on the future uptake of conservation covenants, crowding out voluntary covenanting, and penalising leaders in biodiversity management.***

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<sup>5</sup> See: *Threatened Species Action Plan 2022-32*;  
<https://www.dceew.gov.au/environment/biodiversity/threatened/action-plan>

*It will be important to consider that conservation management activities (such as weed and pest control) are required to maintain ecological condition of areas protected under covenants, and to separate consideration of security (the covenant) from required management activity to maintain and enhance ecological condition when considering approaches to additionality.*

*The policy response from both the Victorian government (in the Victorian offsets market) and New South Wales government (in the NSW biodiversity offsets scheme and NSW Biodiversity Trust programs<sup>6</sup>) has been to recognise and neutralise the potential for perverse outcomes by enabling participation for existing conservation covenant holders in emerging biodiversity markets.*

It remains unclear whether these concerns have been sufficiently addressed by the legislation. ALCA remains concerned that by devolving the guardrails on this issue to methodology determinations rather than clarifying them in the Bill proper, the Bill may impose perverse limitations and outcomes that cannot be unwound without future legislative amendment.

(For further information on permanent protection, see below: ‘Detailed legislative amendments’, ‘Conservation agreements and covenants, and other private protected area mechanisms’; also: ‘Priorities for methodology development’, ‘Permanent protection a high priority’.)

### **Scheme-level audits**

The Government needs to introduce provisions to the Bill that allow the regulator to undertake scheme-level auditing, namely, systematic monitoring of biodiversity projects and their outcomes.

A review of the Biodiversity Conservation Trust NSW’s *Ecological Monitoring Module and Monitoring, Evaluation, Reporting (MER) Framework* would provide useful guidance to the Government on how scheme-level monitoring can be undertaken<sup>7</sup>.

This would greatly aid the Nature Repair Market Committee’s periodic review of methodology determinations (and, as recommended in the ‘Detailed legislative amendments’ below, biodiversity assessment instruments) and help to avoid some of the challenges that have historically faced Australia’s carbon market.

### **Direct Federal Government participation**

ALCA welcomes the inclusion of clear legislative guidance on Government participation in the market.

ALCA robustly reiterates Principle 9 from its September 2022 submission to the national biodiversity market consultation that encourages the Government to avail itself of this option, especially early in the market’s operation to provide market stability as well as to help mature the market:

***“Direct Federal Government participation in the market as a purchaser of biodiversity certificates could be an important way to mature and stabilise an Australian biodiversity market. Direct participation provides a clear signal of government confidence to invest.***

*Direct participation also leads to increased Government accountability... as well as allows the Government to help shape and direct the market according to national strategic priorities for Australian biodiversity outcomes...*

<sup>6</sup> See: Part 11, *Biodiversity Assessment Method*, NSW Department of Planning, Industry & Environment, 2020; <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/biodiversity-assessment-method-2020-200438.pdf>; and: *Existing Obligations* (Conservation Management Program), NSW Biodiversity Conservation Trust, October 2019; <https://www.bct.nsw.gov.au/sites/default/files/2019-10/Existing%20obligations%20CMP.pdf>

<sup>7</sup> See: Biodiversity Conservation Trust NSW; <https://www.bct.nsw.gov.au/info/assessment-compliance-and-monitoring>

*Direct Federal Government participation could also help insure against the possibility of market failure.”*

This point is reinforced by the recommendation to include a Biodiversity Investment Strategy instrument, as outlined under ‘Detailed legislative amendments’ below.

To be clear, the Commonwealth Government should be prohibited from investing in biodiversity certificates that support or are connected with environmental offsets [see below: ‘Detailed legislative amendments’, ‘Prohibiting Government investment in offsets’].

### **Project ‘lumpiness’ and secondary markets**

It is unclear at this stage how easily large potential projects can be divided into a number of smaller projects to facilitate access to demand. Given this risk of ‘project lumpiness’, ALCA encourages the Government to consider whether it needs to legislatively address these concerns, or whether they can be addressed at the contractual level between buyers and sellers.

As a related issue, the Government should actively consider how it intends to regulate secondary markets, and whether there should be more explicit regulation of secondary markets within the Bill, noting that secondary markets will be especially problematic if the Government intends to allow biodiversity certificates for use as environmental offsets.

### **Appropriate Regulator**

Given its intended direct role and relative expertise on environmental issues, the Government should consider whether the forthcoming independent Environment Protection Agency would be a more appropriate regulator of the market rather than the Clean Energy Regulator.

### **Drawing upon existing State-based mechanisms**

ALCA encourages the Government to evaluate relevant State-based mechanisms – specifically, their criteria and standards for the assessment of biodiversity improvements – and how these would interact with a nationally consistent approach.

Whilst ALCA recognises that these findings will be more directly relevant to the development of methodology determinations, these mechanisms should still be considered before finalising the Bill to ensure that the legislation can adequately capture, leverage, and align with such State-based mechanisms.

## Priorities for methodology development

### Public consultation on priorities

The first point to note on the development of methodologies, is that it is imperative that the priorities – especially the initial priorities over the first 12 to 18 months after the passage of the Bill – be subject to public consultation. The initial priorities for methodologies will set the standard and direction of the market, and should have **sufficient depth** (i.e. quantity and liquidity of biodiversity certificates), **focus on wildlife as well as flora** (i.e. not just planting trees), and **focus on delivering high quality outcomes for biodiversity rather than low quality outcomes** even if low quality outcomes may be more convenient to deliver alongside existing commercial activities.

### Permanent protection a high priority

A methodology determination that can deliver permanent protection should be a high priority for the Nature Repair Market, given how critical it will be to help deliver the Government's commitment to '30 by 30', and noting the limited window of time the Government has to leverage the Nature Repair Market to this end.

As noted above under General Issues (see: 'Mitigating perverse effects upon permanent protection'), permanent protection includes conservation covenants (as per s31.5(5) of the *Income Tax Assessment Act 1997*), conservation agreements under the *EPBC Act*, and other mechanisms that deliver private protected areas for inclusion in the National Reserve System.

It should be noted that in some jurisdictions, State government statutory bodies (i.e. land trusts) will be important delivery partners as they are accredited to deliver conservation covenants.

It should be noted that the biodiversity assessment instrument may be an alternative or additional way to prioritise or preference permanent protection, and ALCA would welcome further discussions on the expected pathways to deliver permanent protection.

## Detailed legislative amendments

This section catalogues the recommended legislative amendments as contained within the enclosed marked-up copy of the Bill, as well as the reasons for each of those amendments.

The location of each amendment within the marked-up copy of the Bill is denoted within the [square brackets], referring to the Bill's page number (as written at the alternating bottom-right and bottom-left of each page), and the line numbers (i.e. the numbered rows on each page).

### Objects of the Act

[p2, lines 15-25]

The current Objects in the Bill are uncomfortably distant – i.e. insufficiently legally proximate – from the assumed policy intent of delivering improvements to Australian biodiversity.

The first object (s3(a)) should be strengthened to become more proximate, namely, to *achieve* rather than simply facilitate the achievement of the enhancement, restoration, and protection of biodiversity; this also implies a clearer focus upon a net positive benefit rather than a 'where possible' approach.

A second object should be added that makes it clear that every biodiversity certificate should facilitate a net enhancement, restoration and protection of biodiversity. Amongst other reasons, this is intended to help guard against deleterious outcomes for biodiversity being delivered by the Act (i.e. avoiding nature negative outcomes from the market, such as may occur if the market is used to facilitate improperly construed environmental offsets as has been experienced in other Australian environmental offsets markets).

The current second object of the Bill should be strengthened by an explicit reference to Australia's commitments under the Kunming-Montreal Global Biodiversity Framework<sup>8</sup>, the recent and most significant global compact on biodiversity to which Australia is a party.

As key stakeholders in the market and in nature, NGOs should be explicitly referenced in the list contained within the Bill's current third object (s3(c)). It is noted that whilst promoting engagement and co-operation of market participants is an object, it has no clear prominence throughout the remainder of the Bill. This needs to be rectified, with ALCA's recommendation being the addition of a clear function for the Regulator [see below: 'Encouraging participation'].

### Additional focus on restoration

[throughout the Bill]

From the long-title of the Bill onwards, the language of 'restore' and 'restoration' should be added alongside 'protect' and 'enhance' as:

- 'restore' and 'restoration' are terms are much more familiar and meaningful to environmental managers than 'enhance';
- it creates greater scope for policy alignment with Australia's recent commitment to the Montreal-Kunming Global Biodiversity Framework, specifically, to the restoration of 30% of degraded lands by 2030<sup>9</sup>;
- it helps highlight the value of returning or repairing biodiversity – where possible – to its condition before entering a state of disrepair; and
- it aligns more closely with the emphasis upon 'repair' within the name the Government has given to the market, as well as the short title of the Bill itself.

<sup>8</sup> See: <https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf>

<sup>9</sup> See: Target 2, "Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity."; Ibid.

## Biodiversity Investment Strategy instrument

[p8, lines 1-2; p96, line 18]

A key element missing in the Act is a transmission mechanism for Government policy aims beyond a broad policy desire to ‘protect and enhance nature’ and the broad power for the Government to purchase biodiversity certificates.

Drawing inspiration from investment mandate directions under the Clean Energy Finance Corporation<sup>10</sup> and forthcoming National Reconstruction Fund<sup>11</sup>, a Biodiversity Investment Strategy instrument would provide much needed and useful forward guidance to the market about Government investment priorities and their policy intentions. It would also turn the current passive policy stance – at least as it currently appears in the Bill – into a proactive policy stance, explicitly feeding Government policy aims into market outcomes.

ALCA further recommends that such a Biodiversity Investment Strategy would be useful to signal to the market that the focus should not be upon high integrity *but low-quality* biodiversity certificates, i.e. that the market, at least according to the Government, would be normatively encouraged to steer away from lowest common denominator outcomes.

For example, ALCA would encourage the Government to use the Biodiversity Investment Strategy instrument as a tool to support the prioritisation of permanent protection.

Guidance on what the Biodiversity Investment Strategy instrument would detail should be contained within a new, additional Division in Part 6—Purchase of biodiversity certificates by the Commonwealth.

## Conservation agreements and covenants, and other private protected area mechanisms

[p9, lines 3-6; p15, lines 18-23]

An explicit reference to conservation agreements (as per the *EPBC Act 1999*) and conservation covenants (as per the *Income Tax Assessment Act 1997*) as modes of protection of biodiversity provide added weight to the potential for the Nature Repair Market to assist in delivering the Government’s policy commitment to ‘30 by 30’ – namely, protecting 30% of Australia’s lands (and seas) by 2030<sup>12</sup>.

It is further recommended that this should be augmented by the inclusion of a reference regarding protection mechanisms that provide eligibility of land or sea within the National Reserve System.

These amendments serve to highlight the chief existing legal mechanisms in Australia for delivering environmental protection on privately managed land and, very importantly, elevates the importance of permanent protection to the delivery of the Government’s ‘30 by 30’ policy commitment.

## Matters of environmental significance

[p13, lines 23-25; p54, lines 16-20; p59, lines 20-23; p61, lines 12-15; p76, lines 25-28; p78, lines 20-23; p80, lines 11-14]

In making or varying methodology determinations or biodiversity assessment instruments, the Minister must act in accordance with requirements relating to matters of national environmental significance (‘MNES’) under the *EPBC Act 1999*. This manifests the Government’s key environmental protection

<sup>10</sup> See: <https://www.legislation.gov.au/Details/F2020L00552>

<sup>11</sup> See: [https://storage.googleapis.com/converlens-au-industry/industry/p/prj218724d02676d17fca976/public\\_assets/NRF-Consultation-Paper.pdf](https://storage.googleapis.com/converlens-au-industry/industry/p/prj218724d02676d17fca976/public_assets/NRF-Consultation-Paper.pdf)

<sup>12</sup> See: *Threatened Species Action Plan 2022-32*;  
<https://www.dceew.gov.au/environment/biodiversity/threatened/action-plan>

policy priorities – as articulated in Australia’s cornerstone environmental legislation – and also ensures explicit policy consistency between the two Acts.

### **Registered Biodiversity Auditors**

[p6, lines 9-10; p16, lines 1-3; plus other references to greenhouse gas auditors throughout the Bill]

ALCA recognises that utilising existing greenhouse gas auditors is simpler from a legislative point of view, and that there will likely be auditors who will operate across both the carbon market and nature repair market.

However, greenhouse gas auditors are not appropriate for auditing biodiversity projects and should be replaced with a separate registration scheme for biodiversity auditors to guarantee that they possess expertise specifically relevant to the monitoring and assessment of biodiversity.

Relying on the greenhouse gas auditor registration scheme – which serves a distinct and separate purpose to support for the nature repair market – may appear preferable in the short-term, but it is not a tidy nor preferable outcome over the longer term, where there are likely to be increasingly divergent requirements and thus a need to keep the registration schemes separate. Creating a legislative divorce of the auditor registration schemes later down the track will be much messier than setting it out separately from the outset.

It is thus better to create a separate registration scheme within the Nature Repair Market Bill, but to provide the means for provisional cross-registration until such time as the biodiversity auditor registration scheme matures, and its particular, distinct requirements become more apparent and necessary.

The creation of a biodiversity auditor registration scheme will require a replication of ss75-75A of the *National Greenhouse and Energy Reporting Act 2007* in an appropriate location within the *Nature Repair Market Bill*, but obviously reframed for biodiversity.

Another possibility is to look at updating s221 [*Rules may provide for voluntary accreditation of advisers etc.*], however ALCA views this provides insufficient clarity in the head legislation and thus not a preferred approach.

### **Integrity of project plans / project registration**

[p25, lines 11 & 16]

Noting the critical importance of integrity to the nature repair market, the standard of integrity should be elevated from ‘likely to’ to ‘expected to’.

### **Excluded biodiversity projects**

[p44, line 18]

Whilst it is understood that these provisions simply mirror that of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, s32(f) is too broad in its ambit and should be explicitly limited to a larger, community-level scale agricultural production rather than – potentially – single farms or paddocks.

## **Cultural impacts of methodology determinations and biodiversity assessment instruments**

[p59, line 26; p61, line 18]

This reference allows the Minister to give specific regard to cultural impacts – including Indigenous cultural impacts – that are likely to arise from projects under certain methodologies or biodiversity assessments.

### **Permanence period**

[especially p14, lines 20-21; p45, lines 1-3; plus elsewhere throughout document]

The use of the expression ‘permanence period’ (see especially: s7 and s34) is inherently contradictory and thus generally confusing. Further, its use may be easily confused with the term ‘permanent protection’ that is used within the environmental management and private land conservation sectors.

ALCA therefore recommends that all instances of ‘permanence period’ should be replaced with ‘certificate period’.

### **Transparency of reasons for decisions by the Minister on methodology determinations**

[p58, lines 1-5]

ALCA generally welcomes the transparency requirements relating to Committee advice and the reasons for that advice. However, this level of transparency should also apply to the reasons for the decisions by the Minister regarding the making, varying or revoking of methodology determinations.

Given their more administrative nature, at this time ALCA perceives that there is less need for the same level of transparency to apply to Ministerial decision-making regarding the making, varying or revocation of biodiversity assessment instruments.

### **Varying methodology determinations – transparency for dissenting NRM Committee members**

[p71, lines 10-14]

This added subsection ensures that the level of integrity for *varying* methodology determinations aligns with that of *making* methodology determinations, by requiring NRM Committee members who are satisfied with a variation – but where the Committee is dissatisfied – to provide their reasons (as it currently stands for *making* standards; see: s54(3)(a)(iii)).

### **Ministerial direction of the NRM Committee**

[p72, lines 3-4]

These words are to ensure beyond doubt that the Minister may not directly limit the matters to which the Nature Repair Market Committee members can give regard to when giving the Minister advice. This provides the Committee genuine and unfettered independence.

### **Non-publication of submissions to public consultations**

[p17, lines 22-25; p73, lines 16-19; p84, lines 14-17]

These additional subsections allow for Indigenous cultural sensitivities to be taken into account when considering publication of submissions. This is but one legal construction (by referring to definitions within the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*) – a substitute construction that achieves the same outcome could well be adopted.

## **Biodiversity Integrity Standards**

[p74, lines 6, 12-13, 20 & 25]

As it currently stands, the language in the standards provides an insufficient bar for integrity; a much higher level of confidence is required regarding expected project outcomes. In short, this means converting 'shoulds' into 'woulds'. If it is determined that, semantically, 'would' applies a level of certainty regarding the future that is legislatively impossible, then it could potentially be weakened to "would, on the balance of available evidence".

Again, ALCA notes the importance of adopting Recommendations 5.2 through 5.4 of the Independent Review on ACCUs and ensuring that the language surrounding compliance with Biodiversity Integrity Standards throughout the Bill is appropriately updated.

## **Strengthening NRM Committee advice on biodiversity assessment instruments**

[p77, lines 16 & 25; p79, lines 11 & 20; p82, lines 1, 9, 22 & 31]

The standard of integrity of the advice from the Nature Repair Market Committee on biodiversity assessment instruments needs to be elevated from "would assist in ensuring" to "would ensure", which would put it at greater equivalence to the language of "complies with" as required for advice by the Committee on methodology determinations. There is no clear reason for adopting a lower standard.

[p82, lines 12 & 34]

Likewise, the Committee should be required to give reasons in their advice for being satisfied with biodiversity assessment instruments – as they are required to do for methodology determinations. Again, there is no clear reason for adopting a lower standard.

[p204, lines 23, 25-26 & 28-29; p205, lines 2-3]

In addition, the Committee should be assigned the functions to allow it to periodically review biodiversity assessment instruments, including being able to engage in public consultations in relation to those reviews, and then provide advice to the Minister and Secretary on the outcomes of those reviews.

## **Strengthening integrity in the issue of certificates**

[p88, line 18]

As with the integrity of project plans, the standard of integrity should be elevated from 'likely to' to 'expected to'.

## **Precluding offsets in the market**

[p88, lines 23-24]

This clause is intended to both preclude offsets that facilitate a reduction in Australian biodiversity outside of the project area.

## **Prohibiting Government investment in offsets**

[p94, lines 5-8]

In the event that environmental offsets are allowed to operate within the market – and in any case – the Commonwealth Government should be prohibited from purchasing biodiversity certificates to facilitate or support the use of environmental offsets, whether they be Commonwealth, State, Territory, or international environmental offsets.

### **Committee must have a member with biological or ecological scientific expertise**

[p205, lines 26-29, p206, line 1]

In addition to the other requirements for Committee composition, there must be at least one member of the Committee who has expertise in biological or ecological science. This strengthens the scientific integrity of the committee's advice which in turn is so critically important to the overall integrity of the nature repair market.

### **Improved integrity of Committee resolutions**

[p209, line 17]

Again, because of the absolutely critical and foundational need for integrity in the nature repair market, increasing the threshold required for a resolution of the Nature Repair Market Committee to pass from a majority to a two-thirds majority will provide a significantly higher level of confidence in the advice of the Committee, and thus improve confidence in the market.

### **Encouraging participation**

[p220, lines 6-12]

To ensure and clarify that there will be active encouragement of participation in the market, especially for smaller operators and for First Nations peoples, a 'participation function' should be added to the functions of the regulator. This addition is further supported by Recommendations 14 and 15 of the Independent Review of ACCUs (and outlined above under 'General Issues', 'Independent Review of ACCUs').

### **Biodiversity stewardship scheme reference**

[p221, lines 26-28]

There appears to be an outdated reference in s221(2)(a) to the biodiversity stewardship scheme from the *Agriculture Biodiversity Stewardship Market Bill 2022* that may need to be revisited.

Thank you again for the opportunity to provide a submission on the exposure draft of the *Nature Repair Market Bill*.

ALCA and its members look forward to ongoing engagement with the Government to deliver a national biodiversity market that can deliver high-quality, high-integrity, and positive outcomes for the environment.

### **Australian Land Conservation Alliance**

## Annex: ALCA's 12 Guiding Principles

[As reproduced from ALCA's September 2022 submission to the consultation on the national biodiversity market; also available here: <https://alca.org.au/alca-submission-on-a-national-biodiversity-market/>]

### Principle 1: High-quality, high-integrity outcomes for the environment

The fundamental objective of the biodiversity market needs to be the delivery of high-quality, high-integrity, positive outcomes for biodiversity.

Biodiversity is uniquely complex. It requires target and indicator condition baselines, as well as change monitoring at appropriate scales. It will also require **site-specific management plans** to ensure that planned management activities are suitable and are monitored and audited according to site-specific conditions.

A quick example is that fencing off degraded habitat from livestock may regenerate naturally where a seedbank remains in the soil, but would require active restoration activities where there is no remaining seedbank<sup>13</sup>. Assessing and understanding underlying site-specific conditions will influence predicted outcomes. The auditing requirements for this example would then also be different.

Given the scope for systemic-level environmental changes induced by climate change and natural disasters, there also needs to be scope for **adaptive management**.

**Assurance of high-integrity outcomes can also be secured by adopting existing high-integrity schemes and programs, systems, and approaches.** One excellent example is the existing Federal accreditation and guidelines for conservation covenanting arrangements<sup>14</sup>.

### Principle 2: Directed towards nationally strategic biodiversity investments

Investments via the biodiversity market should be prioritised according to national strategic priorities for biodiversity.

This strategy should be guided by science and knowledge. Where possible, such a strategy should also incorporate current and updated biodiversity strategy and with the recognition of Indigenous rights and interests in biodiversity and of the biocultural value of biodiversity to indigenous people.

Accordingly, the objects of a biodiversity market act need to reflect this and should align with relevant objects of Australia's national environmental legislation.

Further, this also requires an outcomes-focused **national biodiversity investment strategy** (or similar document) that outlines the Government's strategy for utilising the market to maximise biodiversity outcomes in the national interest.

Two potential approaches for directing investments to maximise the national interest include:

- **Assigning a metric for biodiversity conservation outcomes** to certificates as a way of simplifying market signalling on which environmental outcomes are of higher biodiversity value and quality; and
- **Direct Government participation** in the market as an investor.

This will need to be supplemented – although not replaced – by significant Government investment in education regarding biodiversity market assets, costs (including project costs), and outcomes that

<sup>13</sup> Example courtesy of discussions with the Wentworth Group of Concerned Scientists

<sup>14</sup> See: DCCEEW, <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/how-to-apply#guidelines>

enable both full participation of local communities and Indigenous organisations and informed participation from investors.

Ideally these – and potentially other approaches – would be used in combination rather than in isolation.

### **Principle 3: Clear positive outcomes for the environment**

Offsets markets are not always designed to deliver net positive outcomes for the environment and thus the inclusion of offset arrangements within the biodiversity market may run contrary to the delivery of high-quality, high-integrity, and positive outcomes for the environment.

Unless there are significant net positive outcomes for biodiversity beyond the current approach to offsetting in Australia, **there should be no formal or legislated linkages to offsets markets**, whether Federal offsets markets (such as under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act')), State and Territory offsets markets, or international offsets markets.

**The Government should issue a clear statement of intent regarding the proposed interplay between a national biodiversity market and offsets markets.**

### **Principle 4: Ensures a premium for in-perpetuity protection**

The biodiversity market should be designed to ensure that it does not create a perverse disincentive for landholders to eschew in-perpetuity environmental protection that is currently delivered under conservation covenants (and their equivalents) across all State, Territory, and Federal jurisdictions.

In-perpetuity agreements on private land contribute to the Australia's international obligations for establishing a national reserve system and provide long term high-integrity public benefits.

**If applied, a metric for biodiversity conservation outcomes should reflect both the added value and security of in-perpetuity protection, as provided by conservation covenants.**

Existing conservation covenant holders should be able to access the market for management and restoration activities.

If existing covenantors are excluded from the market merely on the basis of additionality, **this will have a serious chilling effect on the future uptake of conservation covenants, crowding out voluntary covenanting, and penalising leaders in biodiversity management.**

It will be important to consider that conservation management activities (such as weed and pest control) are required to maintain ecological condition of areas protected under covenants, and to separate consideration of security (the covenant) from required management activity to maintain and enhance ecological condition when considering approaches to additionality.

The policy response from both the Victorian government (in the Victorian offsets market) and New South Wales government (in the NSW biodiversity offsets scheme and NSW Biodiversity Trust programs<sup>15</sup>) has been to recognise and neutralise the potential for perverse outcomes by enabling participation for existing conservation covenant holders in emerging biodiversity markets.

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<sup>15</sup> See: Part 11, *Biodiversity Assessment Method*, NSW Department of Planning, Industry & Environment, 2020; <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/biodiversity-assessment-method-2020-200438.pdf>; and: *Existing Obligations* (Conservation Management Program), NSW Biodiversity Conservation Trust, October 2019; <https://www.bct.nsw.gov.au/sites/default/files/2019-10/Existing%20obligations%20CMP.pdf>

## Principle 5: Prefer longer term environmental outcomes

**The Government should seek to drive a market preference for longer-term rather than short-term environmental outcomes.** Meaningful biodiversity outcomes take time to realise.

This should be reflected in any metric for biodiversity conservation outcomes and by the Government's biodiversity investment strategy that would guide direct Government participation in the market.

**The biodiversity market should adopt minimum terms of at least 25 years**, in line with the Australian carbon market, noting the need for adaptive management (as referred to in Principle 1).

## Principle 6: Enhance accountability and transparency

Where possible, 'frontload' principles and measures that enhance accountability and transparency into the biodiversity market legislation proper rather than in the protocols, regulations, and delegated instruments. This includes containing **a clear object to deliver high-integrity environmental outcomes within the objects of the act in any biodiversity market legislation.**

**A program of direct Government participation in the market may also be important to drive and enhance accountability;** Government will inevitably be held to a higher standard if it is directing government funds for the purchase of biodiversity certificates in the market, in addition to its role as regulator.

Protocol design – and especially final draft protocols – should be required to go through a public consultation process.

There should be a public register of projects and certificates.

**There should be a presumption that information relating to biodiversity (including management activities) will be published on this register** – such as the location of threatened species – **except where it fails a public interest test, as determined by an independent expert advisory committee.**

Recommendations, guidance, and decisions from any independent expert advisory committee need to be published, along with the Ministers response to that advice (albeit noting Principle 8 which seeks governance at arms-length from Ministerial intervention).

Any independent expert advisory committee must not only be independent but also perceived to be independent.

**Protocols and methodologies adopted under the biodiversity market should be subject to regular review** led independently to (although with access to) the expert advisory committee, and according to publicly available timelines.

**Embedding adaptive management from the outset into protocols and methodologies** will help mitigate the uncertainty created where revisions to protocols and methodologies are found to be required.

Biodiversity outcomes will also require independent verification. ALCA notes that it expects there also to be independent oversight from the Australian Securities and Investments Commission (ASIC) on matters relating to its role as the integrated corporate, market, financial services and consumer credit regulator, for example, on issues such as 'greenwashing'<sup>16</sup>.

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<sup>16</sup> See: ASIC, <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>

### **Principle 7: Non-discriminatory market access**

As a general principle, **market access should not be fettered except where it is in the clear national interest** (for example, market participation by a hostile foreign power). To be clear, this means that **the legislation should adopt an agnostic, non-discriminatory approach to the classes of landholders who will be able to supply the market.**

ALCA notes the view of the Indigenous Carbon Industry Network that identifies potential perverse outcomes that could result from the development of a market design that may limit access, benefit, participation or recognition of values for Aboriginal and Torres Strait Islander people, landholders and organisations.

### **Principle 8: Governance at arms-length from political intervention**

It is recognised that Parliament retains primacy regarding the legislative and regulatory operation of any legislated Australian biodiversity market.

**However, a biodiversity market should be regulated with standards of probity at arms-length from Ministerial intervention.**

In practice, this includes (as above) that any independent expert advisory committee must not only be independent but also perceived to be independent.

It also means, where appropriate, delegating Ministerial authority to independent officers or committees, rather than a Minister acting on the advice (or against the advice and without a statement of reasons) of independent officers or committees.

### **Principle 9: Direct Federal Government participation**

**Direct Federal Government participation in the market as a purchaser of biodiversity certificates could be an important way to mature and stabilise an Australian biodiversity market.** Direct participation provides a clear signal of government confidence to invest.

Direct participation also leads to increased Government accountability (as per Principle 6 above), as well as allows the Government to help shape and direct the market according to national strategic priorities for Australian biodiversity outcomes (as per Principle 2 above).

Direct Federal Government participation could also help insure against the possibility of market failure.

### **Principle 10: Reduce complexity without compromising on integrity**

Biodiversity – and securing outcomes for biodiversity – are inherently complex. However, as long as the market does not compromise on delivering high-integrity, high-quality outcomes for the environment (Principle 1), complexity should be reduced where possible.

The biodiversity market must therefore carefully thread a path between the downside to biodiversity outcomes from reductionism versus the upside from keeping transaction costs as low as possible to encourage market volume.

Reduced complexity also improves accessibility, as well as reducing the reliance of the ultimate suppliers in the market upon brokers and aggregators that increase their transaction costs.

Development and investment in tools to support baseline assessment, monitoring, assurance and validation will also be required.

### **Principle 11: Incorporate lessons from the carbon market review**

ALCA understands that draft biodiversity market legislation will continue to closely resemble the Australia's carbon market legislation (the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)).

Therefore, **it is highly prudent to await the recommendations of the Independent Review of Australian Carbon Credit Units**, due to be handed down to Government by 31 December 2022, so that relevant recommendations can be incorporated into the legislative design of the biodiversity market legislation.

### **Principle 12: Hasten slowly**

Again, ALCA reiterates the importance of avoiding a failed biodiversity market. This means being cautious and methodical in the design of the market and its legislation.

...

**ALCA encourages the Government to take all stakeholders – big and small – on a journey of genuine co-design, including, at minimum, the opportunity to make public comment on exposure draft legislation.**

# EXPOSURE DRAFT

2022-2023

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

## Nature Repair Market Bill 2023

No. , 2023

*(Climate Change, Energy, the Environment and Water)*

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

EXPOSURE DRAFT



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# EXPOSURE DRAFT

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

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**  
6

7 **1 Short title**

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

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 2

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#### 1 **2 Commencement**

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

6

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#### Commencement information

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

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

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

#### 13 **3 Objects of this Act**

14 The objects of this Act are:

- 15 (a) to ~~facilitate the~~ enhancement, restore or and ~~protection of~~  
16 biodiversity in native species in Australia; and  
17 (b) to ensure that each biodiversity certificate issued under this  
18 Act facilitates the net enhancement, restoration and  
19 protection of biodiversity in native species in Australia; and  
20 (bc) to contribute to meeting Australia's international obligations  
21 in relation to biodiversity, including the Kunming-Montreal  
22 Global Biodiversity Framework; and  
23 (ed) to promote engagement and co-operation of market  
24 participants (including First Nations people, governments,  
25 the community, non-government organisations, landholders  
26 and private enterprise) in the enhancement, restoration or  
27 protection of biodiversity in native species in Australia; and

1 (de) to contribute to the reporting and dissemination of  
2 information related to the enhancement, restoration or  
3 protection of biodiversity in native species in Australia.

#### 4 **4 Simplified outline of this Act**

5 A biodiversity project is a project to enhance, restore or protect  
6 biodiversity in native species.

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

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

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

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

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

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

29 This Act is administered by the Minister and the Clean Energy  
30 Regulator. The Regulator has a range of powers available to

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

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- 1 enforce the obligations of a project proponent, including the  
2 following:
- 3 (a) civil penalties (some of which apply only after a  
4 biodiversity certificate has been issued for a project);
  - 5 (b) other powers under the Regulatory Powers Act;
  - 6 (c) powers to require projects to be audited;
  - 7 (d) powers to require project proponents to relinquish  
8 biodiversity certificates;
  - 9 (e) the power to make a biodiversity maintenance  
10 declaration that prohibits certain activities in a project  
11 area.

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

### 23 **5 Crown to be bound**

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

### 29 **6 Extension to external Territories**

30 This Act extends to every external Territory.

## 7 Definitions

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In this Act:

**Aboriginal land council**, for an area of land, means a body corporate that:

- (a) is established under an Act of the Commonwealth, a State or a Territory for the purpose of holding, for the benefit of Aboriginal persons or Torres Strait Islanders:
  - (i) title to land vested in it by or under that Act; or
  - (ii) an estate or interest in land granted under that Act; and
- (b) has functions relating to land that under a law of the Commonwealth, a State or a Territory is land rights land; and
- (c) consists of Aboriginal persons or Torres Strait Islanders who:
  - (i) live in an area to which one or more of the body's functions relate; or
  - (ii) are registered as traditional owners of land in an area to which one or more of the body's functions relate; or
  - (iii) have an association with an area to which one or more of the body's functions relate if the Aboriginal persons or Torres Strait Islanders are accepted as members of the land council on the basis of that association.

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

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

**area** means:

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

**associated provisions** means the following provisions:

- (a) the provisions of the rules;

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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- 1 (b) the provisions of a methodology determination;  
2 (c) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and  
3 137.2 of the *Criminal Code*, in so far as those sections relate  
4 to:  
5 (i) this Act; or  
6 (ii) the rules; or  
7 (iii) a methodology determination.

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

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

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

18 ***Australia***, when used in a geographical sense, includes the external  
19 Territories.

20 ***Australian waters*** means:

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

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

- 31 (a) diversity within species and between species; and  
32 (b) diversity of ecosystems.

# EXPOSURE DRAFT

1           ***biodiversity assessment instrument*** means an instrument under  
2           section 58.

3           ***biodiversity audit*** means:

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

12          ***biodiversity audit report*** means:

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

20          ***biodiversity certificate*** means a certificate issued under section 70.

21          ***biodiversity conservation contract***: see section 79.

22          ***biodiversity conservation contractor***: see section 79.

23          ***biodiversity conservation purchasing process***: see section 83.

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

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

30          ***biodiversity integrity standards***: see section 57.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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1 *Biodiversity Investment Strategy* means an instrument under  
2 section XXX.

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

5 *biodiversity maintenance declaration* means a declaration made  
6 by the Regulator under subsection 154(1).

7 *biodiversity outcome*, in relation to a biodiversity project, means  
8 the enhancement, restoration or protection of biodiversity that the  
9 project is designed to achieve.

10 *biodiversity project* means a project, carried out in a particular  
11 area, that is designed to enhance, restore or protect biodiversity in  
12 native species (whether the effect on biodiversity occurs within or  
13 outside the area).

14 *biodiversity project report* means:

- 15 (a) a category A biodiversity project report; or  
16 (b) a category B biodiversity project report.

17 *body corporate under external administration* means:

- 18 (a) a Chapter 5 body corporate; or  
19 (b) a body corporate that has a corresponding status under a law  
20 of a foreign country.

21 *category A biodiversity project report*: see sections 101 and 102.

22 *category B biodiversity project report*: see section 104.

23 *Chapter 5 body corporate* has the same meaning as in the  
24 *Corporations Act 2001*.

25 *civil penalty order* has the same meaning as in the Regulatory  
26 Powers Act.

27 *civil penalty provision* has the same meaning as in the Regulatory  
28 Powers Act.

# EXPOSURE DRAFT

Preliminary Part 1

## Section 7

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1 **Commonwealth Register account** means a Register account kept  
2 in the name of the Commonwealth.

3 **conservation agreement** has the same meaning as in the  
4 **Environment Protection and Biodiversity Conservation Act 1999.**

5 **conservation covenant** has the same meaning as in the *Income Tax*  
6 *Assessment Act 1997.*

7 **corporation** means:

- 8 (a) a body corporate; or
- 9 (b) a corporation sole.

10 **covers:** a methodology determination **covers** a registered  
11 biodiversity project if the entry for the project in the Register states  
12 that the methodology determination covers the project.

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

- 14 (a) the Commonwealth, a State or a Territory; or
- 15 (b) a statutory authority of:
  - 16 (i) the Commonwealth; or
  - 17 (ii) a State; or
  - 18 (iii) a Territory.

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

- 20 (c) subject to a lease or licence; or
- 21 (d) covered by a reservation, proclamation, dedication,  
22 condition, permission or authority, made or conferred by the  
23 Commonwealth, the State or the Territory; or
- 24 (e) covered by the making, amendment or repeal of legislation of  
25 the Commonwealth, the State or the Territory under which  
26 the whole or a part of the land is to be used for a public  
27 purpose or public purposes; or
- 28 (f) held on trust for the benefit of another person; or
- 29 (g) subject to native title.

30 **Crown lands Minister:**

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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- 1 (a) in relation to a State—means the Minister of the State who,  
2 under the rules, is taken to be the Crown lands Minister of  
3 the State; or
- 4 (b) in relation to the Northern Territory—means the Minister of  
5 the Northern Territory who, under the rules, is taken to be the  
6 Crown lands Minister of the Northern Territory; or
- 7 (c) in relation to the Australian Capital Territory—means the  
8 Minister of the Australian Capital Territory who, under the  
9 rules, is taken to be the Crown lands Minister of the  
10 Australian Capital Territory; or
- 11 (d) in relation to a Territory other than the Northern Territory or  
12 the Australian Capital Territory—means the person who,  
13 under the rules, is taken to be the Crown lands Minister of  
14 the Territory.

15 ***declared prohibited activity***, in relation to a biodiversity  
16 maintenance area, means an activity specified under  
17 subsection 154(4) in relation to the biodiversity maintenance area.

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

20 ***director*** includes a constituent member of a body corporate  
21 incorporated for a public purpose by a law of the Commonwealth,  
22 a State or a Territory.

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

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

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

- 28 (a) an individual;  
29 (b) a body corporate;  
30 (c) a trust;  
31 (d) a corporation sole.

32 ***eligible voluntary action*** means:

# EXPOSURE DRAFT

- 1 (a) making an application; or  
2 (b) giving information in connection with an application; or  
3 (c) withdrawing an application; or  
4 (d) giving a notice (including an electronic notice); or  
5 (e) making a submission; or  
6 (f) making a request; or  
7 (g) giving information in connection with a request;  
8 to the Regulator, where the application, information, notice,  
9 submission or request is permitted, but not required, to be made,  
10 given or withdrawn, as the case may be, under this Act or an  
11 instrument made under this Act.

12 ***engage in conduct*** means:

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

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

16 ***exclusive possession native title area*** means a native title area,  
17 where the native title confers a right of exclusive possession over  
18 the area.

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

- 20 (a) a director of the corporation; or  
21 (b) the chief executive officer (however described) of the  
22 corporation; or  
23 (c) the chief financial officer (however described) of the  
24 corporation; or  
25 (d) the secretary of the corporation.

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

27 ***First Nations people*** means:

- 28 (a) Aboriginal persons; or  
29 (b) Torres Strait Islanders.

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

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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- 1                    ***freehold land rights land*** means land, where:
- 2                    (a) a freehold estate exists over the land, and the grant of the
- 3                    freehold estate took place under a law of a State or a
- 4                    Territory that makes provision for the grant of such things
- 5                    only to, or for the benefit of, Aboriginal persons or Torres
- 6                    Strait Islanders; or
- 7                    (b) a freehold estate exists over the land, and the grant of the
- 8                    freehold estate took place under a law of the Commonwealth
- 9                    that makes provision for the grant of such things only to, or
- 10                    for the benefit of, Aboriginal persons or Torres Strait
- 11                    Islanders; or
- 12                    (c) the land is vested in a person, and the vesting took place
- 13                    under a law of the Commonwealth that makes provision for
- 14                    the vesting of land only in, or for the benefit of, Aboriginal
- 15                    persons or Torres Strait Islanders.
- 16                    ***holder*** of a biodiversity certificate means the person recorded in
- 17                    the Register as the holder of the certificate.
- 18                    ***indigenous-held land*** has the same meaning as in the *Aboriginal*
- 19                    *and Torres Strait Islander Act 2005*.
- 20                    ***indigenous land use agreement*** has the same meaning as in the
- 21                    *Native Title Act 1993*.
- 22                    ***inland waters*** means waters within Australia other than waters of
- 23                    the sea.
- 24                    ***inspector*** means a person appointed as an inspector under
- 25                    section 184.
- 26                    ***land rights land*** means land where:
- 27                    (a) a freehold estate exists, or a lease is in force, over the land,
- 28                    where the grant of the freehold estate or lease took place
- 29                    under legislation that makes provision for the grant of such
- 30                    things only to, or for the benefit of, Aboriginal persons or
- 31                    Torres Strait Islanders; or
- 32                    (b) the land is vested in a person, where the vesting took place
- 33                    under legislation that makes provision for the vesting of land

- 1 only in, or for the benefit of, Aboriginal persons or Torres  
2 Strait Islanders; or  
3 (c) neither paragraph (a) nor (b) applies, and the land is held  
4 expressly for the benefit of, or is held in trust expressly for  
5 the benefit of, Aboriginal persons or Torres Strait Islanders;  
6 or  
7 (d) the land is reserved expressly for the benefit of Aboriginal  
8 persons or Torres Strait Islanders; or  
9 (e) the land is specified in the rules.

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

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

14 ***lease***, in relation to land rights land, includes:

- 15 (a) a lease enforceable in equity; and  
16 (b) a contract that contains a statement to the effect that it is a  
17 lease; and  
18 (c) anything that, at or before the time of its creation, is, for any  
19 purpose, by a law of the Commonwealth, a State or a  
20 Territory, declared to be or described as a lease.

21 ***maintained project***, in relation to a biodiversity maintenance  
22 declaration: see paragraph 154(1)(a).

23 ***matters of national environmental significance*** has the same  
24 ***meaning as in the Environment Protection and Biodiversity***  
25 ***Conservation Act 1999***.

26 ***methodology determination*** means a determination under  
27 subsection 45(1).

28 ***National Native Title Register*** has the same meaning as in the  
29 ***Native Title Act 1993***.

30 ***native title*** has the same meaning as in the ***Native Title Act 1993***.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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1                    **native title area:** an area is a **native title area** if there is an entry on  
2                    the National Native Title Register specifying that native title exists  
3                    in relation to the area.

4                    **natural disturbance,** in relation to a registered biodiversity project,  
5                    means any of the following events, where the event could not  
6                    reasonably be prevented by the project proponent for the project:

- 7                    (a) flood;
- 8                    (b) bushfire;
- 9                    (c) drought;
- 10                   (d) pest attack;
- 11                   (e) disease;
- 12                   (f) an event specified in the rules.

13                   **Nature Repair Market Committee** means the committee  
14                   established by section 194.

15                   **Nature Repair Market Committee member** means a member of the  
16                   Nature Repair Market Committee, and includes the Chair of the  
17                   Nature Repair Market Committee.

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

20                   **permanence certificate period** of a registered biodiversity project  
21                   means the **permanence certificate** period that:

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

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

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

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

- 30                   (a) a biodiversity project; or
- 31                   (b) a registered project under a related scheme;

# EXPOSURE DRAFT

1 means the area, or areas, on or in which the project has been, is  
2 being, or is to be carried out.

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

- 4 (a) sets out how the project is intended to be carried out; and  
5 (b) sets out how the project is intended to achieve the  
6 biodiversity outcome for the project; and  
7 (c) is consistent with the methodology determination that covers,  
8 or is proposed to cover, the project; and  
9 (d) includes such information (if any) as is specified in the rules;  
10 and  
11 (e) complies with such requirements (if any) as are specified in  
12 the rules.

13 ***project proponent***, in relation to a registered biodiversity project,  
14 means the eligible person who is recorded in the Register as the  
15 project proponent for the project.

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

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

18 ***protection of biodiversity may include:***

- 19 (a) protection by way of a conservation agreement; or  
20 (b) protection by way of a conservation covenant; or  
21 (c) protection that provides eligibility for the inclusion of land or  
22 sea within the National Reserve System; or  
23 (d) any other relevant form of protection.

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

26 ***registered biodiversity project*** means a biodiversity project that is  
27 registered on the Register (other than a former registered  
28 biodiversity project in relation to which information is set out in  
29 the Register under rules made for the purposes of  
30 subsection 162(5)).

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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1 **registered ~~biodiversity greenhouse and energy auditor~~** has the  
2 ~~same~~ meaning as ~~given in section XXXX~~ *the National Greenhouse*  
3 *and Energy Reporting Act 2007*.

4 **registered indigenous land use agreement** means an indigenous  
5 land use agreement the details of which are entered on the Register  
6 of Indigenous Land Use Agreements.

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

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

- 10 (a) registered under the *Carbon Credits (Carbon Farming*  
11 *Initiative) Act 2011*; or  
12 (b) registered (however described) under a prescribed law of the  
13 Commonwealth, a State or a Territory.

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

16 **Regulator** means the Clean Energy Regulator.

17 Note: The Clean Energy Regulator is established by the *Clean Energy*  
18 *Regulator Act 2011*.

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

- 21 (a) relates to the project or to an element of the project; and  
22 (b) is required under a law of the Commonwealth (other than this  
23 Act), a State or a Territory that relates to:  
24 (i) land use or development; or  
25 (ii) the environment; or  
26 (iii) water.

27 **Regulatory Powers Act** means the *Regulatory Powers (Standard*  
28 *Provisions) Act 2014*.

29 **relevant land registration official**:

- 30 (a) in relation to a biodiversity project that:  
31 (i) is or was a registered biodiversity project; and
-

# EXPOSURE DRAFT

- 1 (ii) is wholly or partly land-based;  
2 means the Registrar of Titles or other proper officer of the  
3 State or Territory in which the project area is wholly or partly  
4 situated; or  
5 (b) in relation to an area of land that is or was a biodiversity  
6 maintenance area—means the Registrar of Titles or other  
7 proper officer of the State or Territory in which the area of  
8 land is wholly or partly situated.

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

10 ***relinquishment notice*** means a notice given by the Regulator  
11 under any of the following provisions:

- 12 (a) subsection 144(2) (false or misleading information);  
13 (b) subsection 145(2) (cancellation of registration of biodiversity  
14 project);  
15 (c) subsection 146(2) (reversal of biodiversity outcome other  
16 than due to natural disturbance or conduct etc.);  
17 (d) subsection 147(2) (reversal of biodiversity outcome due to  
18 natural disturbance or conduct and no mitigation happens).

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

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

21 ***Secretary*** means the Secretary of the Department.

22 ***significant Aboriginal area*** has the meaning as in the *Aboriginal*  
23 *and Torres Strait Islander Heritage Protection Act 1984*.

24 ***significant Aboriginal object*** has the meaning as in the *Aboriginal*  
25 *and Torres Strait Islander Heritage Protection Act 1984*.

26 ***statutory authority*** of the Commonwealth, a State or a Territory,  
27 means an authority or body (including a corporation sole)  
28 established by or under a law of the Commonwealth, the State or  
29 the Territory (other than a general law allowing incorporation as a  
30 company or body corporate), but does not include:

- 31 (a) an Aboriginal Land Trust established under the *Aboriginal*  
32 *Land Rights (Northern Territory) Act 1976*; or

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 8

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

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

12 **Torres Strait Islander** has the same meaning as in the *Aboriginal*  
13 *and Torres Strait Islander Act 2005*.

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

#### 16 **8 Vacancy in the office of a Nature Repair Market Committee** 17 **member**

18 For the purposes of a reference in:

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

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

#### 25 **9 Electronic notice transmitted to the Regulator**

- 26 (1) For the purposes of this Act, a notice is an **electronic notice**  
27 **transmitted to the Regulator** if, and only if:  
28 (a) the notice is transmitted to the Regulator by means of an  
29 electronic communication; and  
30 (b) if the Regulator requires that the notice be transmitted, in  
31 accordance with particular information technology

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 1 Introduction

Section 10

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1 **Part 2—Registered biodiversity projects**

2 **Division 1—Introduction**

3 **10 Simplified outline of this Part**

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

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

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

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

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

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

# EXPOSURE DRAFT

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

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

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

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

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

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

11 **12 Form of application**

- 12 (1) An application must:

13 (a) be in writing; and

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

- 15 (2) An application must:

16 (a) specify the proposed project area; and

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

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

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

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

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 2 Registration of biodiversity project

#### Section 12

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

#### *Registered native title body corporate*

- 28
- 29 (6) If:
- 30 (a) the applicant is a native title holder for an exclusive  
31 possession native title area; and
- 32 (b) the proposed project area consists of, or includes, the  
33 exclusive possession native title area; and

# EXPOSURE DRAFT

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

## 15 **13 Further information**

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

## 24 **14 Withdrawal of application**

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 2 Registration of biodiversity project

#### Section 15

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

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

##### 5 *Scope*

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

##### 9 *Approval*

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

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

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

##### 23 *Criteria for approval*

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

# EXPOSURE DRAFT

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

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

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

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

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 2 Registration of biodiversity project

#### Section 15

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

# EXPOSURE DRAFT

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

4 *Matters to be included in notice*

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

18 *Timing*

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

26 *When approval takes effect*

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

# EXPOSURE DRAFT

**Part 2** Registered biodiversity projects

**Division 2** Registration of biodiversity project

Section 16

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

3             *Order*

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

# EXPOSURE DRAFT

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

3 *Compliance with order*

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

5 *Timing of decision on application*

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

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

11 *Scope*

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

20 *Condition*

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

# EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 2 Registration of biodiversity project

## Section 18

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

3             *Scope*

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

16             *Condition*

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

22             *Consents*

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

# EXPOSURE DRAFT

Registered biodiversity projects **Part 2**

Variation of registration **Division 3**

Section 19

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## 1 **Division 3—Variation of registration**

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

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

7 (a) add an eligible person as a project proponent of the project;  
8 or

9 (b) remove a project proponent from the project (so long as this  
10 would not result in there not being any project proponents for  
11 the project).

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

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

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

17 (a) if there is a project proponent for the project—the project  
18 proponent applies to the Regulator for the variation; and

19 (b) any eligible person that is to be added as a project proponent  
20 for the project consents, in writing, to the variation; and

21 (c) the Regulator is satisfied that any eligible person that is to be  
22 added as a project proponent for the project is a fit and proper  
23 person; and

24 (d) if a biodiversity certificate is in effect in relation to the  
25 project, and the project proponent (if any) is not the holder of  
26 the certificate—the holder of the certificate has been notified  
27 of the proposed variation, and has been given the opportunity  
28 to make submissions in relation to the proposed variation.

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

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 3 Variation of registration

#### Section 20

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

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

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

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

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

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

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

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

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

# EXPOSURE DRAFT

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

11 **21 Voluntary variation of conditional registration of biodiversity**  
12 **project—condition of registration has been met**

- 13 (1) The rules may make provision for and in relation to empowering  
14 the Regulator to vary the registration of a registered biodiversity  
15 project to remove any of the following conditions to which the  
16 registration is subject:  
17 (a) a condition mentioned in subsection 17(2) (conditions about  
18 obtaining regulatory approvals);  
19 (b) a condition mentioned in subsection 18(2) (conditions about  
20 obtaining consents from eligible interest holders).

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

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

- 24 (2) Rules made for the purposes of subsection (1) must not empower  
25 the Regulator to vary a registration unless:  
26 (a) the project proponent for the project applies to the Regulator  
27 for the variation; and  
28 (b) the Regulator is satisfied that the condition has been met.

# EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 3 Variation of registration

Section 22

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## 22 Procedures for voluntary variation of registration of biodiversity project

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

Registered biodiversity projects **Part 2**  
Variation of registration **Division 3**

## Section 22

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

# EXPOSURE DRAFT

Part 2 Registered biodiversity projects

Division 4 Cancellation of registration of biodiversity project

Section 23

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

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

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

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

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

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

13 (a) a biodiversity certificate (the *original certificate*) has been  
14 issued in respect of the registered biodiversity project  
15 (whether or not the original certificate remains in effect); and

16 (b) the project proponent for the project applies to the Regulator  
17 for the cancellation of the registration; and

18 (c) either:

19 (i) the original certificate is relinquished in accordance  
20 with section 152 in relation to the project, as mentioned  
21 in paragraph 152(2)(c); or

22 (ii) one or more other biodiversity certificates are  
23 relinquished in accordance with section 152 in relation  
24 to the project, as mentioned in paragraph 152(2)(c), and  
25 the relinquished certificate or certificates meet the  
26 relinquishment equivalence requirements in relation to  
27 the original certificate.

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

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

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# EXPOSURE DRAFT

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

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

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

## 25 Procedures for voluntary cancellation of registration of biodiversity project

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 4 Cancellation of registration of biodiversity project

#### Section 25

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

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

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

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

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

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

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

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

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

22 (a) the registration is subject to a condition mentioned in  
23 subsection 17(2) or 18(2); and

24 (b) the Regulator is satisfied that the condition has not been met;  
25 and

26 (c) at least 5 years have passed since the project was first  
27 registered.

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

# EXPOSURE DRAFT

**Part 2** Registered biodiversity projects

**Division 4** Cancellation of registration of biodiversity project

## Section 27

---

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

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

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

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

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

12            (b) either:

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

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

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

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

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

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

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

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

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# EXPOSURE DRAFT

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

## Section 29

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

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

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

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

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

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

13 (a) the Regulator is satisfied that either:

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

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

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

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

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

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

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

# EXPOSURE DRAFT

## Part 2 Registered biodiversity projects

### Division 4 Cancellation of registration of biodiversity project

#### Section 31

---

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

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

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

# EXPOSURE DRAFT

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

## Section 32

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

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

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

# EXPOSURE DRAFT

Part 2 Registered biodiversity projects  
Division 5 Excluded biodiversity projects

Section 33

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1 **Division 5—Excluded biodiversity projects**

2 **33 Excluded biodiversity projects**

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

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

10 (a) the availability of water;

11 (b) biodiversity (other than the kinds of biodiversity to be  
12 addressed by the project);

13 (c) employment;

14 (d) the local community;

15 (e) if there is a local community of Aboriginal persons, or Torres  
16 Strait Islanders, who have a connection to the project area—  
17 that community;

18 (f) local community-level land access for agricultural  
19 production.

# EXPOSURE DRAFT

Registered biodiversity projects **Part 2**  
Duration of permanencertificate period **Division 6**

Section 34

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

2 **34 Duration of permanencertificate period**

3 The permanencertificate period for a registered biodiversity  
4 project:

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

7 (b) ends at:

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

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

# EXPOSURE DRAFT

**Part 3** Multiple project proponents

**Division 1** Introduction

Section 35

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1 **Part 3—Multiple project proponents**

2 **Division 1—Introduction**

3 **35 Simplified outline of this Part**

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

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

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

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

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

# EXPOSURE DRAFT

Multiple project proponents **Part 3**  
References to project proponents **Division 2**

Section 36

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

2 **36 References to project proponents**

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

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

9 (b) a reference in:

10 (i) this Act; or

11 (ii) the rules; or

12 (iii) any other instrument under this Act;

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

# EXPOSURE DRAFT

Part 3 Multiple project proponents

Division 3 Nominee of multiple project proponents

Section 37

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

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

4 *Scope*

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

15 *Nomination*

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

# EXPOSURE DRAFT

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

3 *Scope*

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

6 *Nomination*

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

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

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

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

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

22 **39 Revocation and cessation of nomination**

- 23 (1) If:

- 24 (a) a nomination under subsection 37(2) or 38(2) is in force in  
25 relation to a registered biodiversity project; and  
26 (b) one of the project proponents for the registered biodiversity  
27 project, by written notice given to the Regulator, revokes the  
28 nomination;

29 the nomination ceases to be in force.

- 30 (2) If:
-

# EXPOSURE DRAFT

## Part 3 Multiple project proponents

### Division 3 Nominee of multiple project proponents

#### Section 40

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

3 (b) the nominee ceases to be one of the project proponents for  
4 the registered biodiversity project;  
5 the nomination ceases to be in force.

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

#### 10 **40 Service of documents on nominee**

##### 11 *Scope*

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

##### 14 *Service of documents*

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

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

##### 26 *Scope*

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

# EXPOSURE DRAFT

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

## Section 42

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1 *Eligible voluntary action to be taken by nominee*

- 2 (2) If:
- 3 (a) the multiple project proponents have nominated a nominee
- 4 under subsection 37(2) or 38(2) in relation to the project; and
- 5 (b) the nomination is in force; and
- 6 (c) the nominee takes an eligible voluntary action; and
- 7 (d) the application, nomination, request or notice to which the
- 8 eligible voluntary action relates is expressed to be made,
- 9 withdrawn or given, as the case may be, on behalf of the
- 10 multiple project proponents;
- 11 this Act and any instrument made under this Act have effect as if:
- 12 (e) the application, nomination, request or notice to which the
- 13 eligible voluntary action relates were made, withdrawn or
- 14 given, as the case may be, by the multiple project proponents
- 15 jointly; and
- 16 (f) if the eligible voluntary action is the making of an
- 17 application—a reference in this Act or the instrument to the
- 18 applicant were a reference to each of the multiple project
- 19 proponents.
- 20 (3) The multiple project proponents are not entitled to take an eligible
- 21 voluntary action except in accordance with subsection (2).

### 22 **42 Unilateral cancellation of registration of biodiversity project—**

### 23 **failure of multiple project proponents to nominate a**

### 24 **nominee**

- 25 (1) The rules may make provision for and in relation to empowering
- 26 the Regulator to cancel the registration of a registered biodiversity
- 27 project.
- 28 Note: For review of decisions, see Part 20.
- 29 (2) Rules made for the purposes of subsection (1) must not empower
- 30 the Regulator to cancel a registration unless:
- 31 (a) there are 2 or more project proponents (the *multiple project*
- 32 *proponents*) for the registered biodiversity project; and

# EXPOSURE DRAFT

## Part 3 Multiple project proponents

### Division 3 Nominee of multiple project proponents

#### Section 42

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

# EXPOSURE DRAFT

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

2 **43 Obligations of multiple project proponents**

3 *Scope*

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

13 *Obligations of project proponent*

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

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 1 Introduction

#### Section 44

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## 1 Part 4—Methodology determinations

### 2 Division 1—Introduction

#### 3 44 Simplified outline of this Part

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

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

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

- 16 (a) the biodiversity integrity standards; ~~and~~  
17 (b) advice given by the Nature Repair Market Committee;  
18 and  
19 ~~(c):~~ requirements relating to matters of national  
20 environmental significance.

21 The Minister may also have regard to adverse environmental and  
22 other impacts, and any other matters the Minister considers  
23 relevant.

24 The Minister may make a biodiversity assessment instrument that  
25 prescribes requirements to be complied with by methodology  
26 determinations.

# EXPOSURE DRAFT

1 **Division 2—Methodology determinations**

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

3 **45 Methodology determinations**

- 4 (1) The Minister may, by legislative instrument, make a determination  
5 that:
- 6 (a) is expressed to cover a specified kind of biodiversity project;  
7 and
  - 8 (b) sets out conditions that must be met for such a project to be  
9 registered as a registered biodiversity project; and
  - 10 (c) provides, for the purposes of paragraph 162(1)(j), for  
11 information that is to be included in the entry in the Register  
12 for such a project; and
  - 13 (d) sets out:
    - 14 (i) for the purposes of paragraph 67(2)(b), conditions that  
15 must be met for an application to be made for a  
16 biodiversity certificate to be issued in respect of such a  
17 project; and
    - 18 (ii) for the purposes of paragraph 67(2)(c), a method of  
19 working out the time after which such applications may  
20 be made; and
  - 21 (e) sets out, for the purposes of paragraph 70(2)(g), conditions  
22 that must be met for a biodiversity certificate to be issued in  
23 respect of such a project; and
  - 24 (f) requires, for the purposes of paragraph 108(1)(b), the project  
25 proponent for such a project to notify the Regulator of  
26 specified matters relating to the project; and
  - 27 (g) provides, for the purposes of paragraphs 164(1)(d) and (2)(c),  
28 for information that is to be included in the entry in the  
29 Register for a biodiversity certificate issued in relation to  
30 such a project; and
  - 31 (h) sets out the activities that are to be carried out for the  
32 purposes of such a project; and
-

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 2 Methodology determinations

#### Section 45

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

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 2 Methodology determinations

#### Section 46

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1 (11) The Minister must cause a copy of the reasons for making, varying  
2 or revoking a methodology determination to be published on the  
3 Department's website, including where relevant under this Act,  
4 what the Minister has given regard to in making, varying or  
5 revoking that methodology determination.

6 *Biodiversity assessment instruments*

7 ~~(1211)~~ The Minister must not make a methodology determination unless  
8 there is a biodiversity assessment instrument that applies to the  
9 determination.

10 ~~(1312)~~ A methodology determination must comply with any requirements  
11 prescribed by a biodiversity assessment instrument that applies to  
12 the determination.

#### 13 **46 Civil penalties—requirements in methodology determination**

- 14 (1) An eligible person is liable to a civil penalty if:
- 15 (a) the eligible person is a project proponent of a registered  
16 biodiversity project; and
  - 17 (b) a biodiversity certificate has been issued in respect of the  
18 project (whether or not the certificate remains in force); and
  - 19 (c) the methodology determination that covers the project  
20 imposes a requirement on the project proponent of the project  
21 for the purposes of paragraphs 45(3)(a) and (b); and
  - 22 (d) the eligible person, or any other project proponent for the  
23 project, fails to comply with the requirement.

24 Civil penalty: 2,000 penalty units.

- 25 (2) An eligible person is liable to a civil penalty if:
- 26 (a) the eligible person is a project proponent of a registered  
27 biodiversity project; and
  - 28 (b) a biodiversity certificate has been issued in respect of the  
29 project (whether or not the certificate remains in force); and
  - 30 (c) the methodology determination that covers the project  
31 requires, for the purposes of paragraph 45(3)(b), the project

# EXPOSURE DRAFT

- 1                   proponent for the project to ensure that an activity is not  
2                   carried out in the project area; and  
3                   (d) the activity is carried out in the project area (by the project  
4                   proponent or any other person).

5                   Civil penalty:           2,000 penalty units.

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

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

## 12           **47 Procedure for making a methodology determination**

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

15                   (a) must have regard to the following:

- 16                   (i) whether the determination complies with the  
17                   biodiversity integrity standards;  
18                   (ii) any advice that the Nature Repair Market Committee  
19                   has given to the Minister under subsection 54(2) in  
20                   relation to the making of the determination; ~~and~~  
21                   (iii) whether the determination is in accordance with  
22                   requirements relating to matters of national  
23                   environmental significance; and

24                   (b) may have regard to the following:

- 25                   (i) whether significant adverse environmental, agricultural,  
26                   economic, cultural or social impacts are likely to arise  
27                   from the carrying out of the kind of project that the  
28                   determination covers;  
29                   (ii) such other matters (if any) as the Minister considers  
30                   relevant.

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 2 Methodology determinations

#### Section 47

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1

#### *Advice given by the Nature Repair Market Committee*

2

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

3

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5

6

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

7

- (3) The Minister must not make a methodology determination unless:

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13

- (a) the Nature Repair Market Committee has given the Minister advice under subsection 54(2) in relation to the making of the determination; and
- (b) that advice includes a statement to the effect that the Committee is satisfied that the determination complies with the biodiversity integrity standards.

14

- (4) If the Minister decides:

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- (a) to make a methodology determination; or
- (b) not to make a methodology determination;

the Minister must:

- (c) cause a copy of any advice given by the Nature Repair Market Committee under subsection 54(2) in relation to the determination to be published on the Department's website; and
- (d) do so as soon as practicable after making the decision.

23

#### *Variation and amendment etc. of methodology determination*

24

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

25

26

27

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

# EXPOSURE DRAFT

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

2 **48 Variation of methodology determinations**

3 (1) The Minister may, by legislative instrument, vary a methodology  
4 determination.

5 (2) In deciding whether to vary a methodology determination, the  
6 Minister:

7 (a) must have regard to the following:

8 (i) whether the varied determination complies with the  
9 biodiversity integrity standards;

10 (ii) any advice that the Nature Repair Market Committee  
11 has given to the Minister under subsection 54(2) in  
12 relation to the varying of the determination; ~~and~~

13 (iii) whether the varied determination is in accordance with  
14 requirements relating to matters of national  
15 environmental significance; and

16 (b) may have regard to the following:

17 (i) whether significant adverse environmental, agricultural,  
18 economic, cultural or social impacts are likely to arise  
19 from the carrying out of the kind of project that the  
20 varied determination covers;

21 (ii) such other matters (if any) as the Minister considers  
22 relevant.

23 *Advice given by the Nature Repair Market Committee*

24 (3) Before varying a methodology determination, the Minister must  
25 request the Nature Repair Market Committee to advise the Minister  
26 about whether the Minister should vary the determination.

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

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

30 (4) The Minister must not vary a methodology determination unless:

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 2 Methodology determinations

#### Section 49

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- 1 (a) the Nature Repair Market Committee has given the Minister  
2 advice under subsection 54(2) in relation to the variation of  
3 the determination; and  
4 (b) that advice includes a statement to the effect that the  
5 Committee is satisfied that the varied determination complies  
6 with the biodiversity integrity standards.
- 7 (5) If the Minister decides:  
8 (a) to vary a methodology determination; or  
9 (b) not to vary a methodology determination;  
10 the Minister must:  
11 (c) cause a copy of any advice given by the Nature Repair  
12 Market Committee under subsection 54(2) in relation to the  
13 variation of the determination to be published on the  
14 Department's website; and  
15 (d) do so as soon as practicable after making the decision.
- 16 (6) Subsections (3), (4) and (5) do not apply to a variation if the  
17 variation is of a minor nature.

#### 49 When variation takes effect

- 19 (1) A variation of a methodology determination takes effect:  
20 (a) on the day after the instrument varying the methodology  
21 determination is registered on the Federal Register of  
22 Legislation; or  
23 (b) if a later day is specified in the instrument—on that later day.

#### *Consequences of variation on existing registered biodiversity projects*

- 26 (2) The rules may provide that if:  
27 (a) a methodology determination covers a registered biodiversity  
28 project; and  
29 (b) the methodology determination is varied; and  
30 (c) the project's registration is in effect at the time the variation  
31 takes effect; and  
32 (d) the conditions specified in the rules are satisfied;

# EXPOSURE DRAFT

1 the variation of the methodology determination applies to the  
2 registered biodiversity project.

- 3 (3) The rules may provide that if:  
4 (a) a methodology determination covers a registered biodiversity  
5 project; and  
6 (b) the methodology determination is varied; and  
7 (c) the project's registration is in effect at the time the variation  
8 takes effect; and  
9 (d) the conditions specified in the rules are satisfied;

10 the variation of the methodology determination does not apply to  
11 the registered biodiversity project.

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

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

- 19 (a) a methodology determination covers the registered  
20 biodiversity project; and  
21 (b) the methodology determination is varied; and  
22 (c) the project's registration is in effect at the time the variation  
23 takes effect; and  
24 (d) the conditions specified in the rules are satisfied;

25 the variation of the methodology determination does not apply to  
26 the registered biodiversity project.

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

- 31 (5) The rules may make provision for and in relation to any of the  
32 following matters in relation to an application under rules made for  
33 the purposes of subsection (4):

- 34 (a) the approval by the Regulator of a form for such an  
35 application;

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- 1 (b) information that must accompany such an application;  
2 (c) documents that must accompany such an application;  
3 (d) verification by statutory declaration of statements in such an  
4 application;  
5 (e) the fee (if any) that must accompany such an application;  
6 (f) the withdrawal of such an application;  
7 (g) empowering the Regulator:  
8 (i) to require an applicant to give the Regulator further  
9 information in connection with such an application; and  
10 (ii) if the applicant breaches the requirements—to refuse to  
11 consider the application, or to refuse to take any action,  
12 or any further action, in relation to the application.
- 13 (6) A fee mentioned in paragraph (5)(e) must not be such as to amount  
14 to taxation.
- 15 *Effect of variation on application for approval of registration*
- 16 (7) If:  
17 (a) a variation of a methodology determination takes effect; and  
18 (b) at the time the variation takes effect, an application under  
19 section 11 for the Regulator to approve the registration of a  
20 biodiversity project has been made, and the Regulator has not  
21 decided to:  
22 (i) approve the registration; or  
23 (ii) refuse to approve the registration; and  
24 (c) the application proposes that the project is to be covered by  
25 the methodology determination;  
26 then:  
27 (d) the methodology determination as varied applies to the  
28 application; and  
29 (e) if the biodiversity project is registered, the project is covered  
30 by the methodology determination as varied.
- 31 (8) The rules may provide for any of the following:  
32 (a) the Regulator to notify an eligible person that an application  
33 made by the eligible person, under this Act or an instrument

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- 1 made under this Act, is affected by a variation of a  
2 methodology determination, as mentioned in subsection (7);  
3 (b) the Regulator to give the eligible person an opportunity to  
4 withdraw or vary the application before the Regulator  
5 considers the application.

6 *Refund of fee*

- 7 (9) If:  
8 (a) an application is withdrawn under rules made for the  
9 purposes of subsection (5) or (8); and  
10 (b) the applicant has paid a fee in relation to the application;  
11 the Regulator must, on behalf of the Commonwealth, refund the  
12 application fee.

13 **Subdivision C—Duration, expiry and revocation of**  
14 **methodology determinations**

15 **50 Duration of methodology determinations**

- 16 (1) A methodology determination:  
17 (a) comes into force:  
18 (i) the day after it is registered on the Federal Register of  
19 Legislation; or  
20 (ii) if a later time is specified in the determination—at that  
21 later time; and  
22 (b) unless sooner revoked, remains in force until the earliest of  
23 the following:  
24 (i) if a period is specified in the determination—the end of  
25 that period;  
26 (ii) if a longer period is specified in relation to the  
27 determination in a legislative instrument made by the  
28 Minister for the purposes of this subparagraph—the end  
29 of that longer period;  
30 (iii) the determination is repealed by section 42  
31 (disallowance) of the *Legislation Act 2003*;

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1 (iv) the determination is repealed by Part 4 of Chapter 3  
2 (sunsetting) of the *Legislation Act 2003*.

3 (2) If a methodology determination ceases to be in force, this Act does  
4 not prevent the Minister from making a fresh methodology  
5 determination in the same terms as the determination that has  
6 ceased to be in force.

#### 7 **51 Revocation of methodology determinations**

8 (1) The Minister may, by legislative instrument, revoke a methodology  
9 determination.

10 (2) Before revoking a methodology determination, the Minister must  
11 request the Nature Repair Market Committee to advise the Minister  
12 about whether the Minister should revoke the determination.

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

15 (3) In deciding whether to revoke a methodology determination, the  
16 Minister must have regard to the following:

- 17 (a) whether the determination complies with the biodiversity  
18 integrity standards;  
19 (b) the advice given by the Nature Repair Market Committee  
20 under subsection 54(2);  
21 (c) such other matters (if any) as the Minister considers relevant.

22 (4) If the Minister decides:

- 23 (a) to revoke a methodology determination; or  
24 (b) not to revoke a methodology determination;

25 the Minister must, as soon as practicable after making the decision,  
26 cause a copy of the advice given by the Nature Repair Market  
27 Committee under subsection 54(2) in relation to the determination  
28 to be published on the Department's website.

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1 **52 Consequences of methodology determination ceasing to have**  
2 **effect**

3 *Continued application of methodology determination*

- 4 (1) The rules may provide that if:  
5 (a) the methodology determination that covers a registered  
6 biodiversity project ceases to have effect (whether under this  
7 Subdivision or otherwise); and  
8 (b) the conditions specified in the rules are satisfied;  
9 that methodology determination continues to cover the project as if  
10 the methodology determination had not ceased.
- 11 (2) The rules may empower the Regulator to determine, on application  
12 by the project proponent for a registered biodiversity project, that  
13 if:  
14 (a) the methodology determination that covers the project ceases  
15 to have effect (whether under this Subdivision or otherwise);  
16 and  
17 (b) the conditions specified in the rules are satisfied;  
18 then, despite the cessation, the methodology determination  
19 continues to cover the project as if the methodology determination  
20 had not ceased.
- 21 (3) The rules may make provision for and in relation to any of the  
22 following matters in relation to an application under rules made for  
23 the purposes of subsection (2):  
24 (a) the approval by the Regulator of a form for such an  
25 application;  
26 (b) information that must accompany such an application;  
27 (c) documents that must accompany such an application;  
28 (d) verification by statutory declaration of statements in such an  
29 application;  
30 (e) the fee (if any) that must accompany such an application;  
31 (f) the withdrawal of such an application;  
32 (g) empowering the Regulator:

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- 1 (i) to require an applicant to give the Regulator further  
2 information in connection with such an application; and  
3 (ii) if the applicant breaches the requirements—to refuse to  
4 consider the application, or to refuse to take any action,  
5 or any further action, in relation to the application.

6 (4) A fee mentioned in paragraph (3)(e) must not be such as to amount  
7 to taxation.

8 (5) If:

- 9 (a) an application is withdrawn under rules made for the  
10 purposes of subsection (3); and  
11 (b) the applicant has paid a fee in relation to the application;  
12 the Regulator must, on behalf of the Commonwealth, refund the  
13 application fee.

#### 14 *Variation of registration of biodiversity project*

15 (6) The rules may make provision for and in relation to empowering  
16 the Regulator to vary the registration of a registered biodiversity  
17 project in respect of the methodology determination that covers the  
18 project if:

- 19 (a) the methodology determination that covers the project ceases  
20 to have effect (whether under this Subdivision or otherwise);  
21 and  
22 (b) the conditions specified in the rules are satisfied.

#### 23 **53 Effect of methodology determination ceasing to have effect—** 24 **applications for registration**

25 (1) This section applies to an application under section 11 for the  
26 Regulator to approve the registration of a biodiversity project if the  
27 methodology determination specified in the application under  
28 paragraph 12(2)(c) ceases to have effect (whether under this  
29 Subdivision or otherwise).

30 (2) The Regulator must refuse the application.

31 (3) The rules may provide for any of the following:

- 1 (a) the Regulator to notify the applicant that the Regulator  
2 proposes to refuse the application under subsection (2);  
3 (b) the Regulator to give the applicant an opportunity to  
4 withdraw or vary the application before the Regulator refuses  
5 the application.
- 6 (4) If:  
7 (a) an application is withdrawn under rules made for the  
8 purposes of subsection (3); and  
9 (b) the applicant has paid a fee in relation to the application;  
10 the Regulator must, on behalf of the Commonwealth, refund the  
11 application fee.

## 12 **Subdivision D—Advice about making, varying or revoking** 13 **methodology determinations**

### 14 **54 Advice by the Nature Repair Market Committee**

#### 15 *Scope*

- 16 (1) This section applies if the Minister requests the Nature Repair  
17 Market Committee:  
18 (a) under subsection 47(2), to give advice about whether the  
19 Minister should make a methodology determination; or  
20 (b) under subsection 48(3), to give advice about whether the  
21 Minister should vary a methodology determination; or  
22 (c) under subsection 51(2), to give advice about whether the  
23 Minister should revoke a methodology determination.

#### 24 *Committee to give advice*

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

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

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

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- 1 Committee member's reasons why the Committee  
2 member is not so satisfied;
- 3 (b) if the Committee is not satisfied that the determination as  
4 proposed to be varied complies with the biodiversity integrity  
5 standards:  
6 (i) a statement to that effect; and  
7 (ii) the Committee's reasons why it is not satisfied that the  
8 determination as proposed to be varied complies with  
9 the biodiversity integrity standards;
- 10 (iii) in a case where a Committee member is satisfied that  
11 the determination as proposed to be varied complies  
12 with the biodiversity integrity standards—the  
13 Committee member's reasons why the Committee  
14 member is so satisfied;
- 15 (c) such other information (if any) as is specified in the rules.
- 16 (5) If the requested advice relates to whether the Minister should  
17 revoke a methodology determination, the Nature Repair Market  
18 Committee must include in the advice:  
19 (a) a statement setting out the Committee's opinion about  
20 whether the determination should be revoked; and  
21 (b) the Committee's reasons for the opinion; and  
22 (c) such other information (if any) as is specified in the rules.
- 23 *Committee must have regard to certain matters*
- 24 (6) In giving the requested advice to the Minister, the Nature Repair  
25 Market Committee must have regard to the following:  
26 (a) the biodiversity integrity standards;  
27 (b) any relevant matters specified in a direction in force under  
28 section 55;  
29 (c) any relevant advice given by the Regulator to the Committee;  
30 (d) such other matters (if any) as are specified in the rules.
- 31 (7) Subsection (6) does not, by implication, limit the matters to which  
32 the Nature Repair Market Committee may have regard.

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Part 4 Methodology determinations

Division 2 Methodology determinations

Section 55

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1     **55 Additional matters for the Nature Repair Market Committee to**  
2             **take into account**

3             Without limiting the matters to which the Nature Repair Market  
4             Committee may have regard, ~~t~~The Minister may, by legislative  
5             instrument, direct the Nature Repair Market Committee to do any  
6             or all of the following:

- 7             (a) have regard to one or more specified matters in giving advice  
8                 about the making of a methodology determination;
- 9             (b) have regard to one or more specified matters in giving advice  
10                 about the variation of a methodology determination;
- 11             (c) have regard to one or more specified matters in giving advice  
12                 about the revocation of a methodology determination.

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

17     **Subdivision E—Consultation by the Nature Repair Market**  
18             **Committee**

19     **56 Consultation by the Nature Repair Market Committee**

- 20             (1) The Nature Repair Market Committee must not advise the Minister  
21             to make or vary a methodology determination unless the  
22             Committee has first:
- 23                 (a) published on the Department’s website:
- 24                         (i) a detailed outline of the proposed determination or  
25                                 variation, as the case may be; and
- 26                         (ii) a notice inviting the public to make a submission to the  
27                                 Committee on the detailed outline by a specified time  
28                                 limit; and
- 29                 (b) considered any submissions that were received within that  
30                         time limit.
- 31             (2) The time limit must be 28 days after the notice is published.

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- 1 (3) However, the time limit may be shorter than 28 days after the  
2 notice is published, so long as:  
3 (a) the Nature Repair Market Committee considers that the time  
4 limit is appropriate in the circumstances; and  
5 (b) the time limit is not shorter than 14 days after the notice is  
6 published.

7 *Publication of submissions*

- 8 (4) The Nature Repair Market Committee must publish on the  
9 Department's website any submissions under subsection (1)  
10 received within the time limit referred to in subparagraph (1)(a)(ii).
- 11 (5) However, the Nature Repair Market Committee must not publish a  
12 particular submission made by a person if the person has requested  
13 the Committee not to publish the submission on the ground that  
14 publication of the submission could reasonably be expected to  
15 substantially prejudice:  
16 (a) the commercial interests of the person or another person; ~~or~~  
17 (b) a biodiversity outcome;  
18 (c) a significant Aboriginal area; or  
19 (d) a significant Aboriginal object.
- 20 (6) A request under subsection (5) must:  
21 (a) be in writing; and  
22 (b) be in a form approved, in writing, by the Committee.

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## 1 **Division 3—Biodiversity integrity standards**

### 2 **57 Biodiversity integrity standards**

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

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

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

## Part 4 Methodology determinations

### Division 4 Biodiversity assessment instruments

#### Section 58

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1 **Division 4—Biodiversity assessment instruments**

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

3 **58 Biodiversity assessment instruments**

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

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

- 21 (1) In deciding whether to make a biodiversity assessment instrument,  
22 the Minister:
- 23 (a) must have regard to any advice that the Nature Repair Market  
24 Committee has given to the Minister under subsection 64(2)  
25 in relation to the making of the instrument; ~~and~~
- 26 (b) must have regard to whether the instrument would be in  
27 accordance with requirements relating to matters of national  
28 environmental significance; and

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1 (b) may have regard to such other matters (if any) as the Minister  
2 considers relevant.

3 *Advice given by the Nature Repair Market Committee*

4 (2) Before making a biodiversity assessment instrument, the Minister  
5 must request the Nature Repair Market Committee to advise the  
6 Minister about whether the Minister should make the instrument.

7 (3) The Minister must not make a biodiversity assessment instrument  
8 unless:

9 (a) the Nature Repair Market Committee has given the Minister  
10 advice in relation to the making of the instrument; and

11 (b) if the instrument applies generally—that advice includes a  
12 statement to the effect that the Nature Repair Market  
13 Committee is satisfied that the instrument:

14 (i) is an appropriate means of achieving consistency of  
15 methodology determinations; and

16 (ii) would ~~assist in~~ensuring that methodology  
17 determinations comply with the biodiversity integrity  
18 standards; and

19 (c) if the instrument applies to a class of methodology  
20 determinations—that advice includes a statement to the effect  
21 that the Nature Repair Market Committee is satisfied that the  
22 instrument:

23 (i) is an appropriate means of achieving consistency of  
24 methodology determinations in that class; and

25 (ii) would ~~assist in~~ensuring that methodology  
26 determinations in that class comply with the  
27 biodiversity integrity standards.

28 (4) If the Minister decides:

29 (a) to make a biodiversity assessment instrument; or

30 (b) not to make a biodiversity assessment instrument;

31 the Minister must:

32 (c) cause a copy of any advice given by the Nature Repair  
33 Market Committee under subsection 64(2) in relation to the

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 4 Biodiversity assessment instruments

#### Section 60

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- 1 making of the instrument to be published on the  
2 Department's website; and  
3 (d) do so as soon as practicable after making the decision.

4 *Variation and amendment etc. of biodiversity assessment*  
5 *instrument*

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

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

#### 10 **Subdivision B—Variation of biodiversity assessment** 11 **instruments**

#### 12 **60 Variation of biodiversity assessment instruments**

13 The Minister may, by legislative instrument, vary a biodiversity  
14 assessment instrument.

#### 15 **61 Procedure for varying a biodiversity assessment instrument**

- 16 (1) In deciding whether to vary a biodiversity assessment instrument,  
17 the Minister:  
18 (a) must have regard to any advice that the Nature Repair Market  
19 Committee has given to the Minister under subsection 64(2)  
20 in relation to the varying of the instrument; ~~and~~  
21 (b) must have regard to whether the instrument would be in  
22 accordance with requirements relating to matters of national  
23 environmental significance; and  
24 (b) may have regard to such other matters (if any) as the Minister  
25 considers relevant.

26 *Advice given by the Nature Repair Market Committee*

- 27 (2) Before varying a biodiversity assessment instrument, the Minister  
28 must request the Nature Repair Market Committee to advise the  
29 Minister about whether the Minister should vary the instrument.

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

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## Part 4 Methodology determinations

### Division 4 Biodiversity assessment instruments

#### Section 62

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1 **Subdivision C—Revocation of biodiversity assessment**  
2 **instruments**

3 **62 Revocation of biodiversity assessment instruments**

4 The Minister may, by legislative instrument, revoke a biodiversity  
5 assessment instrument.

6 **63 Procedure for revoking a biodiversity assessment instrument**

7 (1) In deciding whether to revoke a biodiversity assessment  
8 instrument, the Minister:

9 (a) must have regard to any advice that the Nature Repair Market  
10 Committee has given to the Minister under subsection 64(2)  
11 in relation to the revocation of the instrument; ~~and~~

12 (b) must have regard to whether the instrument would be in  
13 accordance with requirements relating to matters of national  
14 environmental significance; and

15 (b) may have regard to such other matters (if any) as the Minister  
16 considers relevant.

17 *Advice given by the Nature Repair Market Committee*

18 (2) Before revoking a biodiversity assessment instrument, the Minister  
19 must request the Nature Repair Market Committee to advise the  
20 Minister about whether the Minister should revoke the instrument.

21 (3) The Minister must not revoke a biodiversity assessment instrument  
22 unless the Nature Repair Market Committee has given the Minister  
23 advice in relation to the revocation of the instrument.

24 (4) If the Minister decides:

25 (a) to revoke a biodiversity assessment instrument; or

26 (b) not to revoke a biodiversity assessment instrument;

27 the Minister must:

28 (c) cause a copy of any advice given by the Biodiversity Market  
29 Committee under subsection 64(2) in relation to the

# EXPOSURE DRAFT

- 1 revocation of the instrument to be published on the  
2 Department's website; and  
3 (d) do so as soon as practicable after making the decision.

## 4 **Subdivision D—Advice about making, varying or revoking** 5 **biodiversity assessment instruments**

### 6 **64 Advice by the Nature Repair Market Committee**

#### 7 *Scope*

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

#### 17 *Committee to give advice*

- 18 (2) The Nature Repair Market Committee must give the requested  
19 advice to the Minister.  
20 Note: The Committee must undertake public consultation before giving  
21 advice about making or varying a biodiversity assessment instrument  
22 (see section 65).
- 23 (3) If the requested advice relates to whether the Minister should make  
24 a biodiversity assessment instrument, the Nature Repair Market  
25 Committee must include in the advice:  
26 (a) if the instrument applies generally—a statement that the  
27 Nature Repair Market Committee is satisfied that the  
28 instrument:  
29 (i) is an appropriate means of achieving consistency of  
30 methodology determinations; and

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 4 Biodiversity assessment instruments

#### Section 64

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

# EXPOSURE DRAFT

- 1 (5) If the requested advice relates to whether the Minister should  
2 revoke a biodiversity assessment instrument, the Nature Repair  
3 Market Committee must include in the advice:  
4 (a) a statement setting out the Committee's opinion about  
5 whether the instrument should be revoked; and  
6 (b) the Committee's reasons for the opinion; and  
7 (c) such other information (if any) as is specified in the rules.

8 *Committee must have regard to certain matters*

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

## 16 **65 Consultation by the Nature Repair Market Committee**

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

# EXPOSURE DRAFT

## Part 4 Methodology determinations

### Division 4 Biodiversity assessment instruments

#### Section 65

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- 1 (a) the Nature Repair Market Committee considers that the time  
2 limit is appropriate in the circumstances; and  
3 (b) the time limit is not shorter than 14 days after the notice is  
4 published.

5 *Publication of submissions*

- 6 (4) The Nature Repair Market Committee must publish on the  
7 Department's website any submissions under subsection (1)  
8 received within the time limit referred to in subparagraph (1)(a)(ii).
- 9 (5) However, the Nature Repair Market Committee must not publish a  
10 particular submission made by a person if the person has requested  
11 the Committee not to publish the submission on the ground that  
12 publication of the submission could reasonably be expected to  
13 substantially prejudice:
- 14 (a) the commercial interests of the person or another person; ~~or~~  
15 (b) a biodiversity outcome;  
16 (c) a significant Aboriginal area; or  
17 (d) a significant Aboriginal object.
- 18 (6) A request under subsection (5) must:  
19 (a) be in writing; and  
20 (b) be in a form approved, in writing, by the Committee.

# EXPOSURE DRAFT

Biodiversity certificates **Part 5**

Introduction **Division 1**

Section 66

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1 **Part 5—Biodiversity certificates**

2 **Division 1—Introduction**

3 **66 Simplified outline of this Part**

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

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

# EXPOSURE DRAFT

**Part 5** Biodiversity certificates

**Division 2** Issue of biodiversity certificates

Section 67

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

2     **67 Application for biodiversity certificate**

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

18     **68 Form of application**

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

# EXPOSURE DRAFT

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

## 21 **69 Further information**

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

# EXPOSURE DRAFT

## Part 5 Biodiversity certificates

### Division 2 Issue of biodiversity certificates

#### Section 70

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1 **70 Issue of biodiversity certificate**

2 *Scope*

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

6 *Issue of certificate*

7 (2) If the Regulator is satisfied that:

8 (a) the applicant is a fit and proper person; and

9 (b) the applicant is the project proponent for the project; and

10 (c) if the registration of the registered biodiversity project is  
11 subject to a condition under section 17 (obtaining regulatory  
12 approvals)—that condition has been met; and

13 (d) if the registration of the registered biodiversity project is  
14 subject to a condition under section 18 (obtaining consents  
15 from eligible interest holders)—that condition has been met;  
16 and

17 (e) the project is sufficiently progressed to have resulted in, or be  
18 likely-expected to result in:

19 (i) the biodiversity outcome for the project; ~~or~~

20 (ii) enhancement, restoration or protection of biodiversity  
21 that would be unlikely to occur in the absence of the  
22 project; and

23 (f) the project does not facilitate a reduction in biodiversity of  
24 native species in Australia not in the project area; and

25 ~~(fg)~~ if the rules specify one or more other eligibility requirements  
26 for the purposes of this paragraph—those requirements are  
27 met; and

28 ~~(gh)~~ if the methodology determination that covers the project  
29 specifies conditions for the purposes of paragraph 45(1)(e)—  
30 those conditions are met;

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

# EXPOSURE DRAFT

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

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

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

7 *Timing*

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

15 *Notice*

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

20 **71 Basis on which biodiversity certificates are issued**

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

# EXPOSURE DRAFT

## Part 5 Biodiversity certificates

### Division 3 Property in biodiversity certificates

#### Section 72

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

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

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

6 **73 Ownership of biodiversity certificate**

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

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

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

19 **74 Transmission of biodiversity certificates**

20 A transmission of a biodiversity certificate, whether by assignment  
21 or by any other lawful means, is of no force until the biodiversity  
22 certificate has been transferred, in accordance with rules made for  
23 the purposes of section 167:  
24 (a) from an account in the Register held by the transferor; and  
25 (b) into an account in the Register held by the transferee.

# EXPOSURE DRAFT

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

- 3 (1) The rules may make provision for or in relation to the registration  
4 in the Register of equitable interests in relation to biodiversity  
5 certificates.
- 6 (2) Subsection (1) does not apply to an equitable interest that is a  
7 security interest within the meaning of the *Personal Property*  
8 *Securities Act 2009*, and to which that Act applies.

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

- 10 (1) This Act does not affect:  
11 (a) the creation of; or  
12 (b) any dealings with; or  
13 (c) the enforcement of;  
14 equitable interests in relation to a biodiversity certificate.
- 15 (2) This section is enacted for the avoidance of doubt.

# EXPOSURE DRAFT

## Part 5 Biodiversity certificates

### Division 4 Cancellation of biodiversity certificate at the end of the permaneneecertificate period for a registered biodiversity project

#### Section 77

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

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

7 *Scope*

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

13 *Cancellation of biodiversity certificate*

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

# EXPOSURE DRAFT

Purchase of biodiversity certificates by the Commonwealth **Part 6**  
Introduction **Division 1**

Section 78

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

3 **Division 1—Introduction**

4 **78 Simplified outline of this Part**

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

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

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

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

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

# EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 2 Biodiversity conservation contracts

Section 79

---

1 **Division 2—Biodiversity conservation contracts**

2 **79 Biodiversity conservation contracts**

- 3 (1) The Secretary may enter into contracts, on behalf of the  
4 Commonwealth, for the purchase by the Commonwealth of  
5 biodiversity certificates, except where those contracts would be  
6 used to facilitate a reduction in biodiversity of native species in  
7 Australia not in the project area or areas of those biodiversity  
8 certificates;
- 9 (2) It is immaterial whether the biodiversity certificates are in  
10 existence when the contract is entered into.
- 11 (3) For the purposes of this Act, a contract entered into under  
12 subsection (1) is to be known as a ***biodiversity conservation***  
13 ***contract***.
- 14 (4) For the purposes of this Act, if the Secretary enters into a  
15 biodiversity conservation contract with a person, the person is a  
16 ***biodiversity conservation contractor***.

17 **80 When biodiversity conservation contracts may be entered into**

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

# EXPOSURE DRAFT

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

Section 81

---

1 **81 Secretary has powers etc. of the Commonwealth**

2 (1) The Secretary, on behalf of the Commonwealth, has all the rights,  
3 responsibilities, duties and powers of the Commonwealth in  
4 relation to the Commonwealth's capacity as a party to a  
5 biodiversity conservation contract.

6 (2) Without limiting subsection (1):

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

10 (b) an amount payable to the Commonwealth under a  
11 biodiversity conservation contract is to be paid to the  
12 Secretary on behalf of the Commonwealth; and

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

16 **82 Conferral of powers on the Secretary**

17 The Secretary may exercise a power conferred on the Secretary by  
18 a biodiversity conservation contract.

# EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 3 Biodiversity conservation purchasing processes

Section 83

---

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

3 **83 Biodiversity conservation purchasing process**

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

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

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

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

13 (1) The Secretary may, on behalf of the Commonwealth, conduct one  
14 or more biodiversity conservation purchasing processes.

15 (2) In exercising the power conferred by subsection (1), the Secretary  
16 must have regard to:

17 (a) the principles set out in subsection (3); and

18 ~~(b) the *Biodiversity Investment Strategy*; and~~

19 ~~(c)~~ such other matters (if any) as are specified in the rules.

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

22 (3) The principles for conducting a biodiversity conservation  
23 purchasing process are that the process should:

24 (a) facilitate the Commonwealth receiving value for money  
25 when purchasing biodiversity certificates; and

26 (b) maximise the protection, ~~or~~ enhancement or restoration of  
27 biodiversity that results from the process; and

28 (c) be conducted in a manner that ensures that administrative  
29 costs are reasonable; and

# EXPOSURE DRAFT

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

## Section 84

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

# EXPOSURE DRAFT

Part 6 Purchase of biodiversity certificates by the Commonwealth

Division 4 Miscellaneous

Section 85

---

1 **Division 4—Miscellaneous**

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

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

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

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

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

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

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

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

# EXPOSURE DRAFT

Interests in land **Part 7**

Introduction **Division 1**

Section 88

---

1 **Part 7—Interests in land**

2 **Division 1—Introduction**

3 **88 Simplified outline of this Part**

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

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

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

# EXPOSURE DRAFT

## Part 7 Interests in land

### Division 2 Eligible interest in an area of land

#### Section 89

---

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

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

3 *Scope*

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

6 *Eligible interest*

- 7 (2) For the purposes of this Act, if:  
8 (a) a person holds an estate in fee simple, or any other legal  
9 estate or interest, in the whole or a part of the area of land;  
10 and  
11 (b) the estate or interest is registered under a Torrens system of  
12 registration;  
13 the estate or interest is an *eligible interest* held by the person in the  
14 area of land.
- 15 (3) For the purposes of this Act, if:  
16 (a) under subsection (2), a person holds an eligible interest in the  
17 area of land; and  
18 (b) another person:  
19 (i) is a mortgagee of the eligible interest, where the  
20 mortgage is registered under a Torrens system of  
21 registration; or  
22 (ii) a chargee of the eligible interest, where the charge is  
23 registered under a Torrens system of registration;  
24 the mortgage or charge is an *eligible interest* held by the other  
25 person in the area of land.
- 26 (4) For the purposes of this Act, if the area of land:  
27 (a) is Crown land; and  
28 (b) is not an exclusive possession native title area; and  
29 (c) is not land rights land;

# EXPOSURE DRAFT

- 1 the Crown lands Minister of the State or Territory holds an *eligible*  
2 *interest* in the area of land.
- 3 (5) The rules may provide that, for the purposes of this Act, a person  
4 specified in, or ascertained in accordance with, the rules holds an  
5 *eligible interest* in the area of land.
- 6 (6) For the purposes of this Act, if:  
7 (a) the area of land is land rights land; and  
8 (b) the area of land is not an exclusive possession native title  
9 area; and  
10 (c) any of the following subparagraphs applies to the area of  
11 land:  
12 (i) a lease is in force over the land, and the grant of the  
13 lease took place under a law of the Commonwealth that  
14 makes provision for the grant of such things only to, or  
15 for the benefit of, Aboriginal persons or Torres Strait  
16 Islanders;  
17 (ii) subparagraph (i) does not apply, and the land is held by  
18 the Commonwealth;  
19 (iii) subparagraph (i) does not apply, and the land is held by  
20 a statutory authority of the Commonwealth;  
21 then:  
22 (d) if subparagraph (c)(i) applies—the Minister who administers  
23 the law mentioned in that subparagraph holds an *eligible*  
24 *interest* in the area of land; or  
25 (e) if subparagraph (c)(ii) applies—the Minister who administers  
26 the *Aboriginal Land Rights (Northern Territory) Act 1976*  
27 holds an *eligible interest* in the area of land; or  
28 (f) if subparagraph (c)(iii) applies—the Minister who  
29 administers the Act that establishes the statutory authority  
30 holds an *eligible interest* in the area of land.
- 31 (7) For the purposes of this Act, if:  
32 (a) the area of land is land rights land in a State or Territory; and  
33 (b) the area of land is not an exclusive possession native title  
34 area; and
-

# EXPOSURE DRAFT

## Part 7 Interests in land

### Division 2 Eligible interest in an area of land

#### Section 90

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

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

##### 8 *Scope*

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

##### 13 *Eligible interest*

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

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

## Part 7 Interests in land

### Division 2 Eligible interest in an area of land

#### Section 91

---

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

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

##### *Scope*

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

##### *Eligible interest*

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

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

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

# EXPOSURE DRAFT

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

## Section 92

---

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

# EXPOSURE DRAFT

Part 7 Interests in land

Division 3 Freehold land rights land

Section 93

---

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

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

4 *Scope*

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

12 *Notification*

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

# EXPOSURE DRAFT

Interests in land **Part 7**  
Entries in title registers **Division 4**

Section 94

---

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

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

3 *Scope*

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

5 *Entries*

- 6 (2) A relevant land registration official may make such entries or  
7 notations in or on registers or other documents kept by the official  
8 (in electronic form or otherwise) as the official thinks appropriate  
9 for the purposes of drawing the attention of persons to:
- 10 (a) the existence of the registered biodiversity project; and
  - 11 (b) the fact that requirements may arise under this Act in relation  
12 to the project; and
  - 13 (c) such other matters (if any) relating to this Act as the official  
14 considers appropriate.

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

16 *Scope*

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

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

21 *Entries*

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

# EXPOSURE DRAFT

## Part 8 Fit and proper person

### Section 96

---

1 **Part 8—Fit and proper person**  
2

3 **96 Simplified outline of this Part**

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

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

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

9 *Matters the Regulator must have regard to*

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

# EXPOSURE DRAFT

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

22 *Matters the Regulator may have regard to*

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

# EXPOSURE DRAFT

## Part 8 Fit and proper person

### Section 98

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

#### 16 *Spent convictions*

- 17 (3) To avoid doubt, nothing in this section affects the operation of  
18 Part VIIC of the *Crimes Act 1914*.
- 19 (4) Rules made for the purposes of paragraph (1)(j) or (2)(c) must not  
20 affect the operation of Part VIIC of the *Crimes Act 1914*.

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

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

#### 26 *Matters the Regulator must have regard to*

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

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

## Part 8 Fit and proper person

### Section 98

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

7 *Matters the Regulator may have regard to*

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

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

3 *Spent convictions*

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

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

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

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

13 *Matters the Regulator must have regard to*

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

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

22 (i) dishonesty or fraudulent conduct; or

23 (ii) the environment; or

24 (iii) climate change; or

25 (iv) work health or safety;

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

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

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

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

# EXPOSURE DRAFT

## Part 8 Fit and proper person

### Section 99

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

29 *Matters the Regulator may have regard to*

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

# EXPOSURE DRAFT

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

22                   *Spent convictions*

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

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

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 1 Introduction

#### Section 100

---

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

2 **Division 1—Introduction**

3 **100 Simplified outline of this Part**

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

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

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

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

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

# EXPOSURE DRAFT

1 **Division 2—Reporting requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 2 Reporting requirements

#### Section 103

---

1

#### *Civil penalty provision*

2

- (3) The project proponent for the project contravenes this subsection if:

3

4

- (a) subsection (2) requires the project proponent to give a category A biodiversity project report for a reporting period; and

5

6

7

- (b) the project proponent does not comply with the requirement before the end of the period mentioned in paragraph 103(1)(h).

8

9

10

Civil penalty: 200 penalty units.

11

- (4) For the purposes of subsection (3), assume that the reporting period ends at the earlier of the following times:

12

13

- (a) 5 years after the reporting period begins;

14

- (b) the end of the activity period for the project.

15

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

16

17

18

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

19

20

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

21

- (1) A category A biodiversity project report about a registered biodiversity project for a reporting period must:

22

23

- (a) be given in the manner and form prescribed by the rules; and

24

- (b) set out the information (if any) specified in the rules; and

25

- (c) set out the information (if any) specified in the methodology determination that covers the project; and

26

27

- (d) if, under the rules or the applicable methodology

28

determination, the category A biodiversity project report is subject to audit under this Act—be accompanied by an audit report that is:

29

30

31

- (i) prescribed by the rules or the applicable methodology determination (as the case requires); and

32

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 2 Reporting requirements

#### Section 104

---

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

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

#### 4           **104 Category B biodiversity project reports**

5                   (1) This section applies if the Regulator has not issued a biodiversity  
6                   certificate in relation to a registered biodiversity project.

7                   (2) The project proponent for the project must give the Regulator a  
8                   written report (a *category B biodiversity project report*) for each  
9                   period that, under the rules, is a *reporting period* for the purposes  
10                  of this section.

11                  (3) A category B biodiversity project report about a project for a  
12                  reporting period must:  
13                   (a) be given in the manner and form prescribed by the rules; and  
14                   (b) set out the information (if any) specified in the rules; and  
15                   (c) set out the information (if any) specified in the methodology  
16                   determination that covers the project; and  
17                   (d) be accompanied by such other documents (if any) as are  
18                   specified in the rules; and  
19                   (e) be accompanied by such other documents (if any) as are  
20                   specified in the methodology determination that covers the  
21                   project; and  
22                   (f) be given to the Regulator within the period ascertained in  
23                   accordance with the rules.

#### 24                  *Civil penalty provision*

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

# EXPOSURE DRAFT

Reporting and notification requirements **Part 9**  
Reporting requirements **Division 2**

## Section 104

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

4 Civil penalty: 200 penalty units.

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

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

# EXPOSURE DRAFT

Part 9 Reporting and notification requirements

Division 3 Notification requirements

Section 105

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1 **Division 3—Notification requirements**

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

4 *Scope*

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

17 *Notification*

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

20 Civil penalty: 200 penalty units.

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

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

# EXPOSURE DRAFT

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

3 *Scope*

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

9 *Notification*

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

13 Civil penalty: 200 penalty units.

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

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

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

20 *Scope*

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

23 *Notification*

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

26 Civil penalty: 60 penalty units.

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 3 Notification requirements

#### Section 108

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

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

#### 6 **108 Notification requirement—methodology determinations**

##### 7 *Scope*

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

##### 14 *Notification*

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

16 Civil penalty: 60 penalty units.

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

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

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

##### 23 *Scope*

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

29 Note: See section 111.

# EXPOSURE DRAFT

1 *Notification*

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

5 Civil penalty: 200 penalty units.

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

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

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

13 *Scope*

14 (1) This section applies if:

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

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

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

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

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

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

31 Note: See section 111.

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 3 Notification requirements

#### Section 111

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1

#### *Notification*

2

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

3

4

5

Civil penalty: 200 penalty units.

6

7

8

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

9

10

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

11

#### **111 Significant reversals in biodiversity outcomes—notification requirements**

12

13

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

14

15

16

17

18

19

- (a) there is taken to have been a reversal of a biodiversity outcome to which a registered biodiversity project relates; and  
(b) the reversal is taken to be significant, or not taken to be significant.

20

21

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

22

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

23

24

#### *Scope*

25

26

27

28

29

30

- (1) This section applies to a project proponent of a registered biodiversity project if:
- (a) in a case where the project proponent is an individual—an event set out in paragraph 97(1)(a), (b), (c), (d) or (i) or (2)(a) occurred in relation to the project proponent; or
- (b) in a case where the project proponent is a corporation:

# EXPOSURE DRAFT

## Section 113

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- 1 (i) an event set out in paragraph 98(1)(a), (b), (c), (d) or (i)  
2 or (2)(a) occurred in relation to the project proponent; or  
3 (ii) an event set out in paragraph 98(1)(a), (b), (c), (d) or (i)  
4 or (2)(a) occurred in relation to an executive officer of  
5 the project proponent; or  
6 (c) in a case where the project proponent is a trust:  
7 (i) an event set out in paragraph 99(1)(a), (b), (c) or (d) or  
8 (2)(a) occurred in relation to the project proponent; or  
9 (ii) an event set out in paragraph 99(1)(a), (b), (c), (d), (i) or  
10 (j) or (2)(a) occurred in relation to a trustee of the  
11 project proponent; or  
12 (d) an event prescribed by the rules has occurred in relation to  
13 the project proponent.
- 14 (2) However, this section does not apply to a project proponent of a  
15 registered biodiversity project if the event consists of a breach of:  
16 (a) this Act or an instrument under this Act; or  
17 (b) a climate change law (within the meaning of the *Clean*  
18 *Energy Regulator Act 2011*).

### *Notification*

- 19  
20 (3) The project proponent must, within 90 days after the event, notify  
21 the Regulator, in writing, of the event.

22 Civil penalty: 200 penalty units.

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

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

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

- 28  
29 (1) If:  
30 (a) the project plan for a registered biodiversity project is varied;  
31 and
-

# EXPOSURE DRAFT

## Part 9 Reporting and notification requirements

### Division 3 Notification requirements

#### Section 114

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

8 Civil penalty: 60 penalty units.

9 (2) If:

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

17 Civil penalty: 60 penalty units.

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

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

#### 24 *Notification*

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

28 Civil penalty: 60 penalty units.

# EXPOSURE DRAFT

Reporting and notification requirements **Part 9**  
Notification requirements **Division 3**

## Section 114

---

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

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

# EXPOSURE DRAFT

## Part 10 Information-gathering powers

### Section 115

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

2

### 3 **115 Simplified outline of this Part**

4

The Regulator may obtain information or documents.

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

6

#### *Scope*

7

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

10

11

#### *Requirement*

12

- (2) The Regulator may, by written notice given to the person, require  
13 the person:

14

(a) to give to the Regulator, within the period and in the manner  
15 and form specified in the notice, any such information; or

16

(b) to produce to the Regulator, within the period and in the  
17 manner specified in the notice, any such documents; or

18

(c) to make copies of any such documents and to produce to the  
19 Regulator, within the period and in the manner specified in  
20 the notice, those copies.

20

21

- (3) A period specified under subsection (2) must not be shorter than 14  
22 days after the notice is given.

22

23

#### *Compliance*

24

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

25

26

Civil penalty: 60 penalty units.

# EXPOSURE DRAFT

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

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

6 *No limitation*

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

## 10 **117 Copying documents—compensation**

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

## 14 **118 Copies of documents**

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

## 23 **119 Regulator may retain documents**

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

# EXPOSURE DRAFT

## Part 10 Information-gathering powers

### Section 119

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

1 **Part 11—Audits**

2 **Division 1—Introduction**

3 **120 Simplified outline of this Part**

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

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

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

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

15 **Division 2—Audits**

16 **121 Compliance audits**

17 *Scope*

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

# EXPOSURE DRAFT

**Part 11** Audits  
**Division 2** Audits

Section 121

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*Audit*

- (2) The Regulator may, by written notice given to the person, require the person to:
- (a) appoint as an audit team leader:
    - (i) a registered ~~greenhouse and energy biodiversity~~ auditor of the person's choice; or
    - (ii) if the Regulator specifies a registered ~~greenhouse and energy biodiversity~~ auditor in the notice—that auditor; or
    - (iii) if the Regulator specifies more than one registered ~~greenhouse and energy biodiversity~~ auditor in the notice—any one of those auditors; and
  - (b) arrange for the audit team leader to carry out an audit on one or more aspects of the person's compliance with this Act or the associated provisions; and
  - (c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and
  - (d) give the Regulator a copy of the audit report on or before the day specified in the notice.

Note: For the conduct of an audit under this section, see section 75 of the *National Greenhouse and Energy Reporting Act 2007*.

- (3) The notice must specify:
- (a) the type of audit to be carried out; and
  - (b) the matters to be covered by the audit; and
  - (c) the form of the audit report and the kinds of details it is to contain.
- (4) A person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty: 60 penalty units.

# EXPOSURE DRAFT

- 1 (5) Without limiting subsection (4), providing assistance that is  
2 reasonably necessary includes complying with any request under  
3 section 123 that relates to the audit.
- 4 (6) Subsection (4) does not require a person to allow an audit team  
5 leader or a person assisting an audit team leader:  
6 (a) to enter premises; or  
7 (b) to take samples of any thing on premises; or  
8 (c) to inspect any thing on premises.
- 9 (7) If the Regulator gives a person written notice under subsection (2),  
10 the person must comply with the requirements of the notice.
- 11 Civil penalty: 200 penalty units.
- 12 (8) The maximum civil penalty for each day that a contravention of  
13 subsection (7) continues after the day specified for the purposes of  
14 paragraph (2)(d) is 5% of the maximum civil penalty that can be  
15 imposed in respect of that contravention.
- 16 Note: Subsection (7) is a continuing civil penalty provision under section 93  
17 of the Regulatory Powers Act.

## *Reimbursement*

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

# EXPOSURE DRAFT

## Part 11 Audits

### Division 2 Audits

#### Section 122

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- 1 (e) the Regulator is satisfied that the person would suffer  
2 financial hardship if the person were not reimbursed for those  
3 costs;  
4 the Regulator may, on behalf of the Commonwealth, reimburse the  
5 person for those costs.  
6 Note: For review of decisions, see Part 20.
- 7 (10) A request under paragraph (9)(d) must:  
8 (a) be in writing; and  
9 (b) be in a form approved, in writing, by the Regulator; and  
10 (c) be accompanied by such information as is specified in the  
11 rules; and  
12 (d) be accompanied by such documents (if any) as are specified  
13 in the rules.
- 14 (11) The approved form of request may provide for verification by  
15 statutory declaration of statements in requests.

#### 122 Other audits

##### 17 *Audit*

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



# EXPOSURE DRAFT

## Part 11 Audits

### Division 3 Audit information

#### Section 124

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1     **Division 3—Audit information**

2     **Subdivision A—Information**

3     **124 Meaning of *audit information***

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

- 6             (a) the information was obtained by a person in the person’s  
7                 capacity as an audit team leader or a person assisting an audit  
8                 team leader;
- 9             (b) the information was obtained in the course of, or for the  
10                purposes of:
- 11                (i) carrying out a biodiversity audit; or  
12                (ii) preparing a biodiversity audit report.

13     **125 Meaning of *protected audit information***

14             For the purposes of this Act, ***protected audit information*** means  
15             ***audit information*** that is:

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

1 **Subdivision B—Secrecy**

2 **126 Secrecy—protected audit information**

3 (1) If:

4 (a) a person is, or has been, an audit team leader or a person  
5 assisting an audit team leader; and

6 (b) the person has obtained protected audit information:

7 the person must not:

8 (c) disclose the information to another person; or

9 (d) use the information.

10 Civil penalty: 120 penalty units.

11 *Exceptions*

12 (2) Each of the following is an exception to the prohibition in  
13 subsection (1):

14 (a) the disclosure or use is authorised by a provision of this Part;

15 (b) the disclosure or use is authorised or required by:

16 (i) a law of the Commonwealth; or

17 (ii) a prescribed law of a State or a Territory.

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

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

21 **127 Disclosure or use for purposes of carrying out biodiversity audit**  
22 **or preparing biodiversity audit report etc.**

23 An audit team leader or a person assisting an audit team leader may  
24 disclose or use audit information if:

25 (a) the disclosure or use is for the purposes of carrying out a  
26 biodiversity audit; or

27 (b) the disclosure or use is for the purposes of preparing a  
28 biodiversity audit report; or

# EXPOSURE DRAFT

## Part 11 Audits

### Division 3 Audit information

#### Section 128

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- 1 (c) if the information relates to a biodiversity project that is, or is  
2 to be, the subject of an application under section 11—the  
3 disclosure or use is for the purposes of giving a biodiversity  
4 audit report to:
- 5 (i) if the project is to have one project proponent—the  
6 eligible person who is proposed to be the project  
7 proponent for the project; or
- 8 (ii) if the project is to have 2 or more project proponents—  
9 any of the eligible persons who are proposed to be the  
10 project proponents for the project; or
- 11 (d) if the information relates to a registered biodiversity  
12 project—the disclosure or use is for the purposes of giving a  
13 biodiversity audit report to:
- 14 (i) if one person is registered as the project proponent for  
15 the project—that person; or
- 16 (ii) if there are 2 or more persons registered as the project  
17 proponents for the project—any of those persons.

#### 18 **128 Disclosure to the Regulator**

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

- 21 (a) the disclosure is for the purposes of this Act or a legislative  
22 instrument made under this Act; and
- 23 (b) the audit team leader or person assisting an audit team leader  
24 is satisfied that the disclosure is likely to assist the Regulator  
25 in performing functions or exercising powers under this Act  
26 or a legislative instrument made under this Act.

#### 27 **129 Disclosure to Minister etc.**

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

#### 30 **130 Disclosure to the Secretary etc.**

- 31 (1) An audit team leader or a person assisting an audit team leader may  
32 disclose audit information to:

- 1 (a) the Secretary; or  
2 (b) an officer of the Department who is authorised by the  
3 Secretary, in writing, for the purposes of this section;  
4 if the disclosure is:  
5 (c) for the purposes of this Act or a legislative instrument made  
6 under this Act; and  
7 (d) likely to assist in the performance of functions, or the  
8 exercise of powers, under this Act or a legislative instrument  
9 made under this Act.
- 10 (2) To avoid doubt, an authorisation under paragraph (1)(b) may:  
11 (a) authorise a specified officer; or  
12 (b) authorise a person who holds, occupies or performs the duties  
13 of, a specified office or position.

## 14 **131 Disclosure to reduce serious risk to life or health of individual**

15 An audit team leader or a person assisting an audit team leader may  
16 disclose audit information if:

- 17 (a) the audit team leader or person assisting an audit team leader  
18 believes on reasonable grounds that the disclosure is  
19 necessary to prevent or lessen a serious risk to the life or  
20 health of an individual; and  
21 (b) the disclosure is for the purposes of preventing or lessening  
22 that risk.

## 23 **132 Disclosure to reduce serious risk to the environment**

24 An audit team leader or a person assisting an audit team leader may  
25 disclose audit information if:

- 26 (a) the audit team leader or person assisting the audit team leader  
27 reasonably believes that the disclosure is necessary to prevent  
28 or lessen a serious risk to the environment; and  
29 (b) the disclosure is for the purposes of preventing or lessening  
30 that risk.

# EXPOSURE DRAFT

## Part 11 Audits

### Division 3 Audit information

#### Section 133

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1     **133 Disclosure to a court, tribunal etc**

2                     An audit team leader or a person assisting an audit team leader may  
3                     disclose audit information:

4                     (a) for the purposes of proceedings before:

5                         (i) a court; or

6                         (ii) a tribunal, authority or person that has the power to  
7                                 require the answering of questions or the production of  
8                                 documents; or

9                     (b) in accordance with an order of a court or such a tribunal,  
10                         authority or person.

11     **134 Disclosure of publicly available information**

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

15     **135 Disclosure with consent**

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

18                         (a) the person has consented to the disclosure; and

19                         (b) the disclosure is in accordance with that consent.

20     **136 Disclosure to person to whom audit information relates**

21                     An audit team leader or a person assisting an audit team leader may  
22                     disclose audit information to a person if the information relates to  
23                     the affairs of the person.

24     **137 Disclosure to person who provided audit information**

25                     An audit team leader or a person assisting an audit team leader may  
26                     disclose audit information to a person if the audit team leader or  
27                     person assisting an audit team leader obtained the information from  
28                     the person.

# EXPOSURE DRAFT

Audits **Part 11**  
Audit information **Division 3**

Section 138

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1 **138 Disclosure of statistics**

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

# EXPOSURE DRAFT

## Part 12 Deposit of biodiversity certificates with the Regulator

### Section 139

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

4 **139 Simplified outline of this Part**

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

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

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

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

# EXPOSURE DRAFT

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

3 *Scope*

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

7 *Approval*

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

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

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

16 *Criteria for approval*

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

# EXPOSURE DRAFT

## Part 12 Deposit of biodiversity certificates with the Regulator

### Section 142

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#### 1 **142 Deposit of a biodiversity certificate with the Regulator**

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

# EXPOSURE DRAFT

Relinquishment requirements **Part 13**

Introduction **Division 1**

Section 143

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1 **Part 13—Relinquishment requirements**

2 **Division 1—Introduction**

3 **143 Simplified outline of this Part**

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

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

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

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

# EXPOSURE DRAFT

Part 13 Relinquishment requirements

Division 2 Relinquishment notices

Section 144

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1 **Division 2—Relinquishment notices**

2 **144 Relinquishment notice—false or misleading information**

3 *Scope*

4 (1) This section applies to a person if:

- 5 (a) a biodiversity certificate (the *original biodiversity certificate*)  
6 has been issued to the person in relation to a biodiversity  
7 project (whether or not the person still holds the certificate,  
8 and whether or not the certificate remains in effect); and  
9 (b) information was given by the person to the Regulator in  
10 connection with the project; and  
11 (c) the information was:  
12 (i) contained in an application under this Act or the rules;  
13 or  
14 (ii) given in connection with an application under this Act  
15 or the rules; or  
16 (iii) contained in a biodiversity project report; or  
17 (iv) contained in a notification under Division 3 of Part 9;  
18 and  
19 (d) the information was false or misleading in a material  
20 particular; and  
21 (e) the issue of the certificate was substantially attributable  
22 (whether directly or indirectly) to the false or misleading  
23 information.

24 *Relinquishment notice*

25 (2) The Regulator may give a relinquishment notice to the person in  
26 relation to the original biodiversity certificate.

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

# EXPOSURE DRAFT

1 **145 Relinquishment notice—cancellation of registration of**  
2 **biodiversity project**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a biodiversity certificate (the *original biodiversity certificate*)  
6 has been issued in relation to a biodiversity project (whether  
7 or not the certificate remains in effect); and
  - 8 (b) the registration of the project as a registered biodiversity  
9 project is cancelled under rules made for the purposes of any  
10 of the following provisions:
    - 11 (i) subsection 28(1) (eligibility requirements not met etc.);
    - 12 (ii) subsection 29(1) (project proponent ceases to be a fit  
13 and proper person);
    - 14 (iii) subsection 30(1) (project proponent ceases to exist etc.);
    - 15 (iv) subsection 31(1) (false or misleading information);
    - 16 (v) subsection 42(1) (failure of multiple project proponents  
17 to nominate a nominee); and
  - 18 (c) the ~~permanence~~certificate period of the project has not ended.

19 *Relinquishment notice*

- 20 (2) The Regulator may give a relinquishment notice, in relation to the  
21 original biodiversity certificate, to any person who was a project  
22 proponent of the project immediately before the registration was  
23 cancelled as mentioned in paragraph (1)(b).

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

25 **146 Relinquishment notice—reversal of biodiversity outcome other**  
26 **than due to natural disturbance or conduct etc.**

27 *Scope*

- 28 (1) This section applies if:

# EXPOSURE DRAFT

## Part 13 Relinquishment requirements

### Division 2 Relinquishment notices

#### Section 147

---

- 1 (a) a biodiversity certificate (the *original biodiversity certificate*)  
2 has been issued in relation to a biodiversity project (whether  
3 or not the certificate remains in effect); and  
4 (b) subject to rules made for the purposes of section 148, there  
5 has been a significant reversal of the biodiversity outcome to  
6 which the project relates; and  
7 (c) the reversal is not attributable to:  
8 (i) natural disturbance; or  
9 (ii) reasonable actions taken to reduce the risk of bushfire;  
10 or  
11 (iii) conduct engaged in by a person (other than the project  
12 proponent for the project), where the conduct is not  
13 within the reasonable control of the project proponent;  
14 and  
15 (d) the ~~permanence~~certificate period of the project has not ended.

#### 16 *Relinquishment notice*

- 17 (2) The Regulator may give a relinquishment notice, in relation to the  
18 original biodiversity certificate, to the project proponent.

19 Note 1: For projects with multiple project proponents, see Part 3 (and in  
20 particular sections 40 and 43).

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

#### 22 **147 Relinquishment notice—reversal of biodiversity outcome due to** 23 **natural disturbance or conduct and no mitigation** 24 **happens**

#### 25 *Scope*

- 26 (1) This section applies if:  
27 (a) a biodiversity certificate (the *original biodiversity certificate*)  
28 has been issued in relation to a biodiversity project (whether  
29 or not the certificate remains in effect); and  
30 (b) subject to rules made for the purposes of section 148, there  
31 has been a significant reversal of the biodiversity outcome to  
32 which the project relates; and

# EXPOSURE DRAFT

- 1 (c) the reversal is attributable to:  
2 (i) natural disturbance; or  
3 (ii) conduct engaged in by a person (other than the project  
4 proponent for the project), where the conduct is not  
5 within the reasonable control of the project proponent;  
6 and  
7 (d) the Regulator is not satisfied that the project proponent has,  
8 within a reasonable period, taken reasonable steps to mitigate  
9 the effect of the natural disturbance or conduct, as the case  
10 may be, on the project; and  
11 (e) the ~~permanence~~certificate period of the project has not ended.

12 *Relinquishment notice*

- 13 (2) The Regulator may give a relinquishment notice, in relation to the  
14 original biodiversity certificate, to the project proponent.

15 Note 1: For projects with multiple project proponents, see Part 3 (and in  
16 particular sections 40 and 43).

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

18 **148 Significant reversals in biodiversity outcomes—relinquishment**  
19 **requirements**

- 20 (1) The rules may prescribe circumstances in which, for the purposes  
21 of paragraphs 146(1)(b) and 147(1)(b):  
22 (a) there is taken to have been a reversal of the biodiversity  
23 outcome to which a registered biodiversity project relates;  
24 and  
25 (b) the reversal is taken to be significant, or not taken to be  
26 significant.  
27 (2) This section does not limit section 111 (significant reversals in  
28 biodiversity outcomes—notification requirements).

29 **149 Form and content of relinquishment notice**

30 A relinquishment notice must:

- 31 (a) be in writing; and
-

# EXPOSURE DRAFT

**Part 13** Relinquishment requirements

**Division 2** Relinquishment notices

Section 149

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1

(b) include the information prescribed by the rules.

# EXPOSURE DRAFT

Relinquishment requirements **Part 13**  
Complying with a relinquishment notice **Division 3**

Section 150

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## 1 **Division 3—Complying with a relinquishment notice**

### 2 **150 Requirement for compliance with relinquishment notice**

- 3 (1) A relinquishment notice given to a person (the *notice recipient*)  
4 under this Part must be complied with under section 151 before the  
5 end of 6 months after the notice is given.

#### 6 *Extension of period to comply*

- 7 (2) The Regulator may extend the period mentioned in subsection (1)  
8 by a further period of up to 6 months if the Regulator is satisfied  
9 that:  
10 (a) not doing so would lead to significant hardship for the notice  
11 recipient; or  
12 (b) the notice recipient cannot relinquish the original biodiversity  
13 certificate under paragraph 151(1)(a), and there are no  
14 certificates that could be used to comply with  
15 paragraph 151(1)(b) reasonably available for the notice  
16 recipient to obtain.

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

- 18 (3) Only one extension under subsection (2) may be given in respect of  
19 any relinquishment notice.  
20 (4) The rules may provide for and in relation to:  
21 (a) a person applying for the Regulator to grant an extension  
22 under subsection (2); and  
23 (b) the Regulator considering, and making a decision on, such an  
24 application.

#### 25 *Civil penalty*

- 26 (5) A person is liable to a civil penalty if:  
27 (a) the person is given a relinquishment notice under this Part;  
28 and

# EXPOSURE DRAFT

## Part 13 Relinquishment requirements

### Division 3 Complying with a relinquishment notice

#### Section 150

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- 1 (b) the notice is not complied with before the end of the period  
2 mentioned in subsection (1) (subject to any extension under  
3 subsection (2)).
- 4 (6) Subsection (5) is a civil penalty provision.
- 5 (7) Despite subsection 82(5) of the Regulatory Powers Act, the  
6 pecuniary penalty in relation to a contravention of subsection (5) of  
7 this section (whether the person is a body corporate or otherwise)  
8 must not be more than the greater of:  
9 (a) 2,000 penalty units; and  
10 (b) if the court can determine the market value of the  
11 biodiversity certificate in relation to which the  
12 relinquishment notice was given—twice that market value.
- 13 (8) In determining the pecuniary penalty, the court must take into  
14 account:  
15 (a) the nature and extent of any harm to the environment that has  
16 been, might be or will be caused by the conduct or  
17 circumstances that resulted in the relinquishment notice  
18 being given; and  
19 (b) the nature and extent of any harm to the market for  
20 biodiversity certificates that has been, might be or will be  
21 caused by:  
22 (i) the conduct or circumstances that resulted in the  
23 relinquishment notice being given; or  
24 (ii) the failure to comply with the relinquishment notice.
- 25 (9) Subsection (8) does not limit subsection 82(6) of the Regulatory  
26 Powers Act.
- 27 (10) To avoid doubt, a person may be liable to pay a pecuniary penalty  
28 for a contravention of subsection (5) even if:  
29 (a) the person is not the holder of any biodiversity certificates; or  
30 (b) the person is not the holder of the biodiversity certificate in  
31 relation to which the relinquishment notice was given; or  
32 (c) the biodiversity certificate in relation to which the  
33 relinquishment notice was given is no longer in effect; or

# EXPOSURE DRAFT

Relinquishment requirements **Part 13**  
Complying with a relinquishment notice **Division 3**

## Section 151

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- 1 (d) the person is not the holder of one or more biodiversity  
2 certificates that, if relinquished under section 152 in relation  
3 to the relinquishment notice, would result in the  
4 relinquishment notice being complied with under  
5 paragraph 151(1)(b); or  
6 (e) no biodiversity certificates exist that, if relinquished under  
7 section 152 in relation to the relinquishment notice, would  
8 result in the relinquishment notice being complied with under  
9 paragraph 151(1)(b).
- 10 (11) Section 93 (continuing contraventions) of the Regulatory Powers  
11 Act does not apply to subsection (5) of this section.

### 12 **151 Compliance with relinquishment requirement—relinquishing** 13 **equivalent biodiversity certificate or certificates**

- 14 (1) A relinquishment notice that relates to a biodiversity certificate  
15 (the *original biodiversity certificate*) is complied with if:  
16 (a) the original biodiversity certificate is relinquished, in relation  
17 to the notice, in accordance with section 152; or  
18 (b) both of the following apply:  
19 (i) one or more other biodiversity certificates (*relinquished*  
20 *certificates*) are relinquished, in relation to the notice, in  
21 accordance with section 152;  
22 (ii) the relinquished certificate or certificates meet the  
23 relinquishment equivalence requirements in relation to  
24 the original biodiversity certificate.
- 25 Note: The certificate or certificates may be relinquished by the person who  
26 was given the relinquishment notice, or by another person.
- 27 (2) The rules may prescribe the circumstances in which:  
28 (a) a biodiversity certificate meets the *relinquishment*  
29 *equivalence requirements* in relation to another biodiversity  
30 certificate; or  
31 (b) 2 or more biodiversity certificates together meet the  
32 *relinquishment equivalence requirements* in relation to  
33 another biodiversity certificate.

# EXPOSURE DRAFT

## Part 13 Relinquishment requirements

### Division 3 Complying with a relinquishment notice

#### Section 152

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1 **152 How biodiversity certificates are relinquished**

- 2 (1) If a person is the holder of a biodiversity certificate, the person  
3 may, by electronic notice transmitted to the Regulator, relinquish  
4 the certificate.
- 5 (2) A notice under subsection (1) must:
- 6 (a) specify the biodiversity certificate that is being relinquished;  
7 and
- 8 (b) if the certificate is being relinquished in order to comply with  
9 a relinquishment notice given under section 144, 145, 146 or  
10 147—identify the relinquishment notice in relation to which  
11 the certificate is being relinquished; and
- 12 (c) if the certificate is being voluntarily relinquished in order to  
13 satisfy a condition for cancellation of the registration of a  
14 biodiversity project under section 23 (voluntary cancellation  
15 of registration where certificate is in effect)—identify the  
16 registered biodiversity project in relation to which the  
17 certificate is being relinquished; and
- 18 (d) if the certificate is being voluntarily relinquished for the  
19 purposes of paragraph 158(1)(c) (revocation of a biodiversity  
20 maintenance declaration)—identify the biodiversity  
21 maintenance declaration in relation to which the certificate is  
22 being relinquished; and
- 23 (e) if there is an entry for the certificate in the person's Register  
24 account—specify the account number of that account; and
- 25 (f) if the certificate is deposited with the Regulator—include a  
26 statement to the effect that the certificate is deposited with  
27 the Regulator; and
- 28 (g) include any other information prescribed by the rules.
- 29 (3) If a person relinquishes a biodiversity certificate under this section,  
30 then:
- 31 (a) in a case where the biodiversity certificate is not deposited  
32 with the Regulator:
- 33 (i) the biodiversity certificate is cancelled; and

# EXPOSURE DRAFT

Relinquishment requirements **Part 13**  
Complying with a relinquishment notice **Division 3**

## Section 152

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- 1 (ii) the Regulator must remove the entry for the certificate  
2 from the person's Register account in which there is an  
3 entry for the certificate; or  
4 (b) in a case where the biodiversity certificate is deposited with  
5 the Regulator:  
6 (i) the biodiversity certificate is cancelled; and  
7 (ii) the Regulator must remove the entry for the certificate  
8 from the Commonwealth Register account in which  
9 there is an entry for the certificate.
- 10 Note: A biodiversity certificate that is cancelled under subsection (3) may  
11 have originally been issued for a biodiversity project that remains a  
12 registered biodiversity project (this may occur, for example, if the  
13 cancelled certificate was relinquished in accordance with  
14 paragraph 151(1)(b) to comply with a relinquishment notice issued for  
15 a different project).
- 16 In such a case, the cancellation of the certificate does not affect the  
17 registration of the biodiversity project to which the certificate relates,  
18 and the obligations of the project proponent in relation to that project  
19 may continue to apply.
- 20 (4) To avoid doubt, the relinquishment of a particular biodiversity  
21 certificate is effective for only one purpose mentioned in  
22 paragraph (2)(b), (c) or (d).
- 23 (5) The Register must set out a record of each notice under  
24 subsection (1).

# EXPOSURE DRAFT

**Part 14** Biodiversity maintenance declarations

**Division 1** Introduction

Section 153

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1 **Part 14—Biodiversity maintenance declarations**

2 **Division 1—Introduction**

3 **153 Simplified outline of this Part**

4 If a relinquishment requirement under Part 13 that relates to a  
5 biodiversity project is not complied with, the Regulator may  
6 declare a biodiversity maintenance area.

7 The declaration may prohibit specified activities in the area. A civil  
8 penalty may apply to a person who contravenes a prohibition in a  
9 biodiversity maintenance declaration.

# EXPOSURE DRAFT

1 **Division 2—Biodiversity maintenance declarations**

2 **154 Biodiversity maintenance declaration**

3 *Declaration*

- 4 (1) The Regulator may, by legislative instrument, declare that a  
5 specified area is a ***biodiversity maintenance area*** if:
- 6 (a) the biodiversity maintenance area is, or has been, the project  
7 area, or part of the project area, of a biodiversity project (the  
8 ***maintained project***); and
  - 9 (b) the maintained project is, or has been, a registered  
10 biodiversity project; and
  - 11 (c) a biodiversity certificate (the ***original biodiversity certificate***)  
12 has been issued in relation to the maintained biodiversity  
13 project (whether or not the certificate remains in effect); and
  - 14 (d) any of the following apply:
    - 15 (i) a relinquishment notice has been given in relation to the  
16 original biodiversity certificate, and the notice was not  
17 complied with in accordance with section 150;
    - 18 (ii) a relinquishment notice has been given in relation to the  
19 original biodiversity certificate, and the Regulator is  
20 satisfied that it is likely that the notice will not be  
21 complied with in accordance with section 150;
    - 22 (iii) the Regulator is satisfied that a relinquishment notice is  
23 likely to be given in relation to the original biodiversity  
24 certificate, and that it is likely that the notice, if given,  
25 would not be complied with in accordance with  
26 section 150;
    - 27 (iv) the Regulator is satisfied that it would be appropriate to  
28 give a relinquishment notice in relation to the original  
29 biodiversity certificate, but the notice cannot be given  
30 because the person to whom the Regulator would give  
31 the notice cannot be located or no longer exists, or for  
32 some other reason.

# EXPOSURE DRAFT

## Part 14 Biodiversity maintenance declarations

### Division 2 Biodiversity maintenance declarations

#### Section 154

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- 1 (2) A declaration under subsection (1) is a ***biodiversity maintenance***  
2 ***declaration***.
- 3 (3) The biodiversity maintenance area specified in a biodiversity  
4 maintenance declaration may consist of:  
5 (a) a single area; or  
6 (b) multiple areas, which need not be continuous.
- 7 *Declared prohibited activities*
- 8 (4) A biodiversity maintenance declaration may specify one or more  
9 activities that are ***declared prohibited activities*** in relation to the  
10 biodiversity maintenance area.
- 11 (5) Without limiting subsection (4), an activity may be specified under  
12 that subsection by reference to:  
13 (a) the area or areas (which must be, or fall within, the  
14 biodiversity maintenance area) on or in which the activity  
15 must not be carried out; or  
16 (b) a manner or manners in which the activity must not be  
17 carried out; or  
18 (c) the time or times at which the activity must not be carried  
19 out; or  
20 (d) the period or periods during which the activity must not be  
21 carried out; or  
22 (e) the person or persons who must not carry out the activity.
- 23 *Notice of declaration*
- 24 (6) If the Regulator makes a biodiversity maintenance declaration  
25 under subsection (1), the Regulator must take all reasonable steps  
26 to ensure that notice of the making of the declaration is given to:  
27 (a) the project proponent for the maintained project; and  
28 (b) if the project is wholly or partly land-based—the relevant  
29 land registration official; and  
30 (c) any other person specified in the rules.

# EXPOSURE DRAFT

- 1 (7) A failure to comply with subsection (6) does not affect the validity  
2 of a biodiversity maintenance declaration.

## 3 **155 Civil penalty for carrying out declared prohibited activity**

4 A person must not carry out an activity in a biodiversity  
5 maintenance area if the activity is a declared prohibited activity in  
6 relation to the biodiversity maintenance area.

7 Civil penalty: 2,000 penalty units.

## 8 **156 When a biodiversity maintenance declaration ceases to be in** 9 **force**

10 Unless sooner revoked, a biodiversity maintenance declaration  
11 ceases to be in force at the earlier of the following times:

- 12 (a) the end of the ~~permanence~~certificate period for the  
13 maintained project;
- 14 (b) if a civil penalty order is made under Part 4 of the Regulatory  
15 Powers Act, as that Part applies in relation to  
16 subsection 150(5) of this Act, that relates to a relinquishment  
17 notice given in respect of the biodiversity certificate issued in  
18 respect of the maintained project—the time the penalty is  
19 paid in full to the Commonwealth.

## 20 **157 Variation or revocation of biodiversity maintenance declaration**

### 21 *Scope*

- 22 (1) This section applies if a biodiversity maintenance declaration is in  
23 force in relation to an area or areas.

### 24 *Variation or revocation*

- 25 (2) The Regulator may, by legislative instrument, vary or revoke the  
26 declaration.
- 27 (3) The Regulator may do so:  
28 (a) on the Regulator's own initiative; or

# EXPOSURE DRAFT

## Part 14 Biodiversity maintenance declarations

### Division 2 Biodiversity maintenance declarations

#### Section 158

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1 (b) on application made to the Regulator by a person.

2 *Application*

3 (4) An application under paragraph (3)(b) must:

4 (a) be in writing; and

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

6 (c) be accompanied by the fee (if any) specified in the rules.

7 (5) A fee specified under paragraph (4)(c) must not be such as to  
8 amount to taxation.

9 *Notification of variation or revocation*

10 (6) If the Regulator varies or revokes the declaration, the Regulator  
11 must take all reasonable steps to ensure that notice of the variation  
12 or revocation is given to:

13 (a) the project proponent for the maintained project; and

14 (b) if the project is wholly or partly land-based—the relevant  
15 land registration official; and

16 (c) any other person specified in the rules.

17 (7) A failure to comply with subsection (6) does not affect the validity  
18 of a variation or revocation.

19 *Refusal*

20 (8) If the Regulator decides to refuse to vary or revoke the declaration  
21 on an application under paragraph (3)(b), the Regulator must give  
22 written notice of the decision to the applicant.

23 **158 Revocation of biodiversity maintenance declaration—voluntary**  
24 **relinquishment of biodiversity certificate**

25 *Scope*

26 (1) This section applies if:

27 (a) a biodiversity maintenance declaration is in force; and

# EXPOSURE DRAFT

- 1 (b) a person applies to the Regulator for the revocation of the  
2 biodiversity maintenance declaration; and  
3 (c) before the application was made, the applicant or another  
4 person voluntarily relinquished, in accordance with  
5 section 152 and in relation to the biodiversity maintenance  
6 declaration:  
7 (i) the biodiversity certificate for the maintained project; or  
8 (ii) one or more other biodiversity certificates that meet the  
9 relinquishment equivalence requirements in relation to  
10 the biodiversity certificate for the maintained project.
- 11 Note: For when one or more biodiversity certificates meet the  
12 *relinquishment equivalence requirements* in relation to another  
13 biodiversity certificate, see rules made for the purposes of  
14 subsection 151(2).

15 *Revocation*

- 16 (2) The Regulator must, by legislative instrument, revoke the  
17 declaration.

18 *Application*

- 19 (3) An application under paragraph (1)(b) must:  
20 (a) be in writing; and  
21 (b) be in a form approved, in writing, by the Regulator.

22 *Notification of revocation*

- 23 (4) If the Regulator revokes the declaration, the Regulator must take  
24 all reasonable steps to ensure that notice of the revocation is given  
25 to:  
26 (a) the project proponent for the maintained project; and  
27 (b) if the project is wholly or partly land-based—the relevant  
28 land registration official; and  
29 (c) any other person specified in the rules.
- 30 (5) A failure to comply with subsection (4) does not affect the validity  
31 of a revocation.

# EXPOSURE DRAFT

**Part 14** Biodiversity maintenance declarations

**Division 2** Biodiversity maintenance declarations

Section 159

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1

*Refusal*

2

- (6) If the Regulator decides to refuse to revoke the declaration, the Regulator must give written notice of the decision to the applicant.

3

4

## **159 Delegation by the Regulator**

5

- (1) The Regulator may, by writing, delegate a power to make, vary or revoke a biodiversity maintenance declaration to a member of the Regulator.

6

7

8

Note 1: Under subsection 35(3) of the *Clean Energy Regulator Act 2011*, the Regulator's general power of delegation does not apply to a power to make, vary or revoke a legislative instrument.

9

10

11

Note 2: For members of the Regulator, see section 17 of the *Clean Energy Regulator Act 2011*.

12

13

- (2) A delegate must comply with any written directions of the Regulator.

14

# EXPOSURE DRAFT

Registers **Part 15**  
Introduction **Division 1**

Section 160

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1 **Part 15—Registers**

2 **Division 1—Introduction**

3 **160 Simplified outline of this Part**

4 The Biodiversity Market Register holds entries for each registered  
5 biodiversity project and each biodiversity certificate. The  
6 Regulator must keep the Register in accordance with the rules.

7 The rules may also provide for an online platform, to facilitate  
8 trading in biodiversity certificates and for other purposes.

# EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 161

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1 **Division 2—Biodiversity Market Register**

2 **161 Biodiversity Market Register**

3 (1) The Regulator must keep a register, to be known as the  
4 Biodiversity Market Register.

5 Note: In this Act, the Biodiversity Market Register is known as the Register  
6 (see the definition of *Register* in section 7).

7 (2) The Register is to be maintained by electronic means.

8 (3) The Register is to be made available for inspection on the  
9 Regulator's website.

10 (4) The Regulator must ensure that the Register is up to date.

11 **162 Entries in the Register—registered biodiversity projects and**  
12 **former registered biodiversity projects**

13 (1) The Register must set out, for each registered biodiversity project:

14 (a) the name of the project; and

15 (b) a description, in accordance with the rules, of the project area  
16 for the project; and

17 (c) a description of the project, including such details (if any) as  
18 are prescribed by the rules; and

19 (d) the project proponent or project proponents for the project;  
20 and

21 (e) the methodology determination that covers the project; and

22 (f) whether the registration of the project is subject to a  
23 condition under section 17 (conditions about obtaining  
24 regulatory approvals); and

25 (g) whether the registration of the project is subject to a  
26 condition under section 18 (conditions about obtaining  
27 consent from eligible interest holders); and

28 (h) if:

29 (i) the project proponent has requested the Regulator that  
30 the Register contain particular information about the

# EXPOSURE DRAFT

- 1 extent to which the project area, or any part of the  
2 project area, is also an area on or in which a registered  
3 project under a related scheme has been, is being, or is  
4 to be, carried out; and
- 5 (ii) the request has not been withdrawn; and
- 6 (iii) the Regulator is satisfied that the requested information  
7 meets the requirements specified in the rules;  
8 the requested information; and
- 9 (i) if a project plan is required by the methodology  
10 determination that covers the project—such information (if  
11 any) about the project plan as is prescribed by the rules; and
- 12 (j) such other information (if any) as is provided for under  
13 paragraph 45(1)(c) by the methodology determination that  
14 covers the project; and
- 15 (k) such other information (if any) as the Regulator considers  
16 appropriate; and
- 17 (l) such other information (if any) as is prescribed by the rules.
- 18 (2) Paragraph (1)(b) has effect subject to section 163.
- 19 Note: Section 163 deals with requests for information about a project area  
20 not to be set out in the Register.
- 21 (3) A request under subparagraph (1)(h)(i) must:
- 22 (a) be in a form approved, in writing, by the Regulator; and
- 23 (b) be accompanied by such documents (if any) as are specified  
24 in the rules.
- 25 (4) If:
- 26 (a) the Register contains information covered by  
27 paragraph (1)(h); and
- 28 (b) the Regulator becomes aware that the information has ceased  
29 to be correct;
- 30 the Regulator may remove the information from the Register.
- 31 *Former registered biodiversity projects*
- 32 (5) The rules may provide for the Register to set out prescribed  
33 information for biodiversity projects that have been, but have
-

# EXPOSURE DRAFT

## Part 15 Registers

### Division 2 Biodiversity Market Register

#### Section 163

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1                    ceased to be, registered biodiversity projects (including such  
2                    projects that are no longer being carried on).

#### 3                    **163 Requests for information about project area not to be set out in** 4                    **the Register**

5                    (1) The Register must not set out a project area, or a part of a project  
6                    area, for a registered biodiversity project if:

7                    (a) either:

8                    (i) the project proponent for the project; or

9                    (ii) another person;

10                   has requested the Regulator not to set out the project area, or  
11                   the part of the project area, as the case may be, in the  
12                   Register; and

13                   (b) the Regulator is satisfied that:

14                   (i) setting out the project area, or the part of the project  
15                   area, as the case may be, could reasonably be expected  
16                   to substantially prejudice a matter referred to in  
17                   subsection (2); and

18                   (ii) the prejudice outweighs the public interest in the setting  
19                   out of the project area, or the part of the project area, as  
20                   the case may be.

21                   (2) For the purposes of subparagraph (1)(b)(i), the matters are the  
22                   following:

23                   (a) the commercial interests of the project proponent for the  
24                   project or another person;

25                   (b) the biodiversity of the project area, or the part of the project  
26                   area, as the case may be;

27                   (c) the safety of any person.

28                   (3) The Register must not set out a project area, or a part of a project  
29                   area, for a registered biodiversity project if:

30                   (a) either:

31                   (i) the project proponent for the project; or

32                   (ii) another person;

# EXPOSURE DRAFT

- 1 has requested the Regulator not to set out the project area, or  
2 the part of the project area, as the case may be, in the  
3 Register; and
- 4 (b) the Regulator is satisfied that:
- 5 (i) there is a local community of Aboriginal persons, or  
6 Torres Strait Islanders, who have a connection to the  
7 project area, or the part of the project area, as the case  
8 may be; and
- 9 (ii) setting out the project area, or the part of the project  
10 area, as the case may be, could reasonably be expected  
11 to have a material adverse impact on that community;  
12 and
- 13 (iii) the adverse impact outweighs the public interest in the  
14 setting out of the project area, or the part of the project  
15 area, as the case may be.
- 16 (4) A request under subsection (1) or (3) must:
- 17 (a) be in writing; and  
18 (b) be in a form approved, in writing, by the Regulator.
- 19 (5) The Regulator must take all reasonable steps to ensure that a  
20 decision is made on the request within 30 days after the request  
21 was made.
- 22 (6) If the Regulator decides to refuse the request, the Regulator must  
23 give written notice of the decision to the project proponent.

## 24 **164 Entries in the Register—biodiversity certificates**

- 25 (1) The Register must set out, for each biodiversity certificate that is in  
26 effect:
- 27 (a) the biodiversity project to which the certificate relates; and  
28 (b) the date of issue of the certificate; and  
29 (c) the holder of the certificate; and  
30 (d) such other information (if any) as is provided for under  
31 paragraph 45(1)(g) by the methodology determination that  
32 covers the project; and  
33 (e) such other information (if any) as is prescribed by the rules.
-

# EXPOSURE DRAFT

## Part 15 Registers

### Division 2 Biodiversity Market Register

#### Section 165

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- 1 (2) The Register must set out, for each biodiversity certificate that has  
2 been in effect, but has ceased to be in effect:  
3 (a) the biodiversity project to which the certificate related; and  
4 (b) the date of issue of the certificate; and  
5 (c) such other information (if any) as is provided for under  
6 paragraph 45(1)(g) by the methodology determination that  
7 covers the project; and  
8 (d) such other information (if any) as is prescribed by the rules.

#### 9 **165 Entries in the Register—accounts for holding biodiversity** 10 **certificates**

11 The rules may make provision for and in relation to empowering  
12 the Regulator to open accounts in the Register to hold biodiversity  
13 certificates.

#### 14 **166 Suspension of operation of the Register**

- 15 (1) The Regulator may temporarily suspend the operation of the  
16 Register if the Regulator is satisfied that:  
17 (a) the suspension is required so that maintenance can be carried  
18 out; or  
19 (b) it is prudent to suspend the operation of the Register in order  
20 to:  
21 (i) ensure the integrity of the Register; or  
22 (ii) prevent, mitigate or minimise abuse of the Register; or  
23 (iii) prevent, mitigate or minimise criminal activity  
24 involving the Register.
- 25 (2) If the Regulator suspends the operation of the Register, the  
26 Regulator must publish a notice on the Regulator’s website  
27 informing the public of the suspension.
- 28 (3) If the Regulator suspends the operation of the Register, the  
29 Regulator may defer taking action in relation to the Register until  
30 the suspension ends.

# EXPOSURE DRAFT

1 **167 Rules may make provision in relation to the Register**

- 2 (1) The rules may make provision for and in relation to the Register.
- 3 (2) Without limiting subsection (1), the rules may make provision for  
4 or in relation to any of the following:
- 5 (a) matters that are to be recorded in the Register;
  - 6 (b) the manner in which information may be communicated to or  
7 by the Regulator in relation to the Register;
  - 8 (c) requests to open, close, transfer or otherwise deal with  
9 accounts in the Register (including forms for making  
10 requests, information that must accompany a request and the  
11 consideration of a request by the Regulator);
  - 12 (d) identification procedures that the Regulator may or must  
13 carry out in relation to a record in the Register;
  - 14 (e) joint accounts;
  - 15 (f) accounts to be kept for the Commonwealth;
  - 16 (g) unilateral closure of accounts by the Regulator;
  - 17 (h) the holding of biodiversity certificates in accounts in the  
18 Register, and the transfer of certificates between accounts;
  - 19 (i) requiring the holders of accounts to notify the Regulator of  
20 specified events;
  - 21 (j) correction or rectification of the Register;
  - 22 (k) verification by statutory declaration of information provided  
23 to the Regulator in relation to the Register;
  - 24 (l) fees for things done by the Regulator in relation to the  
25 Register.
- 26 (3) A fee provided for by rules made for the purposes of this section  
27 must not be such as to amount to taxation.
- 28 (4) A person must not contravene rules made for the purposes of  
29 paragraph (2)(i).
- 30 Civil penalty: 200 penalty units.

# EXPOSURE DRAFT

Part 15 Registers

Division 2 Biodiversity Market Register

Section 168

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1     **168 Use and disclosure of information obtained from the Register**

2                     *Use*

- 3             (1) The rules may provide that a person must not use information to  
4             contact or send material to another person if that information:  
5                 (a) is about the other person; and  
6                 (b) was obtained from the Register.

7                     *Disclosure*

- 8             (2) The rules may provide that a person (the *first person*) must not  
9             disclose information that:  
10                 (a) is about another person; and  
11                 (b) was obtained from the Register; and  
12                 (c) the first person knows is likely to be used to contact or send  
13                 material to the other person.
- 14             (3) A person must not contravene rules made for the purposes of  
15             subsection (1) or (2).

16             Civil penalty:             200 penalty units.

17                     *Exception*

- 18             (4) Subsection (3) does not apply in circumstances specified by the  
19             rules.

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

1 **Division 3—Online platform**

2 **169 Online Platform**

- 3 (1) The rules may make provision for and in relation to empowering  
4 the Regulator to maintain an online platform for any of the  
5 following purposes:
- 6 (a) facilitating the trading of any of the following:
    - 7 (i) biodiversity certificates;
    - 8 (ii) other certificates, units or credits (however described,  
9 and whether issued under a law of the Commonwealth,  
10 a State or a Territory, or in some other way) that relate  
11 to biodiversity projects;
  - 12 (b) facilitating arrangements between project proponents, or  
13 prospective project proponents, of registered biodiversity  
14 projects and prospective purchasers of biodiversity  
15 certificates;
  - 16 (c) facilitating arrangements relating to biodiversity projects that  
17 are not, and are not intended to be, registered under this Act;
  - 18 (d) any other purpose incidental or related to any of the above.
- 19 (2) The rules must not require a person to use the online platform in  
20 order to:
- 21 (a) be the project proponent of a registered biodiversity project;  
22 or
  - 23 (b) be issued with, hold or deal with a biodiversity certificate; or
  - 24 (c) otherwise receive the benefit of any other provision of this  
25 Act.

# EXPOSURE DRAFT

**Part 16** Publication of information

**Division 1** Introduction

Section 170

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1 **Part 16—Publication of information**

2 **Division 1—Introduction**

3 **170 Simplified outline of this Part**

4

5

6

This Part allows or requires the Regulator and the Secretary to publish certain information about biodiversity certificates, registered biodiversity projects and the operation of this Act.

# EXPOSURE DRAFT

1 **Division 2—Information about biodiversity certificates**

2 **171 Information about biodiversity certificates**

- 3 (1) As soon as practicable after a biodiversity certificate is issued to a  
4 person, the Regulator must publish on the Regulator’s website:  
5 (a) the name of the person; and  
6 (b) such other information relating to the certificate as is  
7 prescribed by the rules.
- 8 (2) As soon as practicable after a variation of a biodiversity certificate  
9 is made, the Regulator must publish on the Regulator’s website:  
10 (a) the name of the holder of the certificate; and  
11 (b) such other information relating to the certificate or the  
12 variation as is prescribed by the rules.
- 13 (3) As soon as practicable after a biodiversity certificate is transferred  
14 from one account in the Register to another account in the Register,  
15 the Regulator must publish on the Regulator’s website:  
16 (a) the name of the holder of each of those accounts; and  
17 (b) such other information relating to the certificate or the  
18 transfer as is prescribed by the rules.

19 **172 Reports about activities of Regulator**

- 20 (1) As soon as practicable after the end of a financial year, the  
21 Regulator must publish on the Regulator’s website a report about  
22 the activities of the Regulator under this Act during the financial  
23 year.
- 24 (2) The report must deal with any matters prescribed by the rules.

25 **173 Publication of concise description of the characteristics of**  
26 **biodiversity certificates**

27 The Regulator must:

# EXPOSURE DRAFT

**Part 16** Publication of information

**Division 2** Information about biodiversity certificates

Section 173

---

- 1 (a) publish on the Regulator’s website a statement setting out a  
2 concise description of the characteristics of biodiversity  
3 certificates; and  
4 (b) keep that statement up to date.

# EXPOSURE DRAFT

1 **Division 3—Information about biodiversity certificates**  
2 **purchased by the Commonwealth**

3 **174 Information about biodiversity conservation purchasing**  
4 **processes**

5 After the Secretary conducts a biodiversity conservation  
6 purchasing process, the Secretary may publish on the Department’s  
7 website the following information:

- 8 (a) when the process was conducted;  
9 (b) the total amount that the Commonwealth agreed to pay by  
10 way of purchasing biodiversity certificates through the  
11 process (whether or not those payments have been made);  
12 (c) such other summary information (if any) relating to the  
13 process as the Secretary considers appropriate;  
14 (d) such other statistics (if any) relating to the process as the  
15 Secretary considers appropriate.

16 **175 Annual reports about purchases of biodiversity certificates**

17 The Secretary may publish on the Department’s website a report,  
18 in relation to a financial year, on the following matters:

- 19 (a) the total number of biodiversity certificates that the  
20 Commonwealth has purchased, or has agreed to purchase,  
21 under biodiversity conservation contracts entered into during  
22 the financial year;  
23 (b) the total amount that the Commonwealth will be liable to  
24 pay, or has paid, under biodiversity conservation contracts  
25 entered into during the financial year;  
26 (c) the total number of biodiversity certificates that were  
27 transferred to the Commonwealth during the financial year as  
28 a result of biodiversity conservation contracts (including such  
29 contracts entered into before the financial year);  
30 (d) the total amount that the Commonwealth paid during the  
31 financial year under biodiversity conservation contracts

# EXPOSURE DRAFT

## Part 16 Publication of information

### Division 3 Information about biodiversity certificates purchased by the Commonwealth

#### Section 175

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- 1 (including such contracts entered into before the financial  
2 year);
- 3 (e) for each biodiversity certificate transferred to the  
4 Commonwealth during the financial year as a result of a  
5 biodiversity conservation contract (including such a contract  
6 entered into before the financial year)—sufficient  
7 information to identify the registered biodiversity project in  
8 relation to which the certificate was issued;
- 9 (f) such other summary information (if any) relating to the  
10 purchase of biodiversity certificates by the Commonwealth  
11 under biodiversity conservation contracts as the Secretary  
12 considers appropriate;
- 13 (g) such other statistics (if any) relating to the purchase of  
14 biodiversity certificates by the Commonwealth under  
15 biodiversity conservation contracts as the Secretary considers  
16 appropriate.

# EXPOSURE DRAFT

1 **Division 4—Information about relinquishment**  
2 **requirements**

3 **176 Information about relinquishment requirements**

4 *Scope*

- 5 (1) This section applies if the Regulator gives a person a  
6 relinquishment notice under Part 13.

7 *Relinquishment requirement*

- 8 (2) As soon as practicable after giving the relinquishment notice, the  
9 Regulator must publish on the Regulator’s website:  
10 (a) the name of the person; and  
11 (b) details of the relinquishment requirement.
- 12 (3) If any of the following paragraphs applies:  
13 (a) the decision to require the person to relinquish one or more  
14 biodiversity certificates is being reconsidered by the  
15 Regulator under section 215;  
16 (b) the decision to require the person to relinquish one or more  
17 biodiversity certificates has been affirmed or varied by the  
18 Regulator under section 215, and the decision as so affirmed  
19 or varied is the subject of an application for review by the  
20 Administrative Appeals Tribunal;  
21 (c) the decision to require the person to relinquish one or more  
22 biodiversity certificates is the subject of an application for  
23 review by the Administrative Appeals Tribunal;  
24 the Regulator must:  
25 (d) publish an appropriate annotation on the Regulator’s website;  
26 and  
27 (e) if paragraph (a) applies—when the Regulator notifies the  
28 applicant for reconsideration of the Regulator’s decision on  
29 the reconsideration, the Regulator must publish an  
30 appropriate annotation on the Regulator’s website; and
-

# EXPOSURE DRAFT

## Part 16 Publication of information

### Division 4 Information about relinquishment requirements

#### Section 177

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- 1 (f) if paragraph (b) or (c) applies—when the review by the  
2 Administrative Appeals Tribunal (including any court  
3 proceedings arising out of the review) has been finalised, the  
4 Regulator must publish an appropriate annotation on the  
5 Regulator’s website.

#### 6 **177 Information about relinquished certificates**

##### 7 *Scope*

- 8 (1) This section applies if:  
9 (a) the Regulator gives a person a relinquishment notice; and  
10 (b) one or more biodiversity certificates are relinquished under  
11 section 152 in order to comply with the relinquishment  
12 notice.

##### 13 *Biodiversity certificates relinquished*

- 14 (2) As soon as practicable after receiving the notice under section 152  
15 relinquishing the biodiversity certificate or certificates, the  
16 Regulator must publish on the Regulator’s website:  
17 (a) the name of the person; and  
18 (b) such information in relation to the biodiversity certificate or  
19 certificates as the Regulator thinks appropriate.

# EXPOSURE DRAFT

Record-keeping and project monitoring requirements **Part 17**

Introduction **Division 1**

Section 178

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1 **Part 17—Record-keeping and project monitoring**  
2 **requirements**

3 **Division 1—Introduction**

4 **178 Simplified outline of this Part**

5 The rules may require a person to:

- 6 (a) make a record of information; and  
7 (b) retain the record.

8 A person is subject to record-keeping requirements in relation to  
9 the preparation of a biodiversity project report.

10 A project proponent must comply with record-keeping and project  
11 monitoring requirements imposed by a methodology  
12 determination.

# EXPOSURE DRAFT

Part 17 Record-keeping and project monitoring requirements

Division 2 Record-keeping requirements

Section 179

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1 **Division 2—Record-keeping requirements**

2 **179 Record-keeping requirements—general**

- 3 (1) The rules may require a person to:
- 4 (a) make a record of specified information, where the
- 5 information is relevant to this Act; and
- 6 (b) retain:
- 7 (i) the record; or
- 8 (ii) a copy of the record;
- 9 for 7 years after the making of the record.

- 10 (2) If a person is subject to a requirement under rules made for the
- 11 purposes of subsection (1), the person must comply with that
- 12 requirement.

13 Civil penalty: 200 penalty units.

14 *Other provisions do not limit this section*

- 15 (3) This section is not limited by any other provision of this Act that
- 16 relates to the keeping or retention of records.

17 **180 Record-keeping requirements—preparation of biodiversity**

18 **project report**

19 *Scope*

- 20 (1) This section applies if a person:
- 21 (a) made a record of particular information; and
- 22 (b) used the information to prepare a biodiversity project report.

23 *Record-keeping requirements*

- 24 (2) The rules may require the person to retain:
- 25 (a) the record; or
- 26 (b) a copy of the record;

# EXPOSURE DRAFT

Record-keeping and project monitoring requirements **Part 17**  
Record-keeping requirements **Division 2**

## Section 181

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1 for 7 years after the biodiversity project report was given to the  
2 Regulator.

3 (3) If a person is subject to a requirement under rules made for the  
4 purposes of subsection (2), the person must comply with that  
5 requirement.

6 Civil penalty: 200 penalty units.

### 7 **181 Record-keeping requirements—methodology determinations**

#### 8 *Scope*

9 (1) This section applies to a person if:

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

12 (b) under the methodology determination that covers the project,  
13 the person is subject to a record-keeping requirement relating  
14 to the project.

#### 15 *Record-keeping requirement*

16 (2) The person must comply with the requirement.

17 Civil penalty: 200 penalty units.

# EXPOSURE DRAFT

Part 17 Record-keeping and project monitoring requirements

Division 3 Project monitoring requirements

Section 182

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1 **Division 3—Project monitoring requirements**

2 **182 Project monitoring requirements—methodology determinations**

3 *Scope*

4 (1) This section applies to a person if:

5 (a) the person is the project proponent for a registered  
6 biodiversity project; and

7 (b) under the methodology determination that covers the project,  
8 the person is subject to a requirement to monitor the project.

9 *Project monitoring requirement*

10 (2) The person must comply with the requirement.

11 Civil penalty: 200 penalty units.

1 **Part 18—Enforcement**

2 **Division 1—Introduction**

3 **183 Simplified outline of this Part**

4 Certain provisions are subject to monitoring under Part 2 of the  
5 Regulatory Powers Act.

6 Certain provisions are subject to investigation under Part 3 of the  
7 Regulatory Powers Act.

8 Civil penalty orders may be sought under Part 4 of the Regulatory  
9 Powers Act from a relevant court in relation to contraventions of  
10 civil penalty provisions.

11 Infringement notices may be given under Part 5 of the Regulatory  
12 Powers Act for alleged contraventions of civil penalty provisions.

13 Undertakings to comply with certain provisions may be accepted  
14 and enforced under Part 6 of the Regulatory Powers Act.

15 Injunctions under Part 7 of the Regulatory Powers Act may be used  
16 to restrain a person from contravening section 155 of this Act (civil  
17 penalty for carrying out declared prohibited activity) or to compel  
18 compliance with that section.

19 **184 Appointment of inspectors**

- 20 (1) The Chair of the Regulator may, in writing, appoint a person who  
21 is one of the following as an inspector for the purposes of this Act:
- 22 (a) a person who is:
    - 23 (i) a member of the staff of the Regulator; and
    - 24 (ii) an SES employee or acting SES employee;
  - 25 (b) a person who is:

# EXPOSURE DRAFT

**Part 18** Enforcement  
**Division 1** Introduction

Section 184

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- 1 (i) a member of the staff of the Regulator; and  
2 (ii) an APS employee who holds or performs the duties of  
3 an Executive Level 1 or 2 position or an equivalent  
4 position;  
5 (c) a member or special member of the Australian Federal  
6 Police.
- 7 Note: The expressions *APS employee*, *SES employee* and *acting SES*  
8 *employee* are defined in section 2B of the *Acts Interpretation Act*  
9 *1901*.
- 10 (2) The Chair must not appoint a person as an inspector unless the  
11 Chair is satisfied that the person has the knowledge or experience  
12 necessary to properly exercise the powers of an inspector.
- 13 (3) An inspector must, in exercising powers as such, comply with any  
14 directions of the Chair.
- 15 (4) If a direction is given under subsection (3) in writing, the direction  
16 is not a legislative instrument.

1 **Division 2—Monitoring powers**

2 **185 Monitoring powers**

3 *Provisions subject to monitoring*

4 (1) The following provisions are subject to monitoring under Part 2 of  
5 the Regulatory Powers Act:

6 (a) each provision of this Act or a legislative instrument made  
7 under this Act;

8 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*  
9 *Code*, to the extent that it relates to one or more of the  
10 provisions mentioned in paragraph (a).

11 Note: Part 2 of the Regulatory Powers Act creates a framework for  
12 monitoring whether the provisions mentioned in this subsection have  
13 been complied with. It includes powers of entry and inspection.

14 *Information subject to monitoring*

15 (2) Information given in compliance or purported compliance with a  
16 provision of this Act, the rules or a methodology determination is  
17 subject to monitoring under Part 2 of the Regulatory Powers Act.

18 Note: Part 2 of the Regulatory Powers Act creates a framework for  
19 monitoring whether the information is correct. It includes powers of  
20 entry and inspection.

21 *Related provisions, authorised applicant, authorised person,*  
22 *issuing officer, relevant chief executive and relevant court*

23 (3) For the purposes of Part 2 of the Regulatory Powers Act, as that  
24 Part applies in relation to the provisions mentioned in  
25 subsection (1) and the information mentioned in subsection (2):

26 (a) there are no related provisions; and

27 (b) an inspector is an authorised applicant; and

28 (c) an inspector is an authorised person; and

29 (d) a magistrate is an issuing officer; and

30 (e) the Chair of the Regulator is the relevant chief executive; and

# EXPOSURE DRAFT

## Part 18 Enforcement

### Division 2 Monitoring powers

#### Section 185

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- 1 (f) each of the following is a relevant court:  
2 (i) the Federal Court;  
3 (ii) a court of a State or Territory that has jurisdiction in  
4 relation to matters arising under this Act or the  
5 associated provisions.
- 6 (4) The relevant chief executive may, in writing, delegate the powers  
7 and functions mentioned in subsection (5) to a person who is:  
8 (a) a member of the staff of the Regulator; and  
9 (b) an SES employee or acting SES employee.
- 10 Note: The expressions *SES employee* and *acting SES employee* are defined  
11 in section 2B of the *Acts Interpretation Act 1901*.
- 12 (5) The powers and functions that may be delegated are:  
13 (a) powers and functions under Part 2 of the Regulatory Powers  
14 Act in relation to the provisions mentioned in subsection (1)  
15 and the information mentioned in subsection (2); and  
16 (b) powers and functions under the Regulatory Powers Act that  
17 are incidental to a power or function mentioned in  
18 paragraph (a).
- 19 (6) A person exercising powers or performing functions under a  
20 delegation under subsection (4) must comply with any directions of  
21 the relevant chief executive.
- 22 *Person assisting*
- 23 (7) An authorised person may be assisted by other persons in  
24 exercising powers or performing functions or duties under Part 2 of  
25 the Regulatory Powers Act in relation to the provisions mentioned  
26 in subsection (1) and the information mentioned in subsection (2).
- 27 *Extension to external Territories*
- 28 (8) Part 2 of the Regulatory Powers Act, as that Part applies in relation  
29 to the provisions mentioned in subsection (1) and the information  
30 mentioned in subsection (2), extends to every external Territory.

1 **186 Modifications of Part 2 of the Regulatory Powers Act**

2 *Additional monitoring power*

- 3 (1) For the purposes of determining:
- 4 (a) whether a provision mentioned in subsection 185(1) has  
5 been, or is being, complied with; or
- 6 (b) the correctness of information mentioned in  
7 subsection 185(2);
- 8 the additional powers mentioned in subsection (2) of this section  
9 are taken to be included in the monitoring powers under Part 2 of  
10 the Regulatory Powers Act.
- 11 (2) The additional monitoring powers are:
- 12 (a) the power to take samples of any thing on premises entered  
13 under Part 2 of the Regulatory Powers Act; and
- 14 (b) the power to remove, test and analyse such samples; and
- 15 (c) the power to secure premises entered under Part 2 of the  
16 Regulatory Powers Act; and
- 17 (d) the power to secure things on premises entered under Part 2  
18 of the Regulatory Powers Act for the purpose of sampling,  
19 testing or analysing those things; and
- 20 (e) the power to secure a container on premises entered under  
21 Part 2 of the Regulatory Powers Act that contains a thing if  
22 the inspector reasonably believes that it is not reasonably  
23 practicable to secure the thing without also securing the  
24 container (whether or not the container contains any other  
25 thing).

26 *Use of force in executing a monitoring warrant*

- 27 (3) In executing a monitoring warrant under Part 2 of the Regulatory  
28 Powers Act, as that Part applies in relation to the provisions  
29 mentioned in subsection 185(1) and the information mentioned in  
30 subsection 185(2) of this Act:
- 31 (a) an authorised person may use such force against things as is  
32 necessary and reasonable in the circumstances; and

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## Part 18 Enforcement

### Division 2 Monitoring powers

#### Section 186

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1 (b) a person assisting the authorised person may use such force  
2 against things as is necessary and reasonable in the  
3 circumstances.

#### 4 *Identity cards*

5 (4) A reference to an identity card in sections 25 and 26 and  
6 subsection 35(6) of the Regulatory Powers Act, as those provisions  
7 apply in relation to the provisions mentioned in subsection 185(1)  
8 of this Act and information mentioned in subsection 185(2) of this  
9 Act, is taken to include a reference to written evidence identifying  
10 the authorised person as a member or special member of the  
11 Australian Federal Police.

12 (5) Subsection 35(1) of the Regulatory Powers Act, as that subsection  
13 applies in relation to the provisions mentioned in subsection 185(1)  
14 of this Act and information mentioned in subsection 185(2) of this  
15 Act, does not require the relevant chief executive to issue an  
16 identity card to an authorised person who is a member or special  
17 member of the Australian Federal Police.

1 **Division 3—Investigation powers**

2 **187 Investigation powers**

3 *Provisions subject to investigation*

- 4 (1) A provision is subject to investigation under Part 3 of the  
5 Regulatory Powers Act if it is:  
6 (a) a civil penalty provision of this Act; or  
7 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*  
8 *Code*, to the extent that it relates to this Act.

9 Note: Part 3 of the Regulatory Powers Act creates a framework for  
10 investigating whether a provision has been contravened. It includes  
11 powers of entry, search and seizure.

12 *Related provisions, authorised applicant, authorised person,*  
13 *issuing officer, relevant chief executive and relevant court*

- 14 (2) For the purposes of Part 3 of the Regulatory Powers Act, as that  
15 Part applies in relation to evidential material that relates to a  
16 provision mentioned in subsection (1):  
17 (a) there are no related provisions; and  
18 (b) an inspector is an authorised applicant; and  
19 (c) an inspector is an authorised person; and  
20 (d) a magistrate is an issuing officer; and  
21 (e) the Chair of the Regulator is the relevant chief executive; and  
22 (f) each of the following is a relevant court:  
23 (i) the Federal Court;  
24 (ii) a court of a State or Territory that has jurisdiction in  
25 relation to matters arising under this Act or the  
26 associated provisions.
- 27 (3) The relevant chief executive may, in writing, delegate the powers  
28 and functions mentioned in subsection (4) to a person who is:  
29 (a) a member of the staff of the Regulator; and  
30 (b) an SES employee or acting SES employee.

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## Part 18 Enforcement

### Division 3 Investigation powers

#### Section 188

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1 Note: The expressions *SES employee* and *acting SES employee* are defined  
2 in section 2B of the *Acts Interpretation Act 1901*.

- 3 (4) The powers and functions that may be delegated are:
- 4 (a) powers and functions under Part 3 of the Regulatory Powers  
5 Act in relation to evidential material that relates to a  
6 provision mentioned in subsection (1); and
- 7 (b) powers and functions under the Regulatory Powers Act that  
8 are incidental to a power or function mentioned in  
9 paragraph (a).
- 10 (5) A person exercising powers or performing functions under a  
11 delegation under subsection (3) must comply with any directions of  
12 the relevant chief executive.

#### 13 *Person assisting*

- 14 (6) An authorised person may be assisted by other persons in  
15 exercising powers or performing functions or duties under Part 3 of  
16 the Regulatory Powers Act in relation to evidential material that  
17 relates to a provision mentioned in subsection (1).

#### 18 *Extension to external Territories*

- 19 (7) Part 3 of the Regulatory Powers Act, as that Part applies in relation  
20 to a provision mentioned in subsection (1), extends to every  
21 external Territory.

## 22 **188 Modifications of Part 3 of the Regulatory Powers Act**

#### 23 *Additional investigative powers*

- 24 (1) The additional powers mentioned in subsection (2) are taken to be  
25 included in the investigation powers under Part 3 of the Regulatory  
26 Powers Act, as that Part applies in relation to evidential material  
27 that relates to a provision mentioned in subsection 187(1) of this  
28 Act.
- 29 (2) The additional investigation powers are:

# EXPOSURE DRAFT

- 1 (a) the power to take samples of any thing on premises entered  
2 under Part 3 of the Regulatory Powers Act; and  
3 (b) the power to remove, test and analyse such samples; and  
4 (c) the power to secure premises entered under Part 3 of the  
5 Regulatory Powers Act; and  
6 (d) the power to secure things on premises entered under Part 3  
7 of the Regulatory Powers Act for the purpose of sampling,  
8 testing or analysing those things; and  
9 (e) the power to secure a container on premises entered under  
10 Part 3 of the Regulatory Powers Act that contains a thing if  
11 the inspector reasonably believes that it is not reasonably  
12 practicable to secure the thing without also securing the  
13 container (whether or not the container contains any other  
14 thing).

15 *Operating electronic equipment etc. that may contain evidential*  
16 *material*

- 17 (3) Subsection 50(1) of the Regulatory Powers Act is taken to include  
18 the power (subject to subsections 50(3) and (4) of that Act) to:  
19 (a) operate electronic equipment on premises entered under  
20 Part 3 of that Act, as that Part applies to evidential material  
21 that relates to a provision mentioned in subsection 187(1) of  
22 this Act; and  
23 (b) use a disk, tape or other storage device that:  
24 (i) is on those premises; and  
25 (ii) can be used with the equipment or is associated with it;  
26 to find out whether the equipment, disk, tape or other storage  
27 device contains such evidential material.

28 *Use of force in executing an investigation warrant*

- 29 (4) In executing an investigation warrant under Part 3 of the  
30 Regulatory Powers Act, as that Part applies in relation to evidential  
31 material that relates to a provision mentioned in subsection 187(1)  
32 of this Act:  
33 (a) an authorised person may use such force against things as is  
34 necessary and reasonable in the circumstances; and

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## Part 18 Enforcement

### Division 3 Investigation powers

#### Section 188

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1 (b) a person assisting the authorised person may use such force  
2 against things as is necessary and reasonable in the  
3 circumstances.

#### 4 *Identity cards*

5 (5) A reference to an identity card in sections 55 and 56 and  
6 subsection 76(6) of the Regulatory Powers Act, as those provisions  
7 apply in relation to evidential material that relates to a provision  
8 mentioned in subsection 187(1) of this Act, is taken to include a  
9 reference to written evidence identifying the authorised person as a  
10 member or special member of the Australian Federal Police.

11 (6) Subsection 76(1) of the Regulatory Powers Act, as that subsection  
12 applies in relation to evidential material that relates to a provision  
13 mentioned in subsection 187(1) of this Act, does not require the  
14 relevant chief executive to issue an identity card to an authorised  
15 person who is a member or special member of the Australian  
16 Federal Police.

1 **Division 4—Civil penalty provisions**

2 **189 Civil penalty provisions**

3 *Enforceable civil penalty provisions*

- 4 (1) Each civil penalty provision of this Act is enforceable under Part 4  
5 of the Regulatory Powers Act.

6 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to  
7 be enforced by obtaining an order for a person to pay a pecuniary  
8 penalty for the contravention of the provision.

9 *Authorised applicant*

- 10 (2) For the purposes of Part 4 of the Regulatory Powers Act, the Chair  
11 of the Regulator is an authorised applicant in relation to the civil  
12 penalty provisions of this Act.

- 13 (3) An authorised applicant may, in writing, delegate the authorised  
14 applicant's powers and functions under Part 4 of the Regulatory  
15 Powers Act in relation to the civil penalty provisions of this Act to  
16 a person who is:

- 17 (a) a member of the staff of the Regulator; and  
18 (b) an SES employee or acting SES employee.

19 Note: The expressions *SES employee* and *acting SES employee* are defined  
20 in section 2B of the *Acts Interpretation Act 1901*.

21 *Relevant court*

- 22 (4) For the purposes of Part 4 of the Regulatory Powers Act, each of  
23 the following courts is a relevant court in relation to the civil  
24 penalty provisions of this Act:

- 25 (a) the Federal Court;  
26 (b) a court of a State or Territory that has jurisdiction in relation  
27 to matters arising under this Act or the associated provisions.

# EXPOSURE DRAFT

## Part 18 Enforcement

### Division 4 Civil penalty provisions

#### Section 189

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1

#### *Extension to external Territories*

2

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

3

4

5

#### *Liability of Crown*

6

- (6) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

7

8

1 **Division 5—Infringement notices**

2 **190 Infringement notices**

3 *Provisions subject to an infringement notice*

- 4 (1) A civil penalty provision of this Act is subject to an infringement  
5 notice under Part 5 of the Regulatory Powers Act.

6 Note: Part 5 of the Regulatory Powers Act creates a framework for using  
7 infringement notices in relation to provisions.

8 *Infringement officer*

- 9 (2) For the purposes of Part 5 of the Regulatory Powers Act, each of  
10 the following persons is an infringement officer in relation to the  
11 provisions mentioned in subsection (1):

12 (a) an inspector;

13 (b) a person who is:

14 (i) a member of the staff of the Regulator; and

15 (ii) an SES employee or acting SES employee.

16 Note: The expressions *SES employee* and *acting SES employee* are defined  
17 in section 2B of the *Acts Interpretation Act 1901*.

18 *Relevant chief executive*

- 19 (3) For the purposes of Part 5 of the Regulatory Powers Act, the Chair  
20 of the Regulator is the relevant chief executive in relation to the  
21 provisions mentioned in subsection (1).

- 22 (4) The relevant chief executive may, in writing, delegate the relevant  
23 chief executive's powers and functions under Part 5 of the  
24 Regulatory Powers Act in relation to the provisions mentioned in  
25 subsection (1) to a person who is:

26 (a) a member of the staff of the Regulator; and

27 (b) an SES employee or acting SES employee.

28 Note: The expressions *SES employee* and *acting SES employee* are defined  
29 in section 2B of the *Acts Interpretation Act 1901*.

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# EXPOSURE DRAFT

## Part 18 Enforcement

### Division 5 Infringement notices

#### Section 190

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1 (5) A person exercising powers or performing functions under a  
2 delegation under subsection (4) must comply with any directions of  
3 the relevant chief executive.

4 *Extension to external Territories*

5 (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation  
6 to the provisions mentioned in subsection (1), extends to every  
7 external Territory.

1 **Division 6—Enforceable undertakings**

2 **191 Enforceable undertakings**

3 *Enforceable provisions*

- 4 (1) The following provisions are enforceable under Part 6 of the  
5 Regulatory Powers Act:
- 6 (a) each provision of this Act or a legislative instrument made  
7 under this Act;
- 8 (b) an offence provision of the *Crimes Act 1914* or the *Criminal*  
9 *Code*, to the extent that it relates to one or more of the  
10 provisions mentioned in paragraph (a).

11 Note: Part 6 of the Regulatory Powers Act creates a framework for  
12 accepting and enforcing undertakings relating to compliance with  
13 provisions.

14 *Authorised person*

- 15 (2) For the purposes of Part 6 of the Regulatory Powers Act, the Chair  
16 of the Regulator is an authorised person in relation to the  
17 provisions mentioned in subsection (1).
- 18 (3) An authorised person may, in writing, delegate the authorised  
19 person's powers and functions under Part 6 of the Regulatory  
20 Powers Act in relation to the provisions mentioned in  
21 subsection (1) to a person who is:
- 22 (a) a member of the staff of the Regulator; and  
23 (b) an SES employee or acting SES employee.

24 Note: The expressions *SES employee* and *acting SES employee* are defined  
25 in section 2B of the *Acts Interpretation Act 1901*.

26 *Relevant court*

- 27 (4) For the purposes of Part 6 of the Regulatory Powers Act, each of  
28 the following courts is a relevant court in relation to the provisions  
29 mentioned in subsection (1):
- 30 (a) the Federal Court;
-

# EXPOSURE DRAFT

## Part 18 Enforcement

### Division 6 Enforceable undertakings

#### Section 191

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1 (b) a court of a State or Territory that has jurisdiction in relation  
2 to matters arising under this Act or the associated provisions.

3 *Enforceable undertaking may be published on the Regulator's*  
4 *website*

5 (5) The Regulator may cause an undertaking given under Part 6 of the  
6 Regulatory Powers Act in relation to a provision mentioned in  
7 subsection (1) to be published on the Regulator's website.

8 *Extension to external Territories*

9 (6) Part 6 of the Regulatory Powers Act, as that Part applies in relation  
10 to the provisions mentioned in subsection (1), extends to every  
11 external Territory.

1 **Division 7—Injunctions**

2 **192 Injunctions**

3 *Enforceable provisions*

- 4 (1) Each provision of this Act or a legislative instrument made under  
5 this Act is enforceable under Part 7 of the Regulatory Powers Act.

6 Note: Part 7 of the Regulatory Powers Act creates a framework for using  
7 injunctions to enforce provisions.

8 *Authorised person*

- 9 (2) For the purposes of Part 7 of the Regulatory Powers Act, the Chair  
10 of the Regulator is an authorised person in relation to the  
11 provisions mentioned in subsection (1).

- 12 (3) An authorised person may, in writing, delegate the authorised  
13 person's powers and functions under Part 7 of the Regulatory  
14 Powers Act in relation to the provisions mentioned in  
15 subsection (1) to a person who is:

- 16 (a) a member of the staff of the Regulator; and  
17 (b) an SES employee or acting SES employee.

18 Note: The expressions *SES employee* and *acting SES employee* are defined  
19 in section 2B of the *Acts Interpretation Act 1901*.

20 *Relevant court*

- 21 (4) For the purposes of Part 7 of the Regulatory Powers Act, each of  
22 the following courts is a relevant court in relation to the provisions  
23 mentioned in subsection (1):

- 24 (a) the Federal Court;  
25 (b) a court of a State or Territory that has jurisdiction in relation  
26 to matters arising under this Act or the associated provisions.

# EXPOSURE DRAFT

**Part 18** Enforcement  
**Division 7** Injunctions

## Section 192

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- 1                            *Extension to external Territories*
- 2                            (5) Part 7 of the Regulatory Powers Act, as that Part applies in relation
- 3                            to the provision mentioned in subsection (1), extends to every
- 4                            external Territory.

# EXPOSURE DRAFT

Nature Repair Market Committee **Part 19**

Introduction **Division 1**

Section 193

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1 **Part 19—Nature Repair Market Committee**

2 **Division 1—Introduction**

3 **193 Simplified outline of this Part**

4

This Part establishes the Nature Repair Market Committee.

5

This Part also sets out the following:

6

(a) the functions of the Committee;

7

(b) the membership of the Committee;

8

(c) the appointment of Committee members;

9

(d) other terms and conditions on which Committee members hold office.

10

11

The Regulator and the Department may assist the Nature Repair Market Committee in the performance of its functions.

12

# EXPOSURE DRAFT

Part 19 Nature Repair Market Committee

Division 2 Establishment and functions of the Nature Repair Market Committee

Section 194

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1 **Division 2—Establishment and functions of the Nature**  
2 **Repair Market Committee**

3 **194 Nature Repair Market Committee**

4 The Nature Repair Market Committee is established by this  
5 section.

6 Note: The Committee is not a Commonwealth entity for the purposes of the  
7 *Public Governance, Performance and Accountability Act 2013*.

8 **195 Functions of the Nature Repair Market Committee**

9 The Nature Repair Market Committee has the following functions:

- 10 (a) the functions that are conferred on it by:
- 11 (i) this Act; or
- 12 (ii) the rules; or
- 13 (iii) an instrument made under this Act;
- 14 (b) to advise the Minister about matters that:
- 15 (i) relate to biodiversity projects; and
- 16 (ii) are referred to the Committee by the Minister;
- 17 (c) to advise the Minister about the suspension of the
- 18 consideration by the Regulator of applications for the
- 19 registration of biodiversity projects (see section 16);
- 20 (d) to monitor the compliance of methodology determinations
- 21 with the biodiversity integrity standards;
- 22 (e) to undertake periodic reviews of methodology determinations
- 23 and of biodiversity assessment instruments;
- 24 (f) to undertake public consultation in relation to reviews of
- 25 methodology determinations and reviews of biodiversity
- 26 assessment instruments;
- 27 (g) to advise the Minister in relation to the outcomes of reviews
- 28 of methodology determinations and reviews of biodiversity
- 29 assessment instruments and any related public consultation;

# EXPOSURE DRAFT

Nature Repair Market Committee **Part 19**  
Establishment and functions of the Nature Repair Market Committee **Division 2**

## Section 196

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- 1 (h) to advise the Secretary in relation to the outcomes of reviews  
2 of methodology determinations and reviews of biodiversity  
3 assessment instruments and any related public consultation;  
4 (i) to do anything incidental to or conducive to the performance  
5 of the above functions.

### 6 **196 Nature Repair Market Committee may obtain advice**

7 The Nature Repair Market Committee may obtain advice that is  
8 relevant to the performance of its functions.

# EXPOSURE DRAFT

Part 19 Nature Repair Market Committee

Division 3 Membership of the Nature Repair Market Committee

Section 197

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1       **Division 3—Membership of the Nature Repair Market**  
2                               **Committee**

3       **197 Membership of the Nature Repair Market Committee**

4                               The Nature Repair Market Committee consists of the following  
5                               members:

- 6                               (a) a Chair;  
7                               (b) at least 4, and not more than 5, other members.

8       **198 Appointment of Nature Repair Market Committee members**

- 9                               (1) Each Nature Repair Market Committee member is to be appointed  
10                              by the Minister by written instrument.

11                              Note:        A Nature Repair Market Committee member may be reappointed: see  
12                              section 33AA of the *Acts Interpretation Act 1901*.

- 13                              (2) A person is not eligible for appointment as a Nature Repair Market  
14                              Committee member unless the Minister is satisfied that the person  
15                              has:

- 16                              (a) substantial experience or knowledge; and  
17                              (b) significant standing;  
18                              in at least one of the following fields of expertise:  
19                              (c) agriculture;  
20                              (d) biological or ecological science;  
21                              (e) environmental markets;  
22                              (f) Indigenous knowledge relevant to the functions of the  
23                              Committee;  
24                              (g) land management;  
25                              (h) economics.

- 26                              (3) The Minister must be satisfied that at least one Nature Repair  
27                              Market Committee member has

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

# EXPOSURE DRAFT

1 in biological or ecological science.

2 (4) The Minister must ensure that the Chair of the Nature Repair  
3 Market Committee is not:

- 4 (a) an employee of the Commonwealth; or  
5 (b) an employee of an authority of the Commonwealth; or  
6 (c) a person who holds a full-time office under a law of the  
7 Commonwealth.

8 (54) A Nature Repair Market Committee member holds office on a  
9 part-time basis.

## 10 **199 Period for appointment for Nature Repair Market Committee** 11 **members**

12 (1) The Chair of the Nature Repair Market Committee holds office for  
13 the period specified in the instrument of appointment. The period  
14 must not exceed 5 years.

15 Note: The Chair of the Nature Repair Market Committee may be  
16 reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

17 (2) A Nature Repair Market Committee member (other than the Chair)  
18 holds office for the period specified in the instrument of  
19 appointment. The period must not exceed 3 years.

20 Note: A Nature Repair Market Committee member may be reappointed: see  
21 section 33AA of the *Acts Interpretation Act 1901*.

## 22 **200 Acting Nature Repair Market Committee members**

23 *Acting Chair of the Nature Repair Market Committee*

24 (1) The Minister may, by written instrument, appoint a Nature Repair  
25 Market Committee member to act as the Chair of the Nature Repair  
26 Market Committee:

- 27 (a) during a vacancy in the office of the Chair of the Nature  
28 Repair Market Committee (whether or not an appointment  
29 has previously been made to the office); or

# EXPOSURE DRAFT

## Part 19 Nature Repair Market Committee

### Division 3 Membership of the Nature Repair Market Committee

#### Section 200

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- 1 (b) during any period, or during all periods, when the Chair of  
2 the Nature Repair Market Committee:  
3 (i) is absent from duty or from Australia; or  
4 (ii) is, for any reason, unable to perform the duties of the  
5 office.

6 Note: For rules that apply to acting appointments, see sections 33AB and  
7 33A of the *Acts Interpretation Act 1901*.

8 *Acting Nature Repair Market Committee member (other than the*  
9 *Chair)*

- 10 (2) The Minister may, by written instrument, appoint a person to act as  
11 a Nature Repair Market Committee member (other than the Chair  
12 of the Nature Repair Market Committee):  
13 (a) during a vacancy in the office of a Nature Repair Market  
14 Committee member (other than the Chair of the Committee),  
15 whether or not an appointment has previously been made to  
16 the office; or  
17 (b) during any period, or during all periods, when a Nature  
18 Repair Market Committee member (other than the Chair of  
19 the Committee):  
20 (i) is absent from duty or from Australia; or  
21 (ii) is, for any reason, unable to perform the duties of the  
22 office.

23 Note: For rules that apply to acting appointments, see sections 33AB and  
24 33A of the *Acts Interpretation Act 1901*.

25 *Eligibility*

- 26 (3) A person is not eligible for appointment to act as:  
27 (a) the Chair of the Nature Repair Market Committee; or  
28 (b) a Nature Repair Market Committee member (other than the  
29 Chair of the Committee);  
30 unless the person is eligible for appointment as a Nature Repair  
31 Market Committee member.

32 Note 1: For eligibility for appointment as a Nature Repair Market Committee  
33 member, see subsection 198(2).

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

## 3 **201 Procedures**

- 4 (1) The rules may prescribe the procedures to be followed at or in  
5 relation to meetings of the Nature Repair Market Committee,  
6 including matters relating to the following:  
7 (a) the convening of meetings of the Committee;  
8 (b) the number of Nature Repair Market Committee members  
9 who are to constitute a quorum;  
10 (c) the selection of a Nature Repair Market Committee member  
11 to preside at meetings of the Committee in the absence of the  
12 Chair of the Committee;  
13 (d) the manner in which questions arising at a meeting of the  
14 Committee are to be decided.
- 15 (2) A resolution is taken to have been passed at a meeting of the  
16 Nature Repair Market Committee if:  
17 (a) without meeting, a **two-thirds** majority of Nature Repair  
18 Market Committee members indicate agreement with the  
19 resolution in accordance with the method determined by the  
20 Committee under subsection (3); and  
21 (b) all Nature Repair Market Committee members were  
22 informed of the proposed resolution, or reasonable efforts  
23 had been made to inform all Nature Repair Market  
24 Committee members of the proposed resolution.
- 25 (3) Subsection (2) applies only if the Nature Repair Market  
26 Committee:  
27 (a) determines that it applies; and  
28 (b) determines the method by which Nature Repair Market  
29 Committee members are to indicate agreement with  
30 resolutions.

# EXPOSURE DRAFT

**Part 19** Nature Repair Market Committee

**Division 3** Membership of the Nature Repair Market Committee

Section 202

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1     **202 Disclosure of interests to the Minister**

2                     A Nature Repair Market Committee member must give written  
3                     notice to the Minister of all interests, pecuniary or otherwise, that  
4                     the member has or acquires and that conflict or could conflict with  
5                     the proper performance of the member's duties.

6     **203 Disclosure of interests to the Nature Repair Market Committee**

- 7                     (1) A Nature Repair Market Committee member who has an interest,  
8                     pecuniary or otherwise, in a matter being considered or about to be  
9                     considered by the Committee must disclose the nature of the  
10                    interest to a meeting of the Committee.
- 11                    (2) The disclosure must be made as soon as possible after the relevant  
12                    facts have come to the Nature Repair Market Committee member's  
13                    knowledge.
- 14                    (3) The disclosure must be recorded in the minutes of the meeting.
- 15                    (4) Unless the Nature Repair Market Committee otherwise determines,  
16                    the Nature Repair Market Committee member:  
17                        (a) must not be present during any deliberation by the  
18                        Committee on the matter; and  
19                        (b) must not take part in any decision of the Committee with  
20                        respect to the matter.
- 21                    (5) For the purposes of making a determination under subsection (4),  
22                    the Nature Repair Market Committee member:  
23                        (a) must not be present during any deliberation of the Committee  
24                        for the purpose of making the determination; and  
25                        (b) must not take part in making the determination.
- 26                    (6) A determination under subsection (4) must be recorded in the  
27                    minutes of the meeting of the Nature Repair Market Committee.

28     **204 Other paid work**

29                     A Nature Repair Market Committee member must not engage in  
30                     any paid work that conflicts or could conflict with the proper

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# EXPOSURE DRAFT

1 performance of the Nature Repair Market Committee member's  
2 duties.

## 3 **205 Remuneration**

4 (1) A Nature Repair Market Committee member is to be paid the  
5 remuneration that is determined by the Remuneration Tribunal. If  
6 no determination of that remuneration by the Tribunal is in  
7 operation, the Nature Repair Market Committee member is to be  
8 paid the remuneration that is prescribed by the rules.

9 (2) A Nature Repair Market Committee member is to be paid the  
10 allowances that are prescribed by the rules.

11 (3) This section has effect subject to the *Remuneration Tribunal Act*  
12 *1973*.

## 13 **206 Leave of absence**

14 (1) The Minister may grant leave of absence to the Chair of the Nature  
15 Repair Market Committee on the terms and conditions that the  
16 Minister determines.

17 (2) The Chair of the Nature Repair Market Committee may grant leave  
18 of absence to any Nature Repair Market Committee member on the  
19 terms and conditions that the Chair determines.

## 20 **207 Resignation**

21 (1) A Nature Repair Market Committee member may resign the  
22 member's appointment by giving the Minister a written  
23 resignation.

24 (2) The resignation takes effect on the day it is received by the  
25 Minister or, if a later day is specified in the resignation, on that  
26 later day.

# EXPOSURE DRAFT

**Part 19** Nature Repair Market Committee

**Division 3** Membership of the Nature Repair Market Committee

Section 208

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## 208 Termination of appointment

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- (1) The Minister may terminate the appointment of a Nature Repair Market Committee member:
  - (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Nature Repair Market Committee member if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with the member's creditors; or
    - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
  - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee; or
  - (c) the member engages in paid work that conflicts or could conflict with the proper performance of the member's duties (see section 204); or
  - (d) the member fails, without reasonable excuse, to comply with section 202 or 203 (which deal with the duty to disclose interests).
- (3) The Minister may terminate the appointment of the Chair of the Nature Repair Market Committee if the Chair is any of the following:
  - (a) an employee of the Commonwealth;
  - (b) an employee of an authority of the Commonwealth;
  - (c) a person who holds a full-time office under a law of the Commonwealth.

# EXPOSURE DRAFT

1 **209 Other terms and conditions**

2 A Nature Repair Market Committee member holds office on the  
3 terms and conditions (if any) in relation to matters not covered by  
4 this Act or the rules that are determined by the Minister.

5 **210 Assistance to Nature Repair Market Committee**

6 (1) Any or all of the following bodies:

- 7 (a) the Regulator;  
8 (b) the Department;  
9 (c) any other Department, agency or authority of the  
10 Commonwealth;

11 may assist the Nature Repair Market Committee in the  
12 performance of its functions.

13 (2) The assistance provided by the Regulator may include the  
14 following:

- 15 (a) the provision of information;  
16 (b) the provision of advice.

17 (3) The assistance provided by a body mentioned in paragraph (1)(b)  
18 or (c) may include the following:

- 19 (a) the provision of information;  
20 (b) the provision of advice;  
21 (c) the making available of resources and facilities (including  
22 secretariat services and clerical assistance).

23 (4) If an officer or employee of a body mentioned in subsection (1)  
24 assists the Nature Repair Market Committee, the officer or  
25 employee is taken, for the purposes of this Act, to be a person  
26 assisting the Nature Repair Market Committee under this section.

# EXPOSURE DRAFT

**Part 20** Review of decisions

**Division 1** Introduction

Section 211

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1 **Part 20—Review of decisions**

2 **Division 1—Introduction**

3 **211 Simplified outline of this Part**

4 Certain decisions of delegates of the Regulator may be reviewed by  
5 the Administrative Appeals Tribunal following a process of  
6 internal reconsideration by the Regulator.

7 Certain decisions of the Regulator may be reviewed by the  
8 Administrative Appeals Tribunal.

1 **Division 2—Decisions of the Regulator**

2 **212 Reviewable decisions**

3 For the purposes of this Act, each of the following decisions is a  
4 *reviewable decision*:

- 5 (a) a decision under section 15 to approve, or refuse to approve,  
6 the registration of a biodiversity project;
- 7 (b) a decision under rules made for the purposes of section 19,  
8 20 or 21 to vary, or refuse to vary, the registration of a  
9 registered biodiversity project;
- 10 (c) a decision under rules made for the purposes of section 23 or  
11 24 to cancel, or refuse to cancel, the registration of a  
12 registered biodiversity project;
- 13 (d) a decision under rules made for the purposes of section 26,  
14 27, 28, 29, 30, 31 or 42 to cancel the registration of a  
15 registered biodiversity project;
- 16 (e) a decision under section 70 to issue, or refuse to issue, a  
17 biodiversity certificate;
- 18 (f) a decision under subsection 121(9) to reimburse, or refuse to  
19 reimburse, a person for reasonable costs incurred by the  
20 person in complying with a notice under subsection 121(2);
- 21 (g) a decision under section 144, 145, 146 or 147 to give a  
22 relinquishment notice;
- 23 (h) a decision under subsection 150(2) to refuse to extend the  
24 period mentioned in subsection 150(1);
- 25 (i) a decision under section 141 to approve, or refuse to approve,  
26 the deposit of a biodiversity certificate with the Regulator;
- 27 (j) a decision under paragraph 162(1)(h) to comply with, or  
28 refuse, a request under that paragraph;
- 29 (k) a decision under subsection 162(4) to remove, or not to  
30 remove, information from the Register;
- 31 (l) a decision under section 163 to comply with, or refuse, a  
32 request not to set out a project area in the Register;

# EXPOSURE DRAFT

## Part 20 Review of decisions

### Division 2 Decisions of the Regulator

#### Section 213

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- 1 (m) a decision under a provision of the rules, or under a provision  
2 of another legislative instrument made under this Act, if the  
3 provision is prescribed by the rules for the purposes of this  
4 paragraph.

#### 213 Notice of decision and reconsideration rights to be given— decisions made by delegates of the Regulator

##### 7 *Scope*

- 8 (1) This section applies to a reviewable decision if the decision is  
9 made by a delegate of the Regulator.

##### 10 *Notice of decision and reconsideration rights*

- 11 (2) The delegate must take such steps as are reasonable in the  
12 circumstances to give notice, in writing or otherwise, to each  
13 person whose interests are affected by the decision, of:  
14 (a) the making of the decision; and  
15 (b) the person's right to have the decision reconsidered under  
16 this Part.

17 Note: For notification of reviewable decisions made by the Regulator (rather  
18 than a delegate), see section 27A of the *Administrative Appeals*  
19 *Tribunal Act 1975*.

- 20 (3) A failure to comply with this section does not affect the validity of  
21 the decision.

#### 22 214 Applications for reconsideration of decisions made by delegates 23 of the Regulator

##### 24 *Scope*

- 25 (1) This section applies to a reviewable decision if the decision is  
26 made by a delegate of the Regulator.

27 Note: For review of decisions not made by a delegate of the Regulator, see  
28 subsection 217(2).

# EXPOSURE DRAFT

1

## *Application*

2

(2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Regulator for the Regulator to reconsider the decision.

3

4

5

(3) The application must:

6

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

7

(b) set out the reasons for the application; and

8

(c) be accompanied by the fee (if any) specified in the rules.

9

(4) The application must be made within:

10

(a) 28 days after the applicant is informed of the decision; or

11

(b) if, either before or after the end of that period of 28 days, the Regulator extends the period within which the application may be made—the extended period.

12

13

14

(5) An approved form of an application may provide for verification by statutory declaration of statements in applications.

15

16

(6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

17

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## **215 Reconsideration by the Regulator**

19

(1) Upon receiving such an application, the Regulator must:

20

(a) reconsider the decision; and

21

(b) affirm, vary or revoke the decision.

22

(2) The Regulator's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.

23

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(3) The Regulator must give to the applicant a written notice stating the Regulator's decision on the reconsideration.

26

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(4) Within 28 days after making the decision on the reconsideration, the Regulator must give the applicant a written statement of the Regulator's reasons for the decision.

28

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# EXPOSURE DRAFT

**Part 20** Review of decisions

**Division 2** Decisions of the Regulator

Section 216

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1     **216 Deadline for reconsideration**

- 2             (1) The Regulator must make its decision on reconsideration of a  
3                 decision within 90 days after receiving an application for  
4                 reconsideration.
- 5             (2) The Regulator is taken, for the purposes of this Part, to have made  
6                 a decision affirming the original decision if the Regulator has not  
7                 informed the applicant of its decision on the reconsideration before  
8                 the end of the period of 90 days.

9     **217 Review by the Administrative Appeals Tribunal**

- 10            (1) Applications may be made to the Administrative Appeals Tribunal  
11               to review a reviewable decision if the Regulator has affirmed or  
12               varied the decision under section 215.
- 13            (2) Applications may be made to the Administrative Appeals Tribunal  
14               to review a reviewable decision if the decision was not made by a  
15               delegate of the Regulator.

16            Note:        Section 27A of the *Administrative Appeals Tribunal Act 1975* requires  
17               notification of a decision that is reviewable.

1 **Part 21—Miscellaneous**  
2

3 **218 Simplified outline of this Part**

4 

This Part deals with miscellaneous matters.
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5 **219 Miscellaneous functions of the Regulator**

6 The Regulator has the following functions:

- 7 (a) to monitor compliance with this Act and the associated  
8 provisions;
- 9 (b) to promote compliance with this Act and the associated  
10 provisions;
- 11 (c) to conduct or coordinate education programs about this Act  
12 and the associated provisions;
- 13 (d) to advise the Minister on matters relating to this Act and the  
14 associated provisions;
- 15 (e) to advise the Nature Repair Market Committee on matters  
16 relating to the making, variation or revocation of  
17 methodology determinations or biodiversity assessment  
18 instruments;
- 19 (f) to advise and assist persons in relation to their obligations  
20 under this Act and the associated provisions;
- 21 (g) to advise and assist prospective applicants in connection with  
22 ensuring that applications are in accordance with this Act and  
23 the associated provisions;
- 24 (h) to advise and assist the representatives of persons in relation  
25 to compliance by persons with this Act and the associated  
26 provisions;
- 27 (i) to liaise with regulatory and other relevant bodies, whether in  
28 Australia or elsewhere, about cooperative arrangements for  
29 matters relating to this Act and the associated provisions;
- 30 (j) to advise and assist in relation to the development of the  
31 market for:

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 220

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- 1 (i) biodiversity certificates; or  
2 (ii) other certificates, units or credits (however described,  
3 and whether issued under a law of the Commonwealth,  
4 a State or a Territory, or in some other way) that relate  
5 to biodiversity projects;  
6 (k) to encourage participation, including of Aboriginal persons  
7 or Torres Strait Islanders, in the market for:  
8 (i) biodiversity certificates; or  
9 (ii) other certificates, units or credits (however described,  
10 and whether issued under a law of the Commonwealth,  
11 a State or a Territory, or in some other way) that relate  
12 to biodiversity projects;  
13 (l) to collect, analyse, interpret and disseminate statistical  
14 information relating to the operation of this Act and the  
15 associated provisions.

### 220 Treatment of trusts

- 16  
17 (1) This Act applies to a trust as if it were a person, but with the  
18 changes set out in this section.

#### *Trusts with a single trustee*

- 19  
20 (2) If the trust has a single trustee:  
21 (a) an obligation that would otherwise be imposed on the trust by  
22 or under this Act is imposed on the trustee instead; and  
23 (b) an offence against this Act that would otherwise have been  
24 committed by the trust is taken to have been committed by  
25 the trustee.

#### *Trusts with multiple trustees*

- 26  
27 (3) If the trust has 2 or more trustees:  
28 (a) an obligation that would otherwise be imposed on the trust by  
29 or under this Act is imposed on each trustee instead, but may  
30 be discharged by any of the trustees; and  
31 (b) an offence against this Act that would otherwise have been  
32 committed by the trust is taken to have been committed by

- 1 each trustee of the trust, at the time the offence was  
2 committed, who:
- 3 (i) did the relevant act or made the relevant omission; or
  - 4 (ii) aided, abetted, counselled or procured the relevant act or  
5 omission; or
  - 6 (iii) was in any way knowingly concerned in, or party to, the  
7 relevant act or omission (whether directly or indirectly  
8 and whether by any act or omission of the trustee).

9 *Contraventions of civil penalty provisions*

- 10 (4) This section applies to a contravention of a civil penalty provision  
11 in a corresponding way to the way in which it applies to an  
12 offence.

13 *Offence against this Act*

- 14 (5) For the purposes of this section, ***offence against this Act*** includes  
15 an offence against Chapter 7 of the *Criminal Code* that relates to  
16 this Act.

17 **221 Rules may provide for voluntary accreditation of advisers etc.**

- 18 (1) The rules may make provision for and in relation to the voluntary  
19 accreditation of persons who give advice, or otherwise provide  
20 assistance, in relation to any of the following:
- 21 (a) the operation of this Act;
  - 22 (b) the carrying out of biodiversity projects;
  - 23 (c) the trading of biodiversity certificates.
- 24 (2) Without limiting subsection (1), rules made for the purposes of that  
25 subsection may do any of the following:
- 26 (a) make it a condition of accreditation that a person pass a test  
27 relating to the person's knowledge of the scheme for  
28 biodiversity stewardship established by this Act;
  - 29 (b) make it a condition of accreditation that a person be a fit and  
30 proper person to hold the accreditation;
  - 31 (c) set fees for applications under the rules.

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 222

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- 1 (3) A fee set under paragraph (2)(c) must not be such as to amount to  
2 taxation.
- 3 (4) Rules made for the purposes of subsection (1) must not require a  
4 person to be accredited in order to engage in an activity referred to  
5 in a paragraph of subsection (1).

### 222 Information previously given to the Regulator

- 7 If:
- 8 (a) on a particular occasion, a person gave information to the  
9 Regulator under:
- 10 (i) this Act or the rules; or  
11 (ii) the *Carbon Credits (Carbon Farming Initiative) Act*  
12 *2011*, or a legislative instrument made under that Act;  
13 and
- 14 (b) the person is subsequently required or permitted, under this  
15 Act or the rules, to give the same information to the  
16 Regulator;
- 17 the person is taken to have given the information to the Regulator  
18 on that later occasion.

### 223 Delegation by the Minister

- 19 (1) The Minister may, in writing, delegate all or any of the Minister's  
20 functions or powers under this Act or the rules to:  
21 (a) the Secretary; or  
22 (b) an SES employee, or acting SES employee, in the  
23 Department.  
24
- 25 Note 1: The expressions *SES employee* and *acting SES employee* are defined  
26 in section 2B of the *Acts Interpretation Act 1901*.
- 27 Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain  
28 provisions relating to delegations.
- 29 (2) In performing a delegated function or exercising a delegated  
30 power, the delegate must comply with any written directions of the  
31 Minister.

- 1 (3) Subsection (1) does not apply to a power to make, vary or revoke a  
2 legislative instrument.

## 3 **224 Delegation by the Secretary**

- 4 (1) The Secretary may, in writing, delegate all or any of the  
5 Secretary's functions or powers under this Act or the rules to:  
6 (a) a person who is an SES employee, or acting SES employee,  
7 in the Department; or  
8 (b) a person who is:  
9 (i) an official of the Regulator; and  
10 (ii) an SES employee, or acting SES employee.

11 Note 1: The expressions *SES employee* and *acting SES employee* are defined  
12 in section 2B of the *Acts Interpretation Act 1901*.

13 Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain  
14 provisions relating to delegations.

- 15 (2) In performing a delegated function or exercising a delegated  
16 power, the delegate must comply with any written directions of the  
17 Secretary.

## 18 **225 Concurrent operation of State and Territory laws**

19 This Act is not intended to exclude or limit the operation of a law  
20 of a State or Territory that is capable of operating concurrently  
21 with this Act.

## 22 **226 Law relating to legal professional privilege not affected**

23 This Act does not affect the law relating to legal professional  
24 privilege.

## 25 **227 Arrangements with States and Territories**

26 The Minister may enter into an arrangement with a relevant  
27 Minister of a State or Territory in relation to the administration of  
28 this Act, including:

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 228

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- 1 (a) arrangements for the performance of the functions of a  
2 magistrate under this Act by a magistrate of that State or  
3 Territory; and  
4 (b) arrangements for the exercise of the powers conferred by  
5 section 94 on relevant land registration officials of that State  
6 or Territory; and  
7 (c) arrangements for the exercise of the powers conferred by  
8 section 95 on relevant land registration officials of that State  
9 or Territory.

### 10 **228 Liability for damages**

11 None of the following:

- 12 (a) the Minister;  
13 (b) a delegate of the Minister;  
14 (c) the Secretary;  
15 (d) a delegate of the Secretary;  
16 (e) the Regulator;  
17 (f) a delegate of the Regulator;  
18 (g) an inspector;  
19 (h) a person assisting an inspector;  
20 (i) an audit team leader;  
21 (j) a person assisting an audit team leader;  
22 (k) a Nature Repair Market Committee member;  
23 (l) a person assisting the Nature Repair Market Committee;  
24 is liable to an action or other proceeding for damages for, or in  
25 relation to, an act or matter in good faith done or omitted to be  
26 done:  
27 (m) in the performance or purported performance of any function;  
28 or  
29 (n) in the exercise or purported exercise of any power;  
30 conferred by this Act or the associated provisions.

1     **229 Executive power of the Commonwealth**

2                     This Act does not, by implication, limit the executive power of the  
3                     Commonwealth.

4     **230 Notional payments by the Commonwealth**

5                     (1) The purpose of this section is to ensure that amounts payable under  
6                     this Act or the rules are notionally payable by the Commonwealth  
7                     (or parts of the Commonwealth).

8                     (2) The Minister responsible for administering the *Public Governance,*  
9                     *Performance and Accountability Act 2013* may give written  
10                    directions for the purposes of this section, including directions  
11                    relating to the transfer of amounts within, or between, accounts  
12                    operated by the Commonwealth.

13    **231 Compensation for acquisition of property**

14                    (1) If the operation of this Act, the rules or a methodology  
15                    determination would result in an acquisition of property (within the  
16                    meaning of paragraph 51(xxxi) of the Constitution) from a person  
17                    otherwise than on just terms (within the meaning of that  
18                    paragraph), the Commonwealth is liable to pay a reasonable  
19                    amount of compensation to the person.

20                    (2) If the Commonwealth and the person do not agree on the amount  
21                    of the compensation, the person may institute proceedings in:  
22                    (a) the Federal Court; or  
23                    (b) the Supreme Court of a State or Territory;  
24                    for the recovery from the Commonwealth of such reasonable  
25                    amount of compensation as the court determines.

26    **232 Native title rights not affected**

27                    This Act does not affect the operation of the *Native Title Act 1993*.

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 233

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1     **233 Racial Discrimination Act not affected**

2                     This Act does not affect the operation of the *Racial Discrimination*  
3                     *Act 1975*.

4     **234 Administrative decisions under the rules**

5                     The rules may make provision in relation to a matter by conferring  
6                     a power to make a decision of an administrative character on the  
7                     Regulator.

8     **235 Revocation or variation of instruments**

9                     A provision of this Act that expressly authorises the revocation or  
10                    variation of an instrument does not, by implication, limit the  
11                    application of subsection 33(3) of the *Acts Interpretation Act 1901*  
12                    in relation to other instruments under this Act.

13    **236 Review of operation of this Act etc.**

- 14                    (1) The Minister must cause reviews of the operation of the following  
15                    to be undertaken:  
16                    (a) this Act;  
17                    (b) the rules.
- 18                    (2) A review under subsection (1) must include a review of:  
19                    (a) the extent to which this Act has achieved the objects of this  
20                    Act; and  
21                    (b) any other matters that the Minister directs, in writing, the  
22                    review to consider.

23                    *Public consultation*

- 24                    (3) A review under subsection (1) must make provision for public  
25                    consultation.

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*Report*

- (4) The persons undertaking a review under subsection (1) must give the Minister a written report of the review.
- (5) A report of the review:
  - (a) must set out any directions given by the Minister under paragraph (2)(b); and
  - (b) may set out recommendations to the Commonwealth Government.
- (6) The Minister must cause a copy of a report of the review to be:
  - (a) tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister; and
  - (b) published on the Department's website as soon as practicable after the report is given to the Minister.
- (7) If a report of the review sets out one or more recommendations to the Commonwealth Government:
  - (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  - (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

*First review*

- (8) The first review under subsection (1) must be completed within 5 years after the day determined by the Minister under subsection 11(2).

Note: The day determined by the Minister under subsection 11(2) is the first day on which applications may be made for the Regulator to approve the registration of a biodiversity project.

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 237

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1                    *Subsequent reviews*

2                    (9) Each subsequent review under subsection (1) must be completed  
3                    within 5 years after the completion of the previous review.

4                    *When review is completed*

5                    (10) For the purposes of subsections (8) and (9) a review is completed  
6                    when the report of the review is given to the Minister under  
7                    subsection (4).

8                    *Direction not a legislative instrument*

9                    (11) A direction given under paragraph (2)(b) is not a legislative  
10                    instrument.

### 11                    **237 Rules**

12                    (1) The Minister may, by legislative instrument, make rules  
13                    prescribing matters:

14                                       (a) required or permitted by this Act to be prescribed by the  
15                                       rules; or

16                                       (b) necessary or convenient to be prescribed for carrying out or  
17                                       giving effect to this Act.

18                    (2) To avoid doubt, the rules may not do the following:

19                                       (a) create an offence or civil penalty;

20                                       (b) provide powers of:

21                                                          (i) arrest or detention; or

22                                                          (ii) entry, search or seizure;

23                                       (c) impose a tax;

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

26                                       (e) directly amend the text of this Act.

27                    (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may  
28                    make provision in relation to a matter by applying, adopting or  
29                    incorporating, with or without modification, any matter contained

# EXPOSURE DRAFT

Section 237

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1 in any other instrument or other writing as in force or existing from  
2 time to time.