

South Australia

Hydrogen and Renewable Energy Bill 2023

A BILL FOR

An Act to facilitate and regulate the generation of hydrogen and renewable energy in certain areas of the State, to make related amendments to the *Pastoral Land Management and Conservation Act 1989* and the *Planning, Development and Infrastructure Act 2016*, and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Hydrogen and Renewable Energy Act 2023*.

5 **2—Commencement**

This Act comes into operation on a day to be fixed by proclamation.

3—Objects

The objects of this Act are as follows:

- | | |
|----|--|
| 10 | (a) to facilitate and regulate exploration for, and exploitation of, renewable energy resources; |
| | (b) to establish an effective, efficient and flexible regulatory framework for the constructing, operating, maintaining and decommissioning of renewable energy infrastructure and facilities for generating hydrogen for commercial purposes; |
| 15 | (c) to encourage and maintain an appropriate level of competition for access to designated land to enable exploration for, and exploiting of, renewable energy resources; |
| | (d) to enable engagement with Aboriginal people to ensure the regulatory framework in this Act maximises beneficial economic, environmental and social impacts and minimises adverse cultural and heritage impacts on Aboriginal people; |
| 20 | (e) to facilitate economic prosperity and benefits for the State through the development of an industry for generating hydrogen and renewable energy; |
| | (f) to facilitate net environmental benefits from authorised operations; |
| 25 | (g) to facilitate public safety in managing risks inherent in generating hydrogen; |
| | (h) to enable appropriate consultation before the declaration of release areas and the granting of licences under this Act; |
| | (i) to support the achievement of the following for the State: |

- (i) competitively priced and reliable renewable energy supply;
- (ii) economic development of a hydrogen energy industry;
- (iii) economic development of a net zero carbon emission industry.

4—Interpretation

(1) In this Act—

access agreement—see section 32;

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

authorised officer means a person appointed by the Minister as an authorised officer for the purposes of this Act;

authorised operations means activities authorised to be undertaken under a licence;

commercial purpose, in relation to generating hydrogen, means generating hydrogen for any of the following purposes:

- (a) international export;
- (b) manufacturing chemicals;
- (c) sale or supply of electricity to customers;
- (d) wholesale distribution of hydrogen to customers;
- (e) any other purpose prescribed by the regulations,

but does not include a purpose excluded from the ambit of this definition by the regulations;

Crown land has the same meaning as in the *Crown Land Management Act 2009*;

designated land means—

- (a) pastoral land; or
- (b) Crown land of a kind prescribed by the regulations for the purposes of this definition; or
- (c) South Australian waters;

environment—see subsection (2);

environmental impact report—see section 49;

ERD Court means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

exploit, in relation to a renewable energy resource, includes—

- (a) generating or obtaining energy from a renewable energy resource; and
- (b) storing, transmitting or otherwise conveying energy obtained from the renewable energy resource;

explore, in relation to a renewable energy resource, includes exploring for the existence of, or assessing or scoping the extent, capacity or attributes of, a renewable energy resource;

Fund means the Hydrogen and Renewable Energy Fund established and maintained under section 65;

generating hydrogen means undertaking operations for the creation of hydrogen (and any compound of hydrogen necessary for its processing, storage or transport) by processes such as the electrolysis of water or the reformation of natural gas, and includes—

- (a) operations for the storage of hydrogen; and
- (b) other operations of a kind prescribed by the regulations for the purposes of this definition,

but does not include—

- (c) operations for the storage of hydrogen in a natural underground reservoir; or
- (d) the operation of a transmission pipeline required to be authorised under the *Petroleum and Geothermal Energy Act 2000*; or
- (e) operations of a kind excluded from the ambit of this definition by the regulations;

hydrogen generation licence—see section 11;

infrastructure includes a facility, structure or installation that is being constructed, installed, operated or decommissioned;

infrastructure activity means constructing, installing, operating, maintaining or decommissioning—

- (a) renewable energy infrastructure; or
- (b) a facility for generating hydrogen;

land includes South Australian waters;

licence means—

- (a) a hydrogen generation licence; or
- (b) a renewable energy feasibility licence; or
- (c) a renewable energy infrastructure licence; or
- (d) a renewable energy research licence; or
- (e) a special enterprise licence;

licence area means the area of land in respect of which a licence is granted;

licensee means a person who holds a licence;

marine park has the same meaning as in the *Marine Parks Act 2007*;

Murray-Darling Basin has the same meaning as in the *Murray-Darling Basin Act 1993*;

native title, native title declaration, native title holder, native title land and **native title register** have the same respective meanings as in the *Native Title (South Australia) Act 1994*;

operational management plan—see section 53;

operations includes activities;

owner of land means—

- (a) a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or
- (b) a person who holds native title in respect of the land; or
- 5 (c) a person who has, by statute, the care, control or management of the land; or
- (d) a person who is lawfully in occupation of the land; or
- (e) a person who holds a pastoral lease in respect of the land; or
- (f) a person who holds a resources tenement in respect of the land; or
- 10 (g) a person of a class brought within the ambit of this definition by the regulations;

pastoral land means land comprised in a pastoral lease;

pastoral lease means a lease granted under the *Pastoral Land Management and Conservation Act 1989* over Crown land for pastoral purposes within the meaning of that Act;

15 **register** means the hydrogen and renewable energy register required to be kept under section 92;

regulated activities—see section 9;

release area—see section 7;

relevant Minister means—

- 20 (a) in relation to the Adelaide Dolphin Sanctuary—the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed; or
- (b) in relation to a marine park—the Minister to whom the administration of the *Marine Parks Act 2007* is committed; or
- 25 (c) in relation to a River Murray Protection Area or the Murray-Darling Basin—the Minister to whom the administration of the *River Murray Act 2003* is committed;

renewable energy feasibility licence—see section 13;

renewable energy infrastructure means infrastructure that—

- 30 (a) is necessary in assessing the feasibility of generating renewable energy from a renewable energy resource; or
- (b) has the primary purpose of exploiting a renewable energy resource; or
- (c) is of a kind prescribed by the regulations for the purposes of this definition;

renewable energy infrastructure licence—see section 15;

renewable energy licence means—

- 35 (a) a renewable energy feasibility licence; or
- (b) a renewable energy infrastructure licence; or
- (c) a renewable energy research licence;

renewable energy research licence—see section 17;

renewable energy resource means any of the following:

- (a) light or heat from the sun;
- (b) wind or air flow;
- (c) wind generated waves;
- 5 (d) tides;
- (e) ocean currents;
- (f) any other resource prescribed by the regulations;

resources tenement means—

- (a) a mineral tenement within the meaning of the *Mining Act 1971*; or
- 10 (b) a tenement under the *Opal Mining Act 1995*; or
- (c) a licence under the *Offshore Minerals Act 2000*; or
- (d) a licence under the *Petroleum and Geothermal Energy Act 2000*; or
- (e) a permit, lease or licence under the *Petroleum (Submerged Lands) Act 1982*;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

scoping report—see section 58;

special enterprise licence—see section 22;

specially protected area means—

- (a) the Adelaide Dolphin Sanctuary; or
- 20 (b) a marine park; or
- (c) a River Murray Protection Area;

South Australian waters means—

- (a) waters that are within the limits of the State and vested in the Crown; or
- 25 (b) coastal waters of the State under the *Coastal Waters (State Powers) Act 1980* of the Commonwealth,

and includes adjacent land within the meaning of the *Harbors and Navigation Act 1993*;

statement of environmental objectives—see section 50;

waters includes land underlying waters;

work program means a document prepared by an applicant for a licence, or for the renewal of a licence, that provides—

- (a) a statement of the nature, extent and proposed scheduling of operations proposed to be undertaken under the licence; and
- 35 (b) in the case of a renewable energy feasibility licence—an analysis against the criteria prescribed by the regulations for the purposes of this paragraph; and
- (c) in the case of an application for a hydrogen generation licence or a renewable energy infrastructure licence—

- 5
- (i) an economic analysis of the operations proposed to be undertaken under the licence prepared in accordance with the requirements prescribed by the regulations for the purposes of this subparagraph, including financial projections and details of the financial resources available to the applicant for the purposes of the operations; and
 - (ii) an assessment of the benefits to the State derived, or expected to be derived, from operations proposed to be undertaken under the licence prepared in accordance with the requirements prescribed by the regulations.

10 (2) A reference in this Act to the *environment* includes—

- 15
- (a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, flora, fauna and other features or elements of the natural environment; and
 - (b) buildings, structures and other forms of infrastructure, and cultural artefacts; and
 - (c) existing or permissible land use; and
 - (d) public health, safety or amenity; and
 - (e) the heritage, aesthetic, Aboriginal, social and cultural values of an area; and
 - (f) the social or economic effects associated with regulated activities.

20 5—Application of Act

This Act is intended to have extraterritorial application insofar as the legislative powers of the Parliament permit.

25 6—Interaction with other Acts

- 25
- (1) Subject to subsection (2), except where the contrary intention is expressed in this or any other Act, the provisions of this Act are in addition to, and do not limit, the provisions of any other Act.
 - (2) The Minister must, if taking any action under this Act—
 - (a) that is within the Adelaide Dolphin Sanctuary, or likely to have a direct impact on the Adelaide Dolphin Sanctuary—

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 - (i) seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
 - (ii) take into account the provisions of the Adelaide Dolphin Sanctuary Management Plan under the *Adelaide Dolphin Sanctuary Act 2005* (insofar as may be relevant); and
 - (b) that is within a marine park, or likely to have a direct impact on a marine park—

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 - (i) seek to further the objects of the *Marine Parks Act 2007*; and
 - (ii) take into account the provisions of the management plan for the marine park under the *Marine Parks Act 2007* (insofar as may be relevant); and
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- (c) that is within a River Murray Protection Area, or likely to have a direct impact on a River Murray Protection Area—take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

Part 2—Release area

7—Minister may declare release area

- (1) The Minister may, by notice in the Gazette, declare an area of land comprising designated land specified in the notice that the Minister considers to be suitable for the operation of renewable energy infrastructure to be a **release area**.
- (2) A declaration under subsection (1) may specify the renewable energy resource in respect of which the area is declared.
- (3) A person may, by written notice to the Minister given in a manner and form determined by the Minister, nominate an area of land that the person considers suitable for declaration as a release area.
- (4) The Minister must, before declaring a release area—
- (a) if any part of the proposed area comprises pastoral land—consult with the Minister responsible for the administration of the *Pastoral Land Management and Conservation Act 1989*; or
- (b) if any part of the proposed area comprises South Australian waters—consult with the Minister responsible for the administration of the *Harbors and Navigation Act 1993*,
- as to whether or not to make the proposed declaration.
- (5) If the Minister consults with a Minister under subsection (4), and the Ministers cannot agree on whether or not an area should be declared, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).
- (6) The Minister must, before declaring a release area—
- (a) give notice in writing of the proposed declaration in the manner prescribed by the regulations; and
- (b) undertake consultation required by the regulations in a manner prescribed by the regulations.
- (7) If a declaration of a release area under this section is in force, an application for a renewable energy feasibility licence in respect of land within the declared area must not be made except in response to a call for tenders under section 8.
- (8) The prescribed particulars of a declaration under subsection (1) must be entered on the register.

8—Call for tenders for renewable energy feasibility licence

- (1) The Minister may, at any time, by notice in the Gazette, invite applications for renewable energy feasibility licences within a specified release area.

- (2) A notice under subsection (1)—
- (a) must specify the release area to which the call for tenders relates; and
 - (b) must identify the area over which applications for renewable energy feasibility licences are sought; and
 - 5 (c) must specify a period of time within which applications for renewable energy feasibility licenses must be made; and
 - (d) may specify that applications are to be in respect of a specified renewable energy resource; and
 - 10 (e) may specify criteria prescribed by the regulations against which applications will be assessed; and
 - (f) may include any other information the Minister considers relevant; and
 - (g) must be made publicly available on a website determined by the Minister.
- (3) The Minister must, in determining an application under this section—
- (a) comply with the prescribed requirements; and
 - 15 (b) have regard to any prescribed criteria specified under subsection (2)(e).
- (4) On determining a successful applicant, the Minister must—
- (a) specify, by notice in the Gazette, the name of the successful applicant and a statement of the reasons for the Minister's decision; and
 - 20 (b) give notice to any unsuccessful applicant of the reasons for the Minister's decision.
- (5) The regulations may provide for the circumstances in which the Minister may invite further applications for a renewable energy feasibility licence in respect of a release area and provide for the process by which the Minister may invite and otherwise deal with those applications.

25 Part 3—Licensing

Division 1—Requirement for licence

9—Regulated activities

- (1) The following activities, if undertaken on land within the State or in South Australian waters, are *regulated activities*:
- 30 (a) generating hydrogen for a commercial purpose;
 - (b) exploring for a renewable energy resource;
 - (c) exploiting a renewable energy resource;
 - (d) undertaking an infrastructure activity;
 - 35 (e) any other activity prescribed by the regulations for the purposes of this definition.
- (2) Any activities excluded by the regulations from the ambit of the definition of regulated activities in subsection (1) are not regulated activities.

- (3) A reference to a regulated activity includes all operations reasonably necessary for, or incidental to, undertaking that activity.

10—Requirement for licence

A person must not undertake a regulated activity unless the activity is authorised, or exempted from authorisation, under this Act.

Maximum penalty: \$250 000 or imprisonment for 2 years.

Division 2—Licence categories

Subdivision 1—Hydrogen generation licence

11—Hydrogen generation licence

- (1) A hydrogen generation licence, subject to the conditions of the licence, authorises the licensee—
- (a) to construct, install, operate, maintain and decommission a facility for generating hydrogen within the licence area (which must not exceed 5 km² in area); and
 - (b) to generate hydrogen for a commercial purpose.
- (2) The Minister must, before granting a hydrogen generation licence, be satisfied—
- (a) that the applicant for the licence has, or will acquire, a right or interest in respect of land comprising the proposed licence area sufficient to undertake the proposed operations; and
 - (b) if any land in the proposed licence area comprises native title land that is the subject of a native title declaration or is within the area of a claim that is registered in a native title register—that an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth is in place and authorises the grant of the licence in relation to that land.

12—Term and renewal of licence

- (1) A hydrogen generation licence may be granted for a term determined by the Minister and notified to the licensee.
- (2) The holder of a hydrogen generation licence may, before the date of expiry of the licence (or at a time after the expiry of the licence as allowed by the Minister), apply to the Minister for the renewal of the licence for a further term as may be determined by the Minister and specified in the licence.
- (3) An application for the renewal of a hydrogen generation licence—
- (a) must be made to the Minister in a manner and form determined by the Minister; and
 - (b) must be accompanied by any other information that the Minister may require.
- (4) The Minister must not renew a hydrogen generation licence unless the Minister is satisfied that the applicant for the renewal has met the criteria prescribed by the regulations for the purposes of this subsection.

- (5) If an application for the renewal of a hydrogen generation licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- 5 (6) If the Minister decides to grant a renewal, the hydrogen generation licence will be renewed for a term determined by the Minister and specified in the licence.

Subdivision 2—Renewable energy feasibility licence

13—Renewable energy feasibility licence

- (1) A *renewable energy feasibility licence*, subject to the conditions of the licence—
- 10 (a) authorises the licensee to—
- (i) explore a renewable energy resource in the licence area for the purposes of assessing the feasibility of exploiting a renewable energy resource; and
- 15 (ii) construct, install, operate, maintain and decommission renewable energy infrastructure for the purposes of exploring a renewable energy resource; and
- (b) to the extent that the licence area comprises designated land—confers on the licensee an exclusive right to undertake activities of a kind described in subparagraphs (a)(i) and (ii); and
- 20 (c) confers a right to enter and use land for the purposes of authorised operations in respect of designated land within the licence area.
- (2) Before granting a renewable energy feasibility licence, the Minister must—
- (a) if any part of the proposed licence area comprises pastoral land—consult with the Minister to whom the administration of the *Pastoral Land Management and Conservation Act 1989* is committed; and
- 25 (b) if any part of the proposed licence area comprises South Australian waters—seek the concurrence of the Minister to whom the administration of the *Harbors and Navigation Act 1993* is committed pursuant to section 15 of that Act; and
- 30 (c) if any part of the proposed licence area comprises native title land—
- (i) —
- (A) in the case of native title land that is the subject of a native title declaration or is within the area of a claim that is registered in a native title register—be satisfied that an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth is in place and authorises the grant of the licence; or
- 35 (B) in any other case—be satisfied that the grant of the licence will be valid under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title; and
- 40 (ii) be satisfied of the matters specified in any guidelines issued by the Minister for the purposes of this paragraph.

- (3) The prescribed information in relation to a renewable energy feasibility licence must be entered on the register.

14—Term and renewal of licence

- 5 (1) A renewable energy feasibility licence may be granted for a term of up to 3 years as may be determined by the Minister and specified in the licence.
- (2) The holder of a renewable energy feasibility licence may, before the date of expiry of the licence (or at a time after the expiry of the licence as allowed by the Minister), apply to the Minister for the renewal of the licence—
- 10 (a) for a further term of up to 3 years as may be determined by the Minister and specified in the licence; or
- (b) pending a decision by the Minister on an application for the grant of a renewable energy infrastructure licence that has been made by the holder of the licence.
- (3) An application for the renewal of a renewable energy feasibility licence—
- 15 (a) must be made to the Minister in a manner and form determined by the Minister; and
- (b) must be accompanied by any other information that the Minister may require.
- (4) The Minister must not renew a renewable energy feasibility licence unless the Minister is satisfied—
- 20 (a) that the applicant for the renewal has met the criteria prescribed by the regulations for the purposes of this paragraph; and
- (b) that the renewal is authorised by an existing indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title.
- 25 (5) If an application for the renewal of a renewable energy feasibility licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- 30 (6) The Minister may, after consulting with the licensee, on granting a renewal of a renewable energy feasibility licence, vary the licence area.

Subdivision 3—Renewable energy infrastructure licence

15—Renewable energy infrastructure licence

- (1) A *renewable energy infrastructure licence*, subject to the conditions of the licence—
- 35 (a) authorises the licensee to—
- (i) exploit a renewable energy resource specified in the licence; and
- (ii) construct, install, operate, maintain or decommission renewable energy infrastructure; and
- (b) confers a right to enter and use land for the purposes of authorised operations in respect of designated land within the licence area.

- (2) The Minister must not grant a renewable energy infrastructure licence over an area of designated land unless—
- (a) —
 - (i) the applicant for the licence holds, or has held, a renewable energy feasibility licence in respect of that area; and
 - (ii) the licence area to which the application relates is the area over which the renewable energy feasibility licence is or was held; or
 - (b) the renewable energy infrastructure licence is granted only in respect of storing, transmitting or otherwise conveying energy obtained from the renewable energy resource.
- (3) The Minister must, before granting a renewable energy infrastructure licence—
- (a) if any part of the proposed licence area comprises pastoral land—consult with the Minister to whom the administration of the *Pastoral Land Management and Conservation Act 1989* is committed as to whether or not to grant the licence; and
 - (b) if any part of the proposed licence area comprises South Australian waters—seek the concurrence of the Minister administering the *Harbors and Navigation Act 1993* pursuant to section 15 of that Act; and
 - (c) if any part of the proposed licence area comprises native title land—
 - (i) in the case of native title land that is the subject of a native title declaration or is within the area of a claim that is registered in a native title register—be satisfied that an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth is in place and authorises the grant of the licence; or
 - (ii) in any other case—be satisfied that the grant of the licence will be valid under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title.
- (4) If the Minister consults with a Minister under subsection (3)(a), and the Ministers cannot agree on whether or not a licence should be granted, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).
- (5) The prescribed information in relation to a renewable energy infrastructure licence must be entered on the register.

16—Term and renewal of licence

- (1) The term of a renewable energy infrastructure licence is 40 years, or such longer or shorter term determined by the Minister and specified in the licence.
- (2) The holder of a renewable energy infrastructure licence may, before the date of expiry of the licence (or at a time after the expiry of the licence as allowed by the Minister), apply to the Minister for the renewal of the licence for a further term as may be determined by the Minister and specified in the licence.

- (3) An application for the renewal of a renewable energy infrastructure licence—
- (a) must be made to the Minister in a manner and form determined by the Minister; and
 - (b) must be accompanied by any other information that the Minister may require.
- 5 (4) The Minister must not renew a renewable energy infrastructure licence unless the Minister is satisfied—
- (a) that the applicant for the renewal has met the criteria prescribed by the regulations for the purposes of this paragraph; and
 - (b) —
- 10 (i) that the renewal is authorised by an existing indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth; or
- (ii) that the renewal will otherwise be valid under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title.
- 15 (5) If an application for the renewal of a renewable energy infrastructure licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- 20 (6) If the Minister decides to grant a renewal, the renewable energy infrastructure licence will be renewed for a term determined by the Minister and specified in the licence.

Subdivision 4—Renewable energy research licence

17—Renewable energy research licence

- (1) A **renewable energy research licence**, subject to the conditions of the licence—
- (a) authorises the licensee—
- 25 (i) to explore a renewable energy resource; and
- (ii) to exploit a renewable energy resource for the purpose of researching the capabilities of a technology, system or process for generating renewable energy; and
- 30 (iii) to construct, install, operate, maintain and decommission renewable energy infrastructure for the purposes of undertaking activities of the kind described in a preceding subparagraph; and
- (b) confers a right to enter and use land for the purposes of authorised operations in respect of designated land within the licence area.
- (2) The Minister must, before granting a renewable energy research licence—
- 35 (a) if any part of a proposed licence area comprises pastoral land—consult with the Minister to whom the administration of the *Pastoral Land Management and Conservation Act 1989* is committed as to whether or not to grant the licence; and

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(b) if any part of a proposed licence area comprises land vested in the Minister under the *Harbors and Navigation Act 1993*—seek the concurrence of the Minister administering the *Harbors and Navigation Act 1993* pursuant to section 15 under that Act; and

5 (c) if any part of the proposed licence area comprises native title land—

(i) in the case of native title land that is the subject of a native title declaration or is within the area of a claim that is registered in a native title register—be satisfied that an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth is in place and authorises the grant of the licence; or

10 (ii) in any other case—be satisfied that the grant of the licence will be valid under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title.

15 (3) If the Minister consults with a Minister under subsection (2)(a), and the Ministers cannot agree on whether a licence should be granted or not, the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

20 (4) The prescribed information in relation to a renewable energy research licence must be entered on the register.

18—Term and renewal of licence

(1) A renewable energy research licence may be granted for a term determined by the Minister and notified to the licensee.

25 (2) The holder of a renewable energy research licence may, before the date of expiry of the licence (or at a time after the expiry of the licence as allowed by the Minister), apply to the Minister for the renewal of the licence for a further term as may be determined by the Minister and specified in the licence.

(3) An application for the renewal of a renewable energy research licence—

30 (a) must be made to the Minister in a manner and form determined by the Minister; and

(b) must be accompanied by any other information that the Minister may require.

(4) The Minister must not renew a renewable energy research licence unless the Minister is satisfied—

35 (a) that the applicant for the renewal has met the criteria prescribed by the regulations for the purposes of this paragraph; and

(b) —

(i) that the renewal is authorised by an existing indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth; or

40 (ii) that the renewal will be otherwise be valid under the *Native Title Act 1993* of the Commonwealth to the extent that it affects native title.

- (5) If an application for the renewal of a renewable energy research licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- 5 (6) If the Minister decides to grant a renewal, the renewable energy research licence will be renewed for a term determined by the Minister and specified in the licence.

Subdivision 5—Special enterprise licence

19—Object of this Subdivision

10 The object of this Subdivision is to facilitate the establishment, development or expansion of enterprises comprising regulated activities that are of major significance to the economy of the State by allowing greater security and flexibility of tenure and access to land.

20—Special enterprises

- 15 (1) For the purposes of this Subdivision, an enterprise comprising regulated activities (whether existing or proposed) is a *special enterprise* if—
- (a) the Governor is satisfied, after taking into account the advice of the Minister, that—
 - (i) the enterprise is of major significance to the economy of the State; and
 - 20 (ii) it is in the interests of the State to grant a special enterprise licence in respect of the enterprise; and
 - (b) the Minister and the person who conducts or proposes to establish the enterprise (the *proponent*) have entered into an agreement for the purposes of the grant of a special enterprise licence; and
 - 25 (c) the Governor has ratified the agreement between the Minister and the proponent.
- (2) This Subdivision has effect subject to any guidelines issued by the Minister for the purposes of this Subdivision.
- (3) An agreement under subsection (1)(b)—
- 30 (a) must be in a form determined by the Minister after consultation with the proponent; and
 - (b) has effect when ratified by the Governor; and
 - (c) may be varied from time to time by further agreement between the parties after complying with any process or procedure prescribed by the regulations; and
 - 35 (d) must be entered on the register.
- (4) An agreement under subsection (3)(c) has no force or effect unless or until it is ratified by the Governor and entered on the register.

- (5) The Minister may, in the Minister's absolute discretion, defer consideration of an application for any other licence under this Act until the process under this Subdivision has been brought to an end.

21—Concept phase

- 5 (1) The first step that a proponent who is seeking an agreement with the Minister under this Subdivision must take is to consult with the Minister about the proposal.
- (2) Consultation with the Minister for the purposes of subsection (1) is to be initiated by an application made to the Minister in a manner and form determined by the Minister.
- (3) An application—
- 10 (a) must incorporate or be accompanied by such information as may be prescribed by the regulations; and
- (b) must be accompanied by the prescribed fee.
- (4) On receiving an application for consultation under this section, the Minister may, in the Minister's absolute discretion, consult or refuse to consult with the proponent in
- 15 relation to the application.
- (5) The Minister may require the proponent—
- (a) to provide the Minister with additional information specified by the Minister (and that information must be provided within the period specified by the Minister); and
- 20 (b) to undertake any consultation required by the guidelines issued by the Minister or specified by the Minister (and that consultation must be undertaken within a period specified by the Minister); and
- (c) to take any other action specified by the Minister.
- (6) The Minister may—
- 25 (a) bring the consultation envisaged by subsection (1) to an end at any time as the Minister thinks fit; and
- (b) at the end of the consultation, advise the proponent—
- (i) that the matter may proceed to an application to the Minister for the purposes of this Subdivision; or
- 30 (ii) that the matter is not, in the opinion of the Minister, suitable for further consideration under this Subdivision.
- (7) If subsection (6)(b)(i) applies, the proponent is entitled to proceed to make an agreement with the Minister (but otherwise the matter may not proceed further under this Subdivision).

35 22—Special enterprise licence

- (1) A *special enterprise licence*, subject to the agreement entered into under section 20(1)(b)—
- (a) authorises the licensee to undertake regulated activities of a kind specified in the licence; and

- (b) confers a right to enter and use land in the licence area for the purposes of undertaking authorised operations.
- (2) The Minister must, in considering an application for a special enterprise licence, have regard to the matters specified in the relevant provisions of the guidelines issued by the Minister for the purposes of this Subdivision.
- (3) The Minister must not grant a licence under another provision of this Act to any other person in respect of land to which an application for a special enterprise licence relates until 28 days after the application is refused or withdrawn.
- (4) An application for a special enterprise licence may be made in relation to regulated activities that are subject to an existing licence (and, if the special enterprise licence is granted, the area of the existing licence will be subsumed into the special enterprise licence in accordance with section 24).
- (5) The Minister must give notice of the approval of an application under this section in accordance with any prescribed requirements.
- (6) A special enterprise licence will be granted for a term determined by the Minister.
- (7) The Minister may—
 - (a) extend the term of a special enterprise licence from time to time; or
 - (b) cancel a special enterprise licence if the Minister considers that the licence is no longer being used for the purposes for which the licence was granted.

23—Power to exempt from or modify Act

- (1) Subject to this section, the Minister may, in accordance with the terms of an agreement under this Subdivision (as ratified by the Governor)—
 - (a) exempt a special enterprise licence from compliance with a provision of this Act; or
 - (b) modify the application of a requirement of this Act in relation to the enterprise.
- (2) An exemption or modification cannot be granted or made to this Subdivision in respect of the application of the following provisions of this Act:
 - (a) Part 3 Division 4;
 - (b) section 63;
 - (c) any other provision prescribed by the regulations.
- (3) An exemption or modification may be subject to conditions stipulated in the agreement.
- (4) The Minister may vary or revoke an exemption or modification in accordance with and subject to the terms of the agreement.
- (5) The Minister must cause notice of an exemption or modification, and of any subsequent variation or revocation of it, to be published in the Gazette.
- (6) A person who contravenes a condition of an exemption or modification under this section is guilty of an offence.
Maximum penalty: \$250 000.

24—Existing licences

- (1) If any land comprising the licence area of a special enterprise licence was, immediately before the granting of the licence, comprised in the licence area of another licence held under this Act in respect of the same regulated activities (the *original licence*)—
- (a) the original licence is, by force of this subsection, subsumed into the special enterprise licence; and
- (b) subject to a determination of the Minister—
- (i) an interest (whether legal or equitable) in, or affecting, the original licence (being an interest in force immediately before the granting of the special enterprise licence) continues to have the same effect in respect of the original licence area as it had before the special enterprise licence was granted; and
- (ii) a liability of the holder of the original licence in existence immediately before the granting of the special enterprise licence is not affected by the granting of the special enterprise licence; and
- (iii) an approval, consent, licence or exemption granted under another Act or law with respect to undertaking operations under the original licence will be taken to have been granted with respect to undertaking the same operations under the special enterprise licence if the extent of the operations, and the area of land over which it is to be undertaken, are not to be substantially increased.
- (2) If—
- (a) an original licence is to be subsumed into a special enterprise licence under this Subdivision; and
- (b) the original licence is subject to a condition that has been included to protect the environment,

then the Minister must ensure that a comparable condition is included in the conditions applying to the special enterprise licence.

Division 3—Common provisions

Subdivision 1—Application for licence

25—Application for licence

- (1) An application for a licence—
- (a) must be made in a manner and form determined by the Minister; and
- (b) must identify the area or areas in respect of which the licence is being sought in a manner determined by the Minister; and
- (c) must be accompanied by a proposed work program; and
- (d) must be accompanied by such other information as may be prescribed by the regulations; and
- (e) must be accompanied by the prescribed fee.

- (2) The Minister may require the applicant to provide the Minister with additional information specified by the Minister (and that information must be provided within the period specified by the Minister).

26—Notice of certain applications

- 5 (1) This section applies in relation to—
- (a) an application for a hydrogen generation licence or for the renewal of a hydrogen generation licence; and
 - (b) an application for a renewable energy licence or for the renewal of a renewable energy licence.
- 10 (2) The Minister must, as soon as practicable after receiving an application to which this section applies, in such manner as the Minister thinks fit, give notice of the application—
- (a) to an owner of land in respect of land comprised in a proposed licence area; and
 - 15 (b) if the proposed licence area is within the area of a council—to the council.
- (3) In addition, before the Minister makes a decision on an application to which this section applies, including as to the conditions (if any) that will apply or attach to the relevant licence, the Minister must publish, in such manner as the Minister thinks fit, a notice—
- 20 (a) describing the area to which the application relates; and
 - (b) specifying a place where the application may be inspected; and
 - (c) inviting written submissions in relation to the application to the Minister within a time specified in the invitation.
- (4) The Minister—
- 25 (a) must give to the applicant a copy of any submission received by the Minister under subsection (3) within the relevant period specified by the Minister; and
 - (b) may require the applicant to respond to any matter raised in any such submission within a period specified by the Minister.
- (5) A submission under subsection (3) cannot be made on the basis that the submission (or part of the submission) will be kept confidential and a response under subsection (4) cannot be made on the basis that the response (or part of the response) will be kept confidential.
- 30 (6) In determining whether or not to grant an application to which this section applies and, if so, the conditions on which it should be granted, the Minister must have regard to any submissions or response received under subsection (3) or (4).
- 35 (7) The requirement to publish a notice under subsection (3), and the requirements of subsections (4), (5) and (6), do not apply if the Minister decides to refuse the application without inviting submissions on the application.
- (8) As soon as practicable after determining whether or not to grant or refuse an application to which this section applies, the Minister must cause notice of the determination to be published in accordance with the regulations.
- 40

27—Applications relating to areas within Murray-Darling Basin

If an application for a licence, or for the renewal of a licence, relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

28—Applications relating to areas within specially protected area

(1) If an application for a licence, or for the renewal of a licence, relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.

(2) If an application is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—

(a) on the decision to be made on the application; or

(b) on any conditions that should be applied if the application is approved,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision made by the Governor will be taken to be a decision of the Minister under this Act).

Subdivision 2—Grant of licence

29—Grant or refusal of licence application

(1) The Minister may, at any time and without consulting the applicant or taking any other step, refuse an application for a licence at any stage of its consideration under this Act if—

(a) the applicant fails to comply with a requirement under this Act that is relevant to the making or consideration of the application; or

(b) the Minister considers—

(i) that the applicant has not proceeded with reasonable diligence to obtain any other permission, authorisation, consent or other form of approval under another Act or law that is relevant in the circumstances; or

(ii) that there are other sufficient grounds for not assessing the application further after taking into account the public interest and such other matters as the Minister thinks fit.

(2) The Minister must give written notice to the applicant of the grant or the refusal (either in whole or in part) to grant the licence.

(3) If the Minister refuses (either in whole or in part) to grant an application for a licence, the Minister must provide reasons for the decision.

(4) If the Minister grants an application for a licence, the prescribed information in relation to the licence must be entered on the register.

Subdivision 3—Conditions of licence

30—Conditions of licence

- (1) Subject to this Act, the conditions on which a licence is granted or renewed will be determined by the Minister and notified to the licensee.
- 5 (2) A licence—
 - (a) must include a condition that the licensee provide the Minister with a report on authorised operations in a manner and form, at times and containing the particulars, prescribed by the regulations; and
 - 10 (b) must include conditions ensuring that a proper process is put in place, during the term of the licence, for the eventual decommissioning of the infrastructure operated under the licence and rehabilitation of land within the licence area.
- (3) A renewable energy licence to which section 35 applies must include a condition requiring the payment of rent to the Minister in accordance with that section.
- 15 (4) A renewable energy infrastructure licence must contain a condition, subject to the provisions of the access agreement applying in relation to the licence, that the licensee provide an owner of land within the licence area with information on an ongoing basis regarding—
 - (a) the proposed location and area of access roads and infrastructure associated with the renewable energy infrastructure operated under the licence; and
 - 20 (b) planned authorised operations to be undertaken in the licence area (including construction of the infrastructure to be operated under the licence).
- (5) The conditions of a licence may be imposed, varied or revoked at any time—
 - (a) on written request of the licensee; or
 - (b) on the Minister's own initiative.
- 25 (6) Before acting under subsection (5)(b), the Minister must take reasonable steps to consult with the holder of the relevant licence.

31—Work program

- (1) It is a condition of a licence that the licensee must only carry out work in the licence area in accordance with a work program approved by the Minister.
- 30 (2) The Minister may approve a proposed work program with or without addition or variation.
- (3) The Minister may approve deferment, variation or reduction of the work to be carried out under an approved work program.
- 35 (4) However, Ministerial approval is not required for the acceleration of the work to be carried out under an approved work program.

32—Access agreement

- (1) This section applies in relation to—
 - (a) a renewable energy feasibility licence; and
 - (b) a renewable energy infrastructure licence,

to the extent that the licence area comprises designated land.

- (2) It is a condition of a licence to which this section applies that the relevant licensee must, before undertaking authorised operations under the licence, enter into an agreement (an *access agreement*) with—
- 5 (a) if the licence area comprises pastoral land—the holder of a pastoral lease in respect of the proposed licence area; and
- (b) if a resources tenement is held over land in the licence area—the holder of the relevant resources tenement; and
- (c) a prescribed person (if any),
- 10 (the *parties to the access agreement*).
- (3) An access agreement must address the following matters in relation to operations to be undertaken under a licence to which this section applies:
- (a) access to the licence area, or infrastructure in or in the vicinity of, the licence area, by the parties to the access agreement during the construction,
- 15 installation, operation or decommissioning of renewable energy infrastructure; and
- (b) compensation that is or may be payable by a licensee under section 63.
- (4) An access agreement may not provide for access to infrastructure associated with the licence if access to the infrastructure is not required—
- 20 (a) in the case of an area comprised of pastoral land—for pastoral purposes within the meaning of the *Pastoral Land Management and Conservation Act 1989*; or
- (b) in the case of a relevant resources tenement—for activities authorised under the relevant resources tenement.
- 25 (5) An access agreement may, at any time, be varied on the initiation of a party to the access agreement.
- (6) The parties to an access agreement (or a proposed access agreement) must negotiate in good faith with a view to agreeing the provisions in the access agreement.
- 30 (7) If any of the negotiating parties requests the Minister to do so, the Minister must mediate between the parties to assist in obtaining their agreement.
- (8) If agreement between the negotiating parties is not reached within 6 months from when the negotiations were initiated, either party may apply to the ERD Court for a determination.
- 35 (9) The ERD Court may refuse to determine an application under subsection (8) unless the licensee satisfies the Court that the licensee has made a reasonable attempt to reach agreement with the other parties to the access agreement.
- 40 (10) On application under this section, the ERD Court may—
- (a) make a determination in relation to any matter to be addressed in the proposed access agreement (and a determination of the Court is to be taken to be an access agreement entered into between the parties for the purposes of this section); and

- (b) make a determination in relation to any variation of a provision of an access agreement (and a determination of the Court is to be taken to be a provision of an access agreement); and
- (c) make other orders that the ERD Court considers to be appropriate in the circumstances.
- (11) If an issue is decided by determination of the ERD Court under this section, the parties to the proceedings in which the determination was made cannot make an agreement that is inconsistent with the terms of the determination unless the ERD Court authorises the agreement.
- (12) A party to an access agreement who believes that the other party (the *respondent*) has contravened a provision of the agreement may apply to the ERD Court and the ERD Court may, if satisfied that the respondent is in default, make 1 or more of the following orders:
- (a) an order that the respondent take specified action to comply with the agreement or to rectify a situation caused by the respondent;
- (b) an order that the respondent pay compensation for loss or damage caused by a contravention of the agreement;
- (c) any other order that the ERD Court considers to be appropriate in the circumstances.
- (13) A licensee must, within 14 days of proceedings being initiated in the ERD Court by a party to an access agreement under subsection (8) or (12), notify the Minister of that fact.
- Administrative penalty.

Subdivision 4—Bond and security

33—Bond and security

- (1) The Minister may, by written notice to an applicant for a licence or a licensee, require them to enter into a bond in such sum and subject to such conditions as ensure, in the opinion of the Minister, that—
- (a) any civil or statutory liability likely to be incurred by that person in the course of undertaking authorised operations; and
- (b) the present and future obligations of that person in relation to the rehabilitation of an area disturbed by undertaking authorised operations, will be satisfied.
- (2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.
- (3) If an applicant for a licence fails to comply with a requirement under this section, the Minister may refuse the application.
- (4) If a licensee fails to comply with a requirement under this section, the Minister may—
- (a) if the requirement has not been complied with at the expiration of 1 month from the end of the time allowed for compliance, suspend the licence; and

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- (b) if the requirement has not been complied with at the expiration of 3 months from the end of the time allowed for compliance, cancel the licence.
- (5) The liability to pay an amount under this section constitutes a debt due to the Crown.
- (6) If the Minister holds, or is entitled to hold, money under a bond entered into by a licensee, the Minister may, in the Minister's discretion, expend any portion of that money—
- (a) to compensate any person who has suffered, or is likely to suffer, financial loss as a result of operations undertaken by the licensee or in rehabilitating any area disturbed by such operations; or
- (b) to satisfy any liability to pay an amount that is due to the Crown under this Act.
- (7) The Minister may, on application under this subsection, in the Minister's absolute discretion, agree to the assignment of a liability or obligation under this section to a third party on terms or conditions determined by the Minister.
- (8) No action lies against the Minister in respect of the expenditure of money under this section.

Subdivision 5—Notice of commencement of operations**34—Licensee must give notice of commencement of authorised operations**

A licensee must, in accordance with the requirements of the regulations, notify the Minister in relation to the following:

- (a) the commencement of authorised operations in the licence area;
- (b) the completion of authorised operations in the licence area.

Administrative penalty.

Subdivision 6—Rent**35—Rent**

- (1) This section applies in relation to—
- (a) a renewable energy licence to the extent that the licence area comprises designated land; and
- (b) a special enterprise licence.
- (2) Rent is payable to the Minister in respect of any part of the licence area of a licence to which this section applies—
- (a) of an amount determined in accordance with the regulations to be the annual rent for the licence; and
- (b) annually in arrears.
- (3) Without limiting subsection (2), regulations made for the purposes of this section may provide—
- (a) for rent payable under this section to be reduced, waived or deferred; or

- (b) that an amount or percentage of rent payable under this section is to be paid, at the prescribed times, into the Pastoral Land Management Fund established under the *Pastoral Land Management and Conservation Act 1989*.

- (4) The liability to pay an amount under this section constitutes a debt due to the Crown.

5 **Subdivision 7—Reporting requirements**

36—Licensee to provide reports, information or material

- (1) A licensee must—

- (a) at the prescribed times; and
- (b) at any other time on the written request of the Minister,

10 provide a report, information or material that is relevant to authorised operations in accordance with the requirements prescribed by the regulations.

Administrative penalty.

- (2) A licensee must keep all reports, information or material required to be provided under this section—

- 15 (a) in a form prescribed by the regulations or approved by the Minister; and
- (b) in a place that complies with the requirements prescribed by the regulations or approved by the Minister; and
- (c) for a period prescribed by the regulations or approved by the Minister.

Administrative penalty.

- 20 (3) If a report, information or material is provided under this section, the Minister may retain, use or release the report, information or material in accordance with the requirements prescribed by the regulations.

- (4) A licensee must, on the written request of the Minister, provide a report verifying information or material provided to the Minister under this section.

25 Administrative penalty.

- (5) A report under subsection (1) or (4), and any information or material required to be provided under this section must, if the Minister so requires, be verified by an independent person with qualifications, and in a manner, specified by the Minister.

- 30 (6) Any cost associated with a requirement under this section will be borne by the licensee.

- (7) If a requirement under this section is not complied with, the Minister may take action to obtain the relevant information or material, or to obtain the verification, so required.

- (8) The reasonable costs and expenses incurred by the Minister taking action under subsection (7) constitute a debt due to the Crown.

35 **37—Licensee must report certain incidents**

- (1) A licensee must report an immediately reportable incident to the Minister as follows:

- (a) an initial report must be provided to the Minister, in a manner and form prescribed by the regulations, within 24 hours after the licensee becomes aware of the occurrence of the incident;

- (b) a comprehensive report must be provided to the Minister, in a manner and form prescribed by the regulations—
- (i) unless subparagraph (ii) applies—within 3 months after the licensee becomes aware of the occurrence of the incident; or
 - (ii) within a period specified by the Minister and notified to the licensee in a particular case.

Administrative penalty.

- (2) A licensee must, in a manner and form, and within the period prescribed by the regulations, report a reportable incident to the Minister.

Administrative penalty.

- (3) In this section—

immediately reportable incident means—

- (a) an incident arising from activities conducted under a licence specified in the relevant statement of environmental objectives to be an immediately reportable incident; or
- (b) any other matter brought within the ambit of this definition by the regulations;

reportable incident means—

- (a) an incident (not being an immediately reportable incident) arising from activities conducted under a licence and specified in the statement of environmental objectives to be a reportable incident; or
- (b) any other matter brought within the ambit of this definition by the regulations.

Subdivision 8—Public liability insurance

38—Public liability insurance

- (1) A licensee must, before commencing authorised operations and for the duration of the term of the licence, maintain a policy of public liability insurance indemnifying the licensee, in an amount that is reasonable taking into account the kind of licence, the nature and extent of the operations undertaken under the licence, and relevant industry standards, in relation to any action arising out of the operations undertaken under the licence and complying with any other requirement (if any) determined by the Minister.

Maximum penalty: \$20 000.

- (2) The licensee must provide to the Minister a certificate evidencing the insurance coverage required by subsection (1), and any endorsements or waivers relating to insurance coverage, in accordance with the requirements of this section.

Maximum penalty: \$5 000.

Expiation fee: \$750.

- (3) A certificate under subsection (2) must be provided to the Minister before operations commence under the relevant licence and then a current certificate must be provided to the Minister—
- 5 (a) unless paragraph (b) applies—by each anniversary of the day on which the relevant licence was granted; or
- (b) if the Minister so determines—on another date in each year, or according to a particular frequency, determined by the Minister.
- (4) The licensee must, in accordance with this section, notify the Minister—
- 10 (a) if any insurance obtained for the purposes of this section lapses without having been renewed; or
- (b) if there is a change in an insurance policy obtained for the purposes of this section, including a change in the level of cover.

Maximum penalty: \$5 000.

Expiation fee: \$750.

- 15 (5) A notification under subsection (4)—
- (a) must be provided to the Minister within 14 days after the relevant event under that subsection; and
- (b) must be provided in a manner and form determined by the Minister; and
- 20 (c) must contain the information determined by the Minister, and be accompanied by such information as the Minister may determine.
- (6) A licensee must, at the request of the Minister, provide to the Minister a copy of the policy of insurance relating to the requirements that apply under this section within a period specified by the Minister.

Maximum penalty: \$5 000.

Expiation fee: \$750.

Subdivision 9—Dealing with licence

39—Dealing with licence

- 30 (1) Subject to this section and the conditions of the licence, a licence must not be transferred, assigned, mortgaged, held subject to a trust or otherwise dealt with, whether directly or indirectly, without the consent of the Minister.
- (2) The Minister must, before consenting to a matter referred to in subsection (1), comply with the requirements (if any) prescribed by the regulations.
- (3) If the Minister has consented to a licence being mortgaged under this section, the mortgagee may exercise rights pursuant to the mortgage agreement in relation to the licence without the further consent of the Minister if written notice of the proposed exercise of rights has been given to the Minister.
- 35 (4) If the licensee transfers or assigns the licence—
- (a) all accrued and accruing liabilities to the Crown pass to the transferee or assignee; and

- (b) any such liabilities that had accrued before the date of the transfer or assignment may be enforced against the transferor or assignor (who will be regarded as jointly and severally liable with the transferee or assignee).

Subdivision 10—Change in control

40—Interpretation

In this Subdivision—

- (a) a person *acts jointly with* another person if the person acts or is accustomed to acting, in agreement with, or in accordance with the wishes of, the other person; and
- (b) the *approval period* for a change in control of the holder of a licence is the period—
- (i) commencing on the day on which notice of approval of an application for the change in control is given; and
 - (ii) ending—
 - (A) immediately after the change in control takes effect; or
 - (B) if the approval of a change in control is revoked—on the day on which notice of the revocation of the change in control is given; or
 - (C) 9 months after the day on which notice of approval of the change in control is given,whichever is the earlier; and
- (c) there is a *change in control* of the holder of a licence if—
- (i) 1 or more persons (the *original controllers*) control the holder of the licence at a particular time; and
 - (ii) either—
 - (A) 1 or more other persons begin to control the holder of the licence (whether alone or together with 1 or more other persons the person or persons act jointly with) after that time; or
 - (B) an original controller (whether alone or together with 1 or more other persons the person acts jointly with) ceases to control the holder of the licence after that time; and
- (d) a person *controls* the holder of a licence if the person (whether alone or together with 1 or more other persons the person acts jointly with)—
- (i) holds the power to exercise, or control the exercise of, 20% (or such other percentage as may be prescribed by the regulations for the purposes of this subparagraph) or more of the voting rights in the holder of the licence; or

- (ii) holds, or holds an interest in, 20% (or such other percentage as may be prescribed by the regulations for the purposes of this subparagraph) or more of the issued securities in the holder of the licence.

5 **41—Approval of change in control of holder of licence**

- (1) An application for approval for a change in control of the holder of a licence must—
 - (a) be made in a manner and form determined by the Minister; and
 - (b) be accompanied by the prescribed fee; and
 - (c) be accompanied by such information as the Minister may require (which must be provided within a period determined by the Minister and notified to the applicant).
- (2) In considering an application for approval for a change in control under this section, the Minister must have regard to—
 - (a) whether the technical capability and financial resources available to the holder of the licence after the change in control takes effect are sufficient to—
 - (i) undertake the authorised operations and works under the licence; and
 - (ii) discharge the obligations that are imposed under this Act in relation to the licence; and
 - (b) any other matters prescribed by the regulations,and may have regard to any other matters the Minister thinks relevant.
- (3) The Minister may, by written notice to an applicant under this section—
 - (a) approve the application; or
 - (b) refuse the application.
- (4) The Minister may, during the approval period for a change in control of the holder of a licence, by written notice to an applicant under this section, revoke the approval.

25 **42—Offences**

- (1) If—
 - (a) there is a change in control of the holder of a licence; and
 - (b) —
 - (i) the Minister has not approved the change in control under this Subdivision; or
 - (ii) the Minister has given an approval under this Subdivision but the change in control took effect after the end of the approval period for the change in control,the person who begins to control, or ceases to control, the holder of the licence is guilty of an offence.
Maximum penalty: \$250 000.

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(2) A person does not commit an offence against subsection (1) if the person did not know, and could not reasonably be expected to have known, that the change in control had taken effect.

(3) If—

(a) there is a change in control of the holder of a licence; and

(b) —

(i) the Minister has not approved the change in control under this Subdivision; or

(ii) the Minister has given an approval under this Subdivision but the change in control took effect after the end of the approval period for the change in control; and

(c) the holder of the licence knows, or ought reasonably to know, that the change in control had taken effect; and

(d) the holder of the licence does not notify the Minister of the change in control within 30 days of the change taking effect,

the holder of the licence is guilty of an offence.

Maximum penalty: \$250 000.

(4) If a person commits an offence against subsection (1), the Minister may, by written notice to the holder of the licence to which the change in control took effect, cancel the licence.

Subdivision 11—Suspension, cancellation and surrender of licence**43—Minister may suspend or cancel licence**

(1) The Minister may, after complying with the requirements of this section, by notice to the licensee, suspend or cancel a licence.

(2) The Minister may suspend or cancel a licence—

(a) if the Minister is satisfied that a provision of this Act or a condition of the licence has been contravened; or

(b) if the Minister is not satisfied (on the basis of evidence provided by the licensee)—

(i) that the licensee has met the requirements of a work program; or

(ii) that the licensee has achieved a prescribed criterion that applies to that licence within the prescribed time; or

(c) if the licensee requests the cancellation or suspension; or

(d) in prescribed circumstances.

(3) The Minister may suspend all or some of the operations under a licence—

(a) pending compliance with an obligation or requirement under this Act by the licensee; or

(b) until the licensee takes some other step specified by the Minister; or

- (c) on account of any other matter that, in the opinion of the Minister, warrants suspension of rights under the licence; or
 - (d) in prescribed circumstances.
- (4) The Minister cannot cancel a licence under subsection (2)(a) unless satisfied—
 - (a) that the licensee has been allowed a reasonable opportunity to make good the contravention but has failed to do so; or
 - (b) that cancellation is necessary in order to prevent, arrest or minimise damage to or deterioration of a licence area or an area associated with the undertaking of authorised operations.
- (5) Before the Minister suspends or cancels a licence under subsection (2)(a) or (b) or suspends operations under a licence under subsection (3), the Minister must—
 - (a) notify the licensee of the proposed suspension or cancellation (including the reasons for the Minister's decision); and
 - (b) provide the licensee with an opportunity to make written submissions in relation to the proposed suspension or cancellation within a period specified by the Minister in the notice; and
 - (c) comply with the requirements (if any) prescribed by the regulations.
- (6) The prescribed information in relation to the cancellation or suspension of a licence under this section must be entered on the register.

44—Surrender of licence

- (1) The holder of a licence may apply to the Minister for an approval to surrender the licence.
- (2) An application must be—
 - (a) made in a manner and form determined by the Minister; and
 - (b) accompanied by such information as may be prescribed by the regulations.
- (3) The Minister must, before accepting the surrender of a licence, have regard to the matters prescribed by regulation for the purposes of this subsection.
- (4) The Minister may, by notice to the applicant—
 - (a) approve the surrender unconditionally; or
 - (b) approve the surrender on 1 or more of the following conditions:
 - (i) that the applicant provide information to the Minister before surrendering the licence that was required to be provided under this Act;
 - (ii) that the applicant rehabilitate land affected by authorised operations;
 - (iii) any other conditions specified in the notice by the Minister.
- (5) The prescribed information in relation to the surrender of a licence under this section must be entered on the register.

Subdivision 12—Miscellaneous

45—Licence is not personal property for the purposes of Commonwealth Act

A right, entitlement or authority granted by or under this Act is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

5 46—Exemption from stamp duty

The grant or renewal of a licence is exempt from stamp duty.

Division 4—Environmental impact

Subdivision 1—Preliminary

47—Objects

10 The objects of this Division are to ensure that licensees, in undertaking authorised operations—

- (a) ensure that authorised operations that have or may have adverse effects on the environment are managed so as to reduce environmental damage as far as reasonably practicable; and
- 15 (b) eliminate, as far as reasonably practicable, the risk of significant long term environmental damage; and
- (c) ensure that land adversely affected by authorised operations is properly rehabilitated.

48—Environmental impact assessment criteria

- 20 (1) The Minister must, by notice in the Gazette, determine criteria (the *environmental impact assessment criteria*) against which the environmental impact of authorised operations is to be assessed for the purposes of this Division.
- (2) The Minister may, in accordance with any requirements prescribed by the regulations, undertake a review of the environmental impact assessment criteria.

25 Subdivision 2—Environmental impact report

49—Environmental impact report

- (1) A licensee must, for the purpose of the approval of a statement of environmental objectives under section 50, prepare a report (an *environmental impact report*) in respect of authorised operations.
- 30 (2) An environmental impact report must—
 - (a) take into account the environment, cultural and other values as those matters are relevant to the assessment; and
 - (b) take into account risks inherent in the authorised operations to the health and safety of the public; and
 - 35 (c) contain sufficient information to make possible an informed assessment of the likely impact of the authorised operations on the environment; and

- (d) include an assessment of the environmental impact of authorised operations to which the report applies against the environmental impact assessment criteria; and
- (e) be prepared in accordance with the requirements of the regulations.
- 5 (3) An assessment under subsection (2)(d) must be made in a manner, and comply with any requirements, determined by the Minister or prescribed by the regulations.
- (4) A licensee must undertake consultation on the proposed environmental impact report in accordance with the requirements of the consultation plan prescribed by the regulations.

10 **Subdivision 3—Statement of environmental objectives**

50—Statement of environmental objectives

- (1) A licensee must not undertake authorised operations unless the licensee has a statement that complies with the requirements of this Subdivision and is approved by the Minister (a *statement of environmental objectives*) in force in respect of the authorised operations.
- 15 Maximum penalty: \$250 000.
- (2) A statement of environmental objectives must—
- (a) address the matters contained in the environmental impact report; and
- (b) set out the following:
- 20 (i) environmental objectives that must be achieved in undertaking authorised operations to which the statement applies;
- (ii) the criteria to be applied to determine whether the stated environmental objectives have been achieved in a particular case;
- 25 (iii) immediately reportable incidents and reportable incidents (both within the meaning of section 37); and
- (c) include, as an objective, the rehabilitation of land adversely affected by authorised operations; and
- (d) be prepared in accordance with the requirements prescribed by the regulations; and
- 30 (e) contain any other information prescribed by the regulations.
- (3) A licensee must undertake consultation on the proposed statement of environmental objectives in accordance with the requirements of the consultation plan prescribed by the regulations.
- (4) A copy of the environmental impact report and statement of environmental objectives applying in relation to a licence must be made available on the register.
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51—Approval of statement of environmental objectives

- (1) An application for approval of a statement of environmental objectives must be made in a manner and form, and contain the particulars, determined by the Minister or prescribed by the regulations.

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- (2) The Minister may require an applicant for approval under this section to provide the Minister with any additional information specified by the Minister (and that information must be provided within the period specified by the Minister).
- (3) The Minister may, on the receipt of an application for approval of a proposed statement of environmental objectives—
- (a) approve the statement without alteration; or
- (b) require the licensee to make alterations to the proposed statement after consultation with the licensee in order to ensure that the statement complies with the requirements of section 50(2) and to ensure consistency with the other provisions of this Act; or
- (c) reject the proposed statement on the basis that it does not comply with the requirements of section 53(2) (or any other relevant provision of this Act).

52—Review of statement of environmental objectives

- (1) The licensee must conduct a review of a statement of environmental objectives—
- (a) if directed to do so by the Minister; or
- (b) at a time, or in circumstances, prescribed by the regulations.
- (2) The licensee must conduct a review of a statement of environmental objectives—
- (a) in accordance with any requirements prescribed by the regulations; and
- (b) taking into account the requirements of section 50(2) so as to provide consistency with those requirements.
- (3) A statement of environmental objectives that is revised as a result of a review undertaken under this section (a *revised statement of environmental objectives*) must be provided to the Minister for approval in accordance with any requirements prescribed by the regulations.
- (4) The Minister may, on the receipt of a revised statement of environmental objectives—
- (a) approve the statement without alteration; or
- (b) require alterations to the statement after consultation with the licensee in order to ensure that the statement complies with the requirements of section 50(2) and to ensure consistency with the other provisions of this Act; or
- (c) reject the statement on the basis that it does not comply with the requirements of section 50(2) (or any other relevant provision of this Act).
- (5) A licensee must not fail to comply with a requirement under this section.
Maximum penalty: \$250 000.

Subdivision 4—Operational management plan**53—Operational management plan**

- (1) A licensee must not commence operations under a licence unless a plan that complies with the requirements of this Subdivision and approved by the Minister (an *operational management plan*) is in force in relation to the licence.

Maximum penalty: \$250 000.

- (2) An operational management plan must—

- (a) specify the operations to be undertaken under the licence; and
- (b) specify the statement of environmental objectives to which the plan applies; and
- (c) specify how operations under the licence will be managed, including details of the management systems and controls that will ensure compliance with the relevant statement of environmental objectives; and
- (d) contain any other information and comply with any other requirements as prescribed by the regulations.

- (3) The regulations may provide for the manner in which compliance with an operational management plan is to be monitored and enforced.

- (4) A copy of the operational management plan in relation to a licence must be made available on the register.

- (5) A licensee must comply with the operational management plan in force in relation to their licence.

Maximum penalty: \$250 000.

54—Approval of operational management plan

- (1) An application for approval of an operational management plan must be made in a manner and form, and contain the particulars, determined by the Minister or prescribed by the regulations.

- (2) The Minister may require an applicant for approval under this section to provide the Minister with any additional information specified by the Minister (and that information must be provided within the period specified by the Minister).

- (3) The Minister may, on the receipt of an application for approval of an operational management plan—

- (a) approve the plan without alteration; or
- (b) require the licensee to make alterations to the plan after consultation with the licensee in order to ensure that the plan complies with the requirements of section 53(2) and to ensure consistency with the other provisions of this Act; or
- (c) reject the plan on the basis that it does not comply with the requirements of section 53(2) (or any other relevant provision of this Act).

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- (4) The regulations may set out or adopt an operational management plan that may apply—
- (a) to a group of licences within a particular area; or
 - (b) in relation to operations of a prescribed class.

55—Review of operational management plan

- (1) If the statement of environmental objectives to which an operational management plan relates is reviewed under section 52, the operational management plan must be reviewed in accordance with this section.
- (2) A review of an operational management plan under this section must be conducted—
- (a) in accordance with any requirements prescribed by the regulations; and
 - (b) taking into account the requirements of section 53(2) and so as to provide consistency with those requirements.
- (3) An operational management plan revised as a result of a review under this section (a *revised operational management plan*) must be provided to the Minister in accordance with any requirements prescribed by the regulations.
- (4) The Minister may, on the receipt of a revised operational management plan—
- (a) approve the plan without alteration; or
 - (b) require alterations to the plan after consultation with the licensee in order to ensure that the plan complies with the requirements of section 53(2) and to ensure consistency with the other provisions of this Act; or
 - (c) reject the plan on the basis that it does not comply with the requirements of section 53(2) (or any other relevant provision of this Act).
- (5) A licensee must not fail to comply with a requirement under this section.
Maximum penalty: \$250 000.

Subdivision 5—Scoping report

56—Interpretation

In this Subdivision—

designated person means—

- (a) the holder of a relevant licence; or
- (b) an applicant for a relevant licence;

relevant licence means a licence of a class prescribed by the regulations for the purposes of this Subdivision.

57—Application and object of Subdivision

- (1) This Subdivision applies if—
- (a) regulated activities constitute a controlled action within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth; and

- (b) the controlled action is not to be assessed under Part 8 of that Act but instead assessed under a bilateral agreement in accordance with that Act.
- (2) The object of this Subdivision is to establish a scheme that—
- 5 (a) provides designated persons with an opportunity to obtain greater certainty with respect to government and community expectations as to the scope of work and the level and extent of assessment relating to environmental impacts that are relevant to regulated activities, including by taking the initiative through the preparation and provision of scoping reports; and
- 10 (b) provides for projects to be categorised according to their level of potential environmental impacts and assigned to assessment pathways that are appropriate in their particular circumstances, after taking into account information and other material provided in or in connection with scoping reports; and
- 15 (c) ensures that project assessments are commensurate with the level of environmental impacts after taking into account project type, scale, duration and the sensitivity of the location of regulated activities; and
- (d) ensures that projects are assessed within a scheme that promotes efficiencies, transparency and clarity as to approval pathways and technical assessments.
- 20 (3) This Subdivision may apply in relation to a particular project even if an application is yet to be made for a licence.

58—Scoping report

- (1) A *scoping report* is a report provided for the purposes of this Subdivision as a means of developing, assessing and providing, to such extent as may be reasonable and relevant, information relating to 1 or more of the following:
- 25 (a) categorising the level of environmental impact of regulated activities under a relevant licence;
- (b) determining the reasonable and relevant level of detail for information to be provided to the Minister for the purposes of environmental impact assessment as part of the consideration of an application for a relevant licence;
- 30 (c) identifying and prioritising the issues that are associated with environmental impact assessment as part of the consideration of an application for a relevant licence;
- (d) determining the extent of work required to be undertaken for the purposes of environmental impact assessment as part of the consideration of an application for a relevant licence;
- 35 (e) if it is relevant in the circumstances or is reasonable or appropriate to do so—determining the impacts of a relevant licence on people or communities, including by providing information about the measures that are to be used to manage, limit or remedy those impacts (in the case of negative impacts), or to facilitate or ensure those impacts (in the case of positive impacts).
- 40 (2) A designated person may provide a scoping report to the Minister at any time that is reasonable and appropriate.

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- (3) The Minister may require a designated person to provide a scoping report if such a report has not been provided by the designated person.
- (4) A scoping report—
- (a) must be provided in a manner and form determined by the Minister; and
 - (b) in the case of a report required under subsection (3), must be provided within a period, or at a time or stage, determined by the Minister.
- (5) The Minister may require the designated person to provide the Minister with additional information specified by the Minister (and that information must be provided within any period specified by the Minister).
- (6) Any information provided under this section must—
- (a) be balanced, objective and concise; and
 - (b) state any limitations that apply, or should apply, to the use of information; and
 - (c) identify any matter in relation to which there is a significant lack of information or a significant degree of uncertainty; and
 - (d) so far as is relevant, identify the sensitivity to change of any assumption that has been made and any significant risks that may arise if an assumption is later found to be incorrect; and
 - (e) be in a form determined by the Minister, be supported by such evidence as the Minister may determine, and comply with any requirement of the Minister relating to the amount or detail of information that must be provided.
- (7) A designated person must undertake consultation on the scoping report in accordance with the requirements of the consultation plan prescribed by the regulations.

Subdivision 6—Consultation**59—Consultation by Minister**

- (1) Subject to this Division, the Minister must, in accordance with the requirements prescribed by the regulations, undertake public consultation on—
- (a) an environmental impact report; and
 - (b) a statement (or revised statement) of environmental objectives;
 - (c) a scoping report.
- (2) Without limiting subsection (1), regulations made under this section may address the following:
- (a) the manner and form in which the Minister is to give notice to members of the public that consultation is to occur;
 - (b) the manner in which the report or statement may be made available to members of the public;
 - (c) the manner in which submissions are to be made to the Minister and the time before which submissions must be provided to the Minister (which must be not less than 30 business days from the day on which notice is given under paragraph (a));

(d) the publication of submissions by the Minister (including that the Minister may refuse to publish submissions on grounds that the submissions are irrelevant, offensive or on any other grounds that the Minister thinks fit);

(e) any action that must be undertaken by the licensee as a result of, or in response to, the consultation.

(3) Subject to the regulations, in determining whether or not to approve a statement (or revised statement) of environmental objectives, the Minister must have regard to any submissions received under this section.

Part 4—Entry to and use of land

60—Right of entry to land

Subject to this Part—

(a) the holder of a renewable energy licence may enter and use designated land within the licence area to undertake authorised operations on the land; and

(b) the holder of a special enterprise licence may enter and use the licence area to undertake authorised operations on the land.

61—Notice of entry

(1) The holder of a renewable energy licence and the holder of a special enterprise licence must, before entering—

(a) in the case of the holder of a renewable energy licence—any part of the licence area for the licence that comprises designated land; and

(b) in the case of the holder of a special enterprise licence—the licence area, give written notice, at least 21 days before entering the area, to each owner of land within the area, in the form required by the regulations—

(c) of the licensee's intention to enter the area; and

(d) if the licensee proposes to undertake authorised operations—of the nature of the operations to be undertaken in the area,

(a *notice of entry*).

Maximum penalty: \$20 000.

(2) An owner of land who is entitled to receive a notice of entry may, by written notice to the licensee, reduce the required period of notice.

(3) A licensee is not required to give a notice of entry to an owner of land who is otherwise entitled to receive a notice of entry if—

(a) the licensee has entered into an access agreement with the owner of land in accordance with section 32; or

(b) in the case of an owner of land who holds native title in respect of the land—the licensee holds a licence the grant of which was authorised by an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth; or

(c) the licensee has previously given a notice of entry in respect of the area to be entered.

(4) In this section—

owner of land includes the holder of a licence under this Act.

5 **62—Disputed entry**

(1) This section applies to the holder of a renewable energy licence who has given a notice of entry to a person under section 61(1).

(2) A person who has received a notice of entry may, by written notice to a licensee to whom this section applies, object to the proposed entry.

10 (3) A notice under subsection (2) must be given within 14 days after the notice of entry has been received by the person.

(4) If notice of disputed entry is given, the Minister may attempt to mediate between the parties in order to arrive at mutually satisfactory terms for entry to the area and undertaking operations in the area.

15 (5) If—

(a) the Minister decides against attempting to reach a resolution of the dispute by mediation; or

(b) an attempt is made but the dispute is not resolved within a period fixed in the regulations for the purposes of this paragraph,

20 either party to the dispute may apply to the ERD Court for a resolution of the dispute.

(6) The ERD Court may, on an application under this section, determine the terms on which a licensee may enter the relevant licence area and undertake activities in the area.

25 **63—Compensation**

(1) The owner of land is entitled to receive compensation for any economic loss, hardship or inconvenience suffered by the owner in consequence of authorised operations.

(2) In determining the amount of compensation payable under this section, the following matters should be considered:

30 (a) any damage caused to the land by the person undertaking the authorised operations;

(b) any loss of productivity or profits as a result of the authorised operations;

(c) any other relevant matters.

(3) The amount of compensation may include an additional component to cover reasonable costs reasonably incurred by an owner of land in connection with any negotiation or dispute related to—

35 (a) the licensee gaining access to the land; and

(b) the operations to be undertaken on the land; and

(c) the compensation to be paid under subsection (1).

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- (4) Compensation is not payable under this section to the holder of a resources tenement in relation to—
- (a) any loss represented by a reduction in the value of the resource that may be recovered under that tenement; or
 - 5 (b) any other loss, deprivation or impairment of a prescribed kind.
- (5) The amount of compensation is to be determined by agreement between the owner of land and the licensee or, in default of agreement, by the ERD Court.
- 10 (6) In assessing compensation under subsection (3), costs in connection with any negotiation or dispute will not be taken to be reasonably incurred if they arise during any period when a reasonable offer of compensation is open to be accepted by the relevant owner of land.
- 15 (7) In assessing compensation payable to an owner of land under this section, any other compensation paid or payable under this or any other Act or law to them or any other owner of land, insofar as is fair, reasonable and appropriate to do so and to the extent that the compensation relates to the same matter, damage or loss (as the case may require), must be taken into account.
- (8) For the purposes of this section—
- (a) a reference to authorised operations will be taken to include a reference to an activity authorised to be undertaken under section 67; and
 - 20 (b) a reference to a licensee—
 - (i) does not include the holder of a hydrogen generation licence; and
 - (ii) will be taken to include a reference to the Minister or a person authorised by the Minister to undertake an activity under section 67; and
 - 25 (c) a reference to the owner of land will be taken to only include—
 - (i) the owner of designated land; and
 - (ii) the owner of land on which an activity authorised under section 67 is undertaken; and
 - 30 (iii) the owner of land within the licence area of a special enterprise licence.

64—Right to require acquisition of land

- (1) If the activities undertaken by the holder of a special enterprise licence on land substantially impair an owner of land's use and enjoyment of the land, the owner of land may apply to the ERD Court for an order under this section.
- 35 (2) The ERD Court may, on an application under this section—
- (a) make an order transferring the owner's land to the licensee; and
 - (b) order the licensee to pay to the owner, by way of compensation—
 - (i) an amount equivalent to the market value of the land; and
 - 40 (ii) a further amount the court considers just by way of compensation for disturbance.

Part 5—Hydrogen and Renewable Energy Fund

65—Hydrogen and Renewable Energy Fund

- (1) The Minister must establish and maintain a fund to be called the *Hydrogen and Renewable Energy Fund*.
- 5 (2) The Fund will consist of—
- (a) penalties payable in respect of offences against this Act; and
 - (b) expiation fees paid under this Act; and
 - (c) any income arising from the investment of money from the Fund by the Minister; and
 - 10 (d) any money appropriated by Parliament for the purposes of the Fund; and
 - (e) any other money required to be paid into the Fund under this or any other Act.
- (3) Any money in the Fund that is not for the time being required for the purposes of the Fund may be invested by the Minister in any manner that the Minister thinks fit.
- 15 (4) The Minister may apply any part of the Fund for 1 or any of the following purposes:
- (a) the promotion of research into methods of engineering and practice by which environmental damage or impairment resulting from authorised operations may be reduced;
 - 20 (b) for purposes related to the protection and preservation of native title and Aboriginal heritage;
 - (c) providing for any matter that will further the objects of this Act;
 - (d) to fund other programs, or to achieve other outcomes, prescribed by the regulations;
 - (e) to provide for the costs of administering the Fund.

25 Part 6—Compliance and enforcement

Division 1—Powers of Minister

66—Minister may request information

- (1) The Minister may, at any time, request, by written notice, that a licensee provide information or material—
- 30 (a) that the Minister requires for the administration or enforcement of this Act; or
- (b) that is related to the authorised operations or work undertaken under the relevant licence; or
- (c) of a prescribed kind.
- (2) A licensee must not fail to comply with a request under this section.
- 35 Administrative penalty.

67—Power to conduct assessment of renewable energy resources on land

- (1) Subject to this section, the Minister or a person authorised by the Minister by written notice may, for purposes of assessing renewable energy resources—
- 5 (a) enter and remain on land with assistants, vehicles and equipment as may be necessary or expedient for the purposes of the investigation; and
 - (b) conduct investigations or tests on land; and
 - (c) take, and remove from the land, samples from land; and
 - (d) temporarily install any devices on land; and
 - (e) take photographs, audio or video recordings of land; and
 - 10 (f) undertake any other activities a kind prescribed by the regulations.
- (2) At least 14 days before the Minister or any authorised person undertakes an activity on land under subsection (1), the Minister or authorised person must give notice to the owner of land—
- 15 (a) describing the area of land on which the activity will be undertaken; and
 - (b) describing the activities proposed to be undertaken on the land.
- (3) The Minister or an authorised person need not comply with subsection (2) if it is not practical to do so.
- (4) A person exercising powers under this section must, at the request of a person, provide the person's identity card or other proof of their authority to exercise the powers
- 20 conferred by this section.

Division 2—Authorised officers

68—Appointment of authorised officers

- (1) The Minister may, by instrument in writing, appoint a Public Service employee to be an authorised officer under this Act.
- 25 (2) An appointment under this section may be made subject to such conditions as the Minister thinks fit.

69—Identity cards

- (1) The Minister must issue to each authorised officer an identity card—
- 30 (a) stating the name of the authorised officer; and
 - (b) containing a photograph of the authorised officer; and
 - (c) stating that the person whose name and photograph appear on the card is an authorised officer for this Act.
- (2) If an authorised officer proposes to exercise powers under this Act against a person, the authorised officer must produce their identity card for inspection on request.

70—Authorised investigations

An investigation by an authorised officer is an *authorised investigation* if the purpose of the investigation is—

- (a) to monitor compliance with this Act; or
- 5 (b) to gather information about a suspected offence against this Act; or
- (c) to gather information about personal injury or loss of property related to operations under this Act; or
- (d) to gather information about the actual or potential environmental impact of actual or potential operations under this Act; or
- 10 (e) to gather other information relevant to the administration or enforcement of this Act; or
- (f) to undertake any inquiry relevant to the administration or enforcement of this Act; or
- 15 (g) without limiting a preceding paragraph, to inspect any operations under this Act which are creating, or are likely to create, a nuisance, or are damaging, or are likely to damage, property.

71—Powers of entry and inspection for purpose of authorised investigation

- (1) For the purpose of carrying out an authorised investigation, an authorised officer may—
 - 20 (a) enter, search, inspect and examine any premises, land or vehicle that has been or is intended to be, used for, or in connection with, any authorised operations under this Act and, where necessary for the purpose, break into or open a part of, or anything in, the premises, land or vehicle; or
 - (b) inspect or examine anything; or
 - 25 (c) take photographs, audio or video recordings; or
 - (d) carry out tests on facilities and equipment; or
 - (e) take and remove samples; or
 - (f) seize and retain any thing that may be evidence of non-compliance with this Act.
- 30 (2) If a thing is seized under this section, it must be dealt with in the manner prescribed by the regulations.
- (3) A person must not, without reasonable excuse, obstruct an authorised officer in the exercise of powers under this section.
Maximum penalty: \$10 000 or imprisonment for 6 months.
- 35 (4) A person involved in authorised operations under this Act must give an authorised officer such assistance as is reasonably required for the effective exercise of a power conferred by this section.
Maximum penalty: \$10 000 or imprisonment for 6 months.

- (5) An authorised officer may only exercise a power under subsection (1)(a) in respect of premises on the authority of a warrant issued by a magistrate (including as a warden) or justice.
- (6) A warrant may not be issued unless the magistrate, warden or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.
- (7) An application for the issue of a warrant—
 - (a) may be made either personally or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

72—Power to require information

- (1) An authorised officer may require a person who may be in a position to provide information relevant to any matter subject to an authorised investigation—
 - (a) to answer a question relevant to the investigation; or
 - (b) to take reasonable steps to obtain information relevant to the investigation and to provide it to the authorised officer.
- (2) A person required to answer a question under subsection (1) must answer the question to the best of the person's knowledge, information and belief.
Maximum penalty: \$10 000 or imprisonment for 6 months.
- (3) A person of whom a requirement is made under subsection (1)(b) must comply with the requirement.
Maximum penalty: \$10 000 or imprisonment for 6 months.
- (4) It is not an excuse for an individual to refuse to answer a question or provide information as required under this section on the ground that to do so might tend to incriminate the individual or make the individual liable to a penalty.
- (5) However, if compliance with a requirement to provide information might tend to incriminate the individual or make them liable to a penalty, then the fact of the provision of the information is not admissible in evidence against the individual in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of making a false or misleading statement).
- (6) An authorised officer may require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.
- (7) A person of whom a requirement is made under subsection (6) must comply with the requirement.
Maximum penalty: \$5 000.

73—Production of records

- (1) This section applies to records relating to authorised operations.
- (2) A person who has possession or control of a record to which this section applies must, at the request of an authorised officer—
 - (a) produce the record for inspection by the authorised officer; and

- (b) answer any questions that the authorised officer reasonably asks about the record.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (3) An authorised officer may—

- (a) retain records produced under this section for the purpose of making copies of them; or
- (b) if the authorised officer suspects that the records may be evidence of non-compliance with this Act, seize and retain records produced under this section.

- (4) In this section—

record includes any document or other form of material.

Division 3—Compliance and enforcement

74—Compliance directions

- (1) The Minister may issue a direction under this section (a *compliance direction*) for the purpose of—

- (a) securing compliance with a requirement of this Act, a licence (including a condition of a licence) or an authorisation or direction under or in relation to a licence; or
- (b) preventing or bringing to an end specified operations that are contrary to this Act or a licence (including a condition of a licence); or
- (c) requiring the rehabilitation of an area specified in the direction on account of any operations undertaken with or without an authority required by this Act.

- (2) A compliance direction—

- (a) must be in the form of a written notice given to the person to whom the direction is issued; and

- (b) must—

- (i) specify the person to whom it is issued (whether by name or by description sufficient to identify the person); and
- (ii) specify the grounds on which it is issued; and

- (c) may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:

- (i) a requirement that the person discontinue, or not commence, specified operations indefinitely or for a specified period or until further notice from the Minister;
- (ii) a requirement that the person not undertake specified operations except at specified times or subject to specified conditions;
- (iii) a requirement that the person take specified action within a specified period.

- (3) The Minister may, by written notice given to the person to whom a compliance direction is issued, vary or revoke the direction.
- (4) A person to whom a compliance direction is issued must comply with the direction within the time allowed in the direction.

5 Maximum penalty: \$250 000.

75—Emergency directions

- (1) If, in the opinion of an authorised officer—
- (a) operations under a licence are being undertaken in a way that results in, or that is reasonably likely to result in—

- 10 (i) undue damage to the environment; or
- (ii) contravention of an operational management plan; or
- (iii) contravention of a term or condition of a licence; and

- (b) it is urgently necessary to take action under this section,

15 the authorised officer may, by written notice given to any person involved in undertaking the operations, issue a direction under this section (an *emergency direction*).

- (2) An emergency direction—

- (a) subject to subsection (3), must be in the form of a written notice given to the person to whom the direction is issued; and

20 (b) must specify the grounds on which it is issued; and

- (c) may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:

- 25 (i) a requirement that a person specified or identified in the direction discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from an authorised officer;
- (ii) a requirement that a person specified or identified in the direction take specified action within a specified period;
- (iii) a requirement that a person specified or identified in the direction provide the Minister or a specified authorised officer with a specified report or reports.
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- (3) An authorised officer may, if of the opinion that urgent action is required under this section, issue an emergency direction imposing requirements of a kind referred to in subsection (2)(c) orally but, in that event, the authorised officer must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom the direction applies.
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- (4) An emergency direction issued under this section will cease to have effect at the expiration of 3 business days after the day on which it is issued unless the Minister, within that period, confirms the direction in the manner prescribed by the regulations (and then the direction will continue to have effect for a period determined by the Minister or until revoked by an authorised officer).
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Part 6—Compliance and enforcement

Division 3—Compliance and enforcement

- (5) An authorised officer may, with the approval of the Minister, by written notice given to the person to whom an emergency direction has been issued, vary or revoke the direction.
- (6) A person to whom an emergency direction relates must comply with a direction under this section within the time allowed in the direction.
- Maximum penalty: \$250 000.

76—Review of direction

- (1) A person required to comply with a direction under this Division may apply to the ERD Court for a review of the direction within 28 days after receiving the direction or such longer period as the Minister may allow in a particular case.
- (2) Unless the Minister or the Court decides to the contrary, an application for review of a direction does not suspend operation of the direction.
- (3) On review of a direction, the ERD Court may—
- (a) confirm the direction (with or without modification); or
 - (b) revoke the direction.

77—Contravention of Act

The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under this Division a requirement for an act that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

78—Action if non-compliance occurs

- (1) If the requirements of a direction under this Division are not complied with, the Minister may take the action required by the direction.
- (2) Any action to be taken under subsection (1) may be taken by an authorised officer or by another person authorised by the Minister for the purpose.
- (3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:
- (a) the Minister must issue the person with an instrument of authority;
 - (b) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers under this section.
- (4) The reasonable costs and expenses incurred by the Minister taking action under this section constitute a debt due to the Crown.

Division 4—Miscellaneous**79—Enforceable voluntary undertakings**

- (1) The Minister may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the contravention or alleged contravention to which the undertaking relates.
- (3) A person must not contravene an undertaking made by the person that is in effect.
Maximum penalty: \$50 000.
- (4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the ERD Court for enforcement of the undertaking.
- (5) If the ERD Court is satisfied that the person has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make any of the following orders:
- (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to the Minister—
 - (i) the costs of the proceedings; and
 - (ii) the reasonable costs of the Minister in monitoring compliance with the undertaking in the future;
 - (d) any other order that the Court considers appropriate in the circumstances.
- (6) A person who has given an undertaking may, at any time, with the written agreement of the Minister—
- (a) vary the undertaking; or
 - (b) withdraw the undertaking.
- (7) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- (8) No proceedings for a contravention or alleged contravention of this Act may be brought against a person who has given an undertaking under this section in relation to that contravention and who has completely discharged the undertaking.
- (9) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.
- (10) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

80—Civil remedies

- (1) Applications may be made to the ERD Court for 1 or more of the following orders:
- (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;

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- (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
- 5 (c) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
- 10 (d) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Fund) of an amount in the nature of exemplary damages determined by the Court.
- (2) An application under this section may be made by the Minister.
- 15 (3) The power of the ERD Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- 20 (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm or damage if the person engages in conduct of that kind.
- 25 (4) The power of the ERD Court to make an order requiring a person to take specified action may be exercised—
- (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
- 30 (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm or damage if the person refuses or fails to take that action.
- 35 (5) In assessing an amount to be ordered in the nature of exemplary damages, the ERD Court must have regard to—
- (a) any undue damage to the environment or detriment to the public interest resulting from the contravention; and
- (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
- 40 (c) any other matter it considers relevant.
- (6) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a judge of the ERD Court.

- (7) An application may be made without notice to any person and, if the ERD Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- 5 (8) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- 10 (9) If, on an application under this section or before the determination of the proceedings commenced by the application, the ERD Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (10) An interim order—
- 15 (a) may be made on an application without notice to any person; and
- (b) may be made whether or not the proceedings have been referred to a conference; and
- (c) will be made subject to such conditions as the ERD Court thinks fit; and
- (d) will not operate after the proceedings in which it is made are finally determined.
- 20 (11) The ERD Court may order an applicant in proceedings under this section—
- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (12).
- 25 (12) If, on an application under this section alleging a contravention of this Act, the ERD Court is satisfied—
- (a) that the respondent has not contravened this Act; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- 30 (c) that in the circumstances it is appropriate to make an order under this provision,
- the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the
- 35 respondent.
- (13) The ERD Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- 40 (14) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.

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(15) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

5 (16) The ERD Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

81—Annual report

(1) The Minister must, by 30 September in each year, cause a report to be published setting out the following in respect of the previous financial year:

- 10 (a) the results of any authorised investigations undertaken under section 70;
- (b) the number of compliance directions issued under section 74;
- (c) the number of emergency directions issued under section 75.

(2) A report published under this section must be made available on the register.

Part 7—Offences and penalties**15 82—False or misleading statements**

A person must not, in giving any information under this Act—

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

20 Maximum penalty: \$150 000.

83—Offence relating to licence

(1) A licensee must not contravene a term or condition of their licence.

Maximum penalty: \$250 000.

25 (2) A licensee must not undertake authorised operations otherwise than in accordance with the terms and conditions of their licence.

Maximum penalty: \$250 000.

(3) A person must not, without lawful excuse, obstruct or hinder a licensee in the reasonable exercise of rights conferred under this Act.

Maximum penalty: \$150 000.

30 84—Offences regarding authorised officers

(1) A person must not obstruct, hinder, threaten or attempt to influence an authorised officer in the exercise of a power under this Act.

Maximum penalty: \$15 000.

(2) A person must not impersonate an authorised officer.

35 Maximum penalty: \$15 000.

85—Civil penalties

- 5 (1) Subject to this section, if the Minister is satisfied that a person has committed an offence by contravening a provision of this Act, the Minister may, as an alternative to criminal proceedings, recover, by negotiation or by application to the ERD Court, an amount as a civil penalty in respect of the contravention.
- 10 (2) The Minister may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- 15 (3) The Minister may not make an application to the ERD Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
- (a) unless the Minister has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Minister, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Minister's notice to make such an election; or
- 20 (b) if the person serves written notice on the Minister, before the making of such an application, that the person elects to be prosecuted for the contravention.
- (4) The maximum amount that the Minister may recover by negotiation as a civil penalty in respect of a contravention is—
- (a) the amount specified by this Act as the criminal penalty in relation to that contravention; or
- 25 (b) \$150 000,
- whichever is the lesser.
- (5) If, on an application by the Minister, the ERD Court is satisfied, on the balance of probabilities, that a person has contravened a provision of this Act, the Court may order the person to pay to the Minister an amount as a civil penalty (but not exceeding the amount specified by this Act as the criminal penalty in relation to that contravention).
- 30 (6) In determining the amount to be paid by a person as a civil penalty, the ERD Court must have regard to—
- (a) the nature and extent of the contravention; and
- 35 (b) any detriment to the public interest resulting from the contravention; and
- (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
- (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and
- 40 (e) any other matter it considers relevant.
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the ERD Court.

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- (8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- 5 (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- 10 (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
- 15 (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- 20 (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.
- 25 (14) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (15) The ERD Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- 30 (16) An amount recovered as a civil penalty under this section will be paid into the Fund.

86—Additional orders on conviction

- (1) If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, and to any other order that may be made under this or any other Act, make 1 or more of the following orders:
- 35 (a) an order requiring the person to take any specified action (including an order to rectify the consequences of any contravention of this Act, or to ensure that a further contravention does not occur);
- 40 (b) without limiting paragraph (a)—an order requiring the person to make good any environmental damage and, if appropriate, to take specified action to prevent or mitigate further harm to the environment;

(c) an order requiring the person to publicise the contravention of this Act and any environmental or other consequences, and the other orders (if any) made against the person;

(d) an order requiring the person to pay into the Fund an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or a related body corporate, has gained, or can reasonably be expected to gain, as a result of the contravention of this Act;

(e) an order requiring the person to pay to any person who has suffered loss or damage to property as a result of the acts or omissions constituting the offence, or incurred costs or expenses in taking action to prevent or mitigate such loss or damage, compensation for that loss or damage and reasonable reimbursement for those costs or expenses.

(2) For the purposes of subsection (1)(d), a financial benefit obtained by delaying or avoiding costs will be taken to be a financial benefit gained as a result of a contravention of this Act if the contravention can be attributed (in whole or in part) to that delay or avoidance.

(3) The court may, by an order under this section, fix a period for compliance and impose other requirements the court considers necessary or expedient for the enforcement of the order.

87—Continuing offences

(1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, subject to any determination of a court, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, subject to any determination of a court, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

88—Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

(a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

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- (c) the director failed to exercise due diligence to prevent the commission of the offence.

89—Time limits

- 5 (1) Criminal proceedings under this Act may be commenced at any time within 3 years after the date of the alleged offence or, with the authorisation of the Attorney-General, at any later time within 10 years after the alleged offence.
- 10 (2) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of criminal proceedings under this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

90—Evidentiary provisions

- 15 (1) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying—
- (a) that a person named in the certificate was or was not at a specified time a licensee; or
- (b) that a specified provision was a term or condition of a specified licence at a specified time; or
- 20 (c) that a specified provision was a requirement or condition of an operational management plan; or
- (d) that a specified determination, direction, decision, order or requirement was made or given on a specified day; or
- (e) that at a specified time the Minister gave notice of any specified matter under or in connection with the operation of this Act; or
- 25 (f) that at a specified time the Minister had not received a notice, instrument or other document, or had not received any information of a specified kind; or
- (g) that at a specified time a specified person was an authorised officer under this Act; or
- (h) that a particular delegation was in force under this Act at a specified time,

is, in the absence of proof to the contrary, proof of the matter so certified.

- 30 (2) In any proceedings for an offence against this Act, a document purporting to be a licence under this Act will be accepted as such in the absence of evidence to the contrary.
- (3) If in any proceedings for an offence against this Act in relation to any operations it is proved that there has been a contravention of—
- 35 (a) a term or condition of a licence; or
- (b) a requirement or condition of an operational management plan applying in respect of a licence,

it must be presumed, in the absence of evidence to the contrary, that the contravention occurred as a result of an act of the relevant licensee.

- 5 (4) In any proceedings for an offence against this Act, if it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical, measuring or other device or technique by an authorised officer or a person assisting an authorised officer, the alleged fact must be accepted as proved in the absence of evidence to the contrary.

Part 8—Appeals to ERD Court

91—Appeals to ERD Court

- 10 (1) This section applies to the following decisions:
- (a) a decision to grant or refuse an application for a licence;
 - 10 (b) a decision to refuse an application for the renewal of a licence;
 - (c) a decision to impose, vary or revoke a condition of licence;
 - (d) a decision to suspend or cancel a licence;
 - (e) a decision in relation to an application for approval of a statement of environmental objectives;
 - 15 (f) a decision in relation to the review of a statement of environmental objectives;
 - (g) a decision in relation to an application for approval of an operational management plan;
 - (h) a decision in relation to the review of an operational management plan.
- 20 (2) Subject to subsection (3), a person who is dissatisfied with a decision to which this section applies may appeal against the decision to the ERD Court.
- (3) An appeal must be made in a manner and form determined by the ERD Court, setting out the grounds of the appeal.
- 25 (4) Subject to this section, an appeal under this section must be instituted within 21 days after notice of the relevant decision is given to the appellant.
- (5) If the reasons of the Minister are not given to the appellant in writing at the time of making the decision and the appellant (within the period specified in subsection (4) as the time within which an appeal may be instituted) requires the Minister to state the reasons in writing—
- 30 (a) the Minister must, within 30 days after being required to do so by the appellant, state in writing the reasons for the decision; and
 - (b) the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.
- 35 (6) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.
- 40 (7) Unless otherwise determined by the ERD Court, an appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to that appeal).

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- (8) Subject to subsection (9), the institution of an appeal does not affect the operation of the decision to which the appeal relates.
- (9) The ERD Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of a decision if the Court is satisfied that it is appropriate to do so.
- (10) An order under subsection (9)—
- (a) may be varied or revoked by the ERD Court by further order; and
 - (b) is subject to such conditions as are specified in the order; and
 - (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the decision of the ERD Court on the appeal comes into operation, whichever is the earlier.
- (11) The ERD Court must not make an order under subsection (9) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.
- (12) The ERD Court may, on hearing an appeal under this section, do 1 or more of the following:
- (a) confirm, vary or revoke the decision or order appealed against;
 - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
 - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.
- (13) An order for costs cannot be made against an appellant unless the ERD Court is satisfied that the appellant's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

Part 9—Hydrogen and renewable energy register

92—Hydrogen and renewable energy register

- (1) The Minister must establish and maintain a hydrogen and renewable energy register (the *register*).
- (2) The register must contain the following:
- (a) in relation to a licence granted under this Act—
 - (i) the prescribed particulars in relation to the licensee; and
 - (ii) the dates on which the licence was granted and will expire;
 - (b) information required to be entered on the register under this Act;
 - (c) any other information prescribed by the regulations.
- (3) The Minister may amend the register in order to ensure that the information on the register is current and accurate.

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- (4) The Minister—
- (a) must make the register publicly available—
 - (i) on a website maintained by the Minister; and
 - (ii) in any other manner the Minister thinks fit; and
 - (b) must ensure that copies of information on the register can be made available to a person on payment of the prescribed fee.
- (5) In this section—
- prescribed particulars*, in relation to a person, means—
- (a) any address for service or other email address, telephone number or street or postal address provided by the person for purposes connected with a licence; and
 - (b) any other particulars of a kind prescribed by the regulations.

Part 10—Miscellaneous

93—Delegation

- (1) The Minister may delegate powers or functions under this Act to any person.
- (2) A delegation under this section—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Minister to act personally in any matter; and
 - (c) is revocable at will; and
 - (d) may, if the instrument of delegation so provides, be further delegated.

94—Confidentiality

- (1) A person engaged, or formerly engaged, in the administration of this Act must not divulge or communicate any information relating to trade processes or financial information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration of this Act; or
 - (d) to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purpose of the performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

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- (3) If the Minister publishes information in accordance with this Act, the Minister may exclude from publication information that the minister considers to be—
- (a) personal information of a confidential nature; or
 - (b) information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were published; or
 - (c) information the publication of which would, or could reasonably be expected to, prejudice the commercial position of a person or confer a commercial advantage on a person; or
 - (d) information the publication of which—
 - (i) would otherwise be contrary to the public interest; or
 - (ii) would be inappropriate for such other reason as the Minister thinks fit.

95—Exemptions

- (1) If the Minister is satisfied that circumstances exist that justify so doing, the Minister may, by written notice—
- (a) exempt a licensee from complying with a condition of their licence; or
 - (b) exempt a person from the operation of this Act or a specified provision of this Act.
- (2) The Minister must, in considering whether or not to exempt a person from the operation of this Act, have regard to the criteria prescribed by the regulations for the purposes of this section.
- (3) An exemption under this section—
- (a) may be granted absolutely or on conditions; and
 - (b) remains in force for a period determined by the Minister and specified in the written notice.
- (4) An exemption may not be granted under this section so as to discriminate against the holders of native title in land.

96—Charge on property if debt due to Crown

- (1) This section applies to property (other than real property) if the owner of the property is liable to pay a debt due to the Crown under this Act.
- (2) A charge on the property to secure payment of the debt to the Crown is created by force of this section.
- (3) A charge created on property under subsection (2)—
- (a) has priority over any other interest in the property (including a security interest within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth); and
 - (b) has priority over all other encumbrances; and
 - (c) is not affected by a change in ownership of the property.

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- (4) Section 73(2) of the *Personal Property Securities Act 2009* of the Commonwealth applies to the charge.
- (5) The charge remains in force until the debt is paid in full or otherwise discharged.

97—Administrative penalties

- 5 (1) This section applies to any provision of this Act at the foot of which the words "Administrative penalty" appear.
- (2) If a person who is a holder or former holder of a licence is alleged to have contravened a provision to which this section applies, the Minister may, by written notice to the person, impose an administrative penalty on the person (and the Minister may act under this subsection without prior consultation with the person and without the need to give a warning or any prior notice in relation to the matter).
- 10 (3) The amount of an administrative penalty is an amount (not exceeding \$15 000) prescribed by regulation in relation to the relevant provision.
- (4) An administrative penalty may be recovered as a debt due to the Crown.
- 15 (5) An amount recovered as an administrative penalty under this section will be paid into the Fund.
- (6) If an administrative penalty has been imposed in relation to a particular act or default, the same act or default cannot be made the subject of proceedings for an offence against this Act and if proceedings for an offence against this Act have been brought in relation to a particular act or default, an administrative penalty cannot be imposed for the same act or default.
- 20

98—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- 25 (2) Without limiting subsection (1), the regulations may—
- (a) exempt a person, or a class of persons, from the operation of this Act or a specified provision of this Act; and
- (b) set out a process to be undertaken by the Minister before granting an exemption of a kind described in paragraph (a); and
- 30 (c) prescribe a penalty, not exceeding \$20 000, for contravention of a regulation; and
- (d) prescribe an expiation fee, not exceeding \$7 500, in respect of any offence against this Act or the regulations; and
- (e) be of general or limited application; and
- 35 (f) make different provision according to the matters or circumstances to which they are expressed to apply; and
- (g) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and

- (h) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.
- (3) The Minister may prescribe fees for the purposes of this Act (including an annual fee payable by a licensee) by fee notice under the *Legislation (Fees) Act 2019*.

Schedule 1—Related amendments

Part 1—Amendment of *Pastoral Land Management and Conservation Act 1989*

1—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *ILUA* insert:
- hydrogen generation facility* means a facility for generating hydrogen that is authorised to be constructed and operated pursuant to a hydrogen generation licence under the *Hydrogen and Renewable Energy Act 2023*;
- (2) Section 3(1)—after the definition of *rehabilitation* insert:
- renewable energy infrastructure* and *renewable energy licence* have the same respective meanings as in the *Hydrogen and Renewable Energy Act 2023*;
- (3) Section 3(1), definition of *solar energy facility*—delete the definition
- (4) Section 3(1), definitions of *wind farm* and *wind farm licence*—delete the definitions

2—Amendment of section 4—Objects

Section 4(f)—delete "wind farms" and substitute:
renewable energy infrastructure

3—Amendment of section 9—Pastoral Land Management Fund

Section 9(2)(ab)—delete paragraph (ab)

4—Amendment of section 22—Conditions of pastoral leases

- (1) Section 22(1)(a)(v)—after subparagraph (D) insert:
- and
- (E) the *Hydrogen and Renewable Energy Act 2023*; and
- (2) Section 22(1)(a)(vii)—delete subparagraph (vii)
- (3) Section 22(1)(c)(iii)—delete subparagraph (iii) and substitute:
- (iii) the right of a Minister to whom the administration of the *Hydrogen and Renewable Energy Act 2023* is committed to grant a renewable energy licence under that Act.
- (4) Section 22(8)—delete subsection (8)

5—Amendment of section 31—Alteration of boundaries

Section 31(1a)(a) and (b)—delete "solar energy facility" wherever occurring and substitute in each case:

hydrogen generation facility

6—Amendment of section 32—Resumption of land

Section 32(3)(a)—delete "solar energy facility" and substitute:

hydrogen generation facility

7—Repeal of Part 6 Division 4

Part 6 Division 4—delete Division 4

Part 2—Amendment of *Planning, Development and Infrastructure Act 2016***8—Amendment of heading to Part 12**

Heading to Part 12—after "Mining" insert:

and renewable energy

9—Amendment of section 160—Mining tenements to be referred in certain cases to Minister

(1) Section heading—delete "Mining tenements" and substitute:

Mining and renewable energy matters

(2) Section 160(1), definition of *appropriate authority*—delete "the Minister of the Crown for the time being administering the Mining Acts" and substitute:

—

(a) a Minister to whom the administration of the Mining Acts are committed; or

(b) a Minister to whom the administration of the *Hydrogen and Renewable Energy Act 2023* is committed;

(3) Section 160(1), definition of *designated mining matter*—delete "mining"

(4) Section 160(1), definition of *designated mining matter*—after paragraph (b) insert:

or

(c) an application for a licence under the *Hydrogen and Renewable Energy Act 2023*; or

(d) a proposed statement of environmental objectives under the *Hydrogen and Renewable Energy Act 2023*;

(5) Section 160(1)—after the definition of *designated mining matter* insert:

relevant licence means—

(a) a mining production tenement; or

(b) a licence under the *Hydrogen and Renewable Energy Act 2023*.

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Schedule 1—Related amendments

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- (6) Section 160(2)—delete "mining" wherever occurring
- (7) Section 160(3)—after "Mining Acts" insert:
or the *Hydrogen and Renewable Energy Act 2023* (as the case may be)
- (8) Section 160(3)—delete "mining"
- 5 (9) Section 160(4)—delete "in pursuance of a mining production tenement" and substitute:
under a relevant licence
- (10) Section 160(5)—delete "mining" first occurring
- (11) Section 160(5)—delete "mining production tenement" wherever occurring and
10 substitute in each case:
relevant licence
- (12) Section 160(7)—delete "mining" wherever occurring

10—Amendment of section 161—Related matters

- (1) Section 161(1)—after paragraph (b) insert:
15 and
(c) regulated activities within the meaning of the *Hydrogen and Renewable Energy Act 2023*.
- (2) Section 161(2)—after "mining operations" insert:
or relevant regulated activities (as the case may be)
- 20 (3) Section 161(3)—after "Mining Acts" insert:
or the *Hydrogen and Renewable Energy Act 2023*
- (4) Section 161(5)—after "Mining Acts" insert:
or the *Hydrogen and Renewable Energy Act 2023*