



# **Australian Jobs Act 2013**

**No. 69, 2013**

## **Compilation No. 5**

**Compilation date:** 14 October 2024

**Includes amendments:** Act No. 39, 2024

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Australian Jobs Act 2013* that shows the text of the law as amended and in force on 14 October 2024 (the **compilation date**).

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

### Uncommenced amendments

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

### Application, saving and transitional provisions for provisions and amendments

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

### Editorial changes

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act about Australian industry participation plans for major projects, and for other purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Australian Jobs Act 2013*.

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 June 2013
2. Sections 3 to 128	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	27 December 2013
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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

### 3 Object

The main object of this Act is to support the creation and retention of Australian jobs by:

- (a) requiring Australian Industry Participation plans for major projects; and
- (b) providing that an Australian Industry Participation plan for a major project will ensure that Australian entities have full, fair and reasonable opportunity to bid for:
  - (i) the supply of key goods or services for the project; and
  - (ii) if the project involves establishing a new facility—the supply of key goods or services for the new facility’s initial operational phase.

### 4 Simplified outline

The following is a simplified outline of this Act:

- An Australian Industry Participation plan (*AIP plan*) is required for a major project to establish, expand, improve or upgrade a facility.
- An AIP plan will deal with:
  - (a) the project phase of a major project; and
  - (b) if a major project involves establishing a new facility—the new facility’s initial operational phase.
- The key objective of an AIP plan is that Australian entities should have full, fair and reasonable opportunity to bid for:
  - (a) the supply of key goods or services for the project; and
  - (b) if the project involves establishing a new facility—the supply of key goods or services for the new facility’s initial operational phase.

- This Act sets up the Australian Industry Participation Authority.
- The Authority's functions include:
  - (a) approving AIP plans; and
  - (b) monitoring compliance; and
  - (c) other functions relating to Australian industry participation matters.
- The Minister may establish the Australian Industry Participation Advisory Board.

## 5 Definitions

In this Act:

**ABN** has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

**ACN** has the same meaning as in the *Corporations Act 2001*.

**acquire** has the same meaning as in the *Competition and Consumer Act 2010*.

**advisory board member** means a member of the AIP advisory board, and includes the Chair of the AIP advisory board.

**AIP advisory board** means the Australian Industry Participation Advisory Board established under section 85.

**AIP matter** means:

- (a) a matter relating to the opportunities for Australian entities to bid for the supply of key goods or services for a designated project; or
- (b) a matter relating to the opportunities for Australian entities to bid for the supply of key goods or services for the initial operational phase of a new relevant facility in relation to a designated project.

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***AIP plan rules*** means the rules set out in Division 2 of Part 2.

***approved AIP plan*** means an approved AIP plan under section 18, 19 or 20.

***Australian entity*** means an entity that has an ABN or an ACN.

***Australian police force*** means:

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

***Authority*** means the Australian Industry Participation Authority.

Note: See section 67.

***bid*** includes tender.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***designated project*** has the meaning given by section 7.

***draft AIP plan*** means a plan that is accompanied by a document stating that the plan is a draft AIP plan.

***electricity facility*** means one, or a combination of 2 or more, of the following facilities:

- (a) an electricity generation facility;
- (b) an electricity transmission facility;
- (c) an electricity distribution facility.

***eligible facility*** has the meaning given by section 6.

***engage in conduct*** means:

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

***entity*** has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

***entrusted official*** means:

- (a) the Authority; or
- (b) a member of the staff assisting the Authority; or
- (c) a person whose services are made available to the Authority under section 81; or
- (d) a person engaged as a consultant under section 82; or
- (e) an advisory board member.

**goods** has the same meaning as in the *Competition and Consumer Act 2010*.

**key goods or services** has the meaning given by section 10.

**key goods or services for a new relevant facility's initial operational phase** has the meaning given by section 12.

**key goods or services for a project** has the meaning given by section 11.

**key objective:**

- (a) in relation to Part B of an approved AIP plan for a major project—has the meaning given by section 34; or
- (b) in relation to Part C of an approved AIP plan for a major project—has the meaning given by section 38.

**land transport facility** means one, or a combination of 2 or more, of the following things:

- (a) a road;
- (b) a tunnel;
- (c) a bridge;
- (d) a railway line;

that is to be used for the transport of people or goods.

**legislative rules** means rules made under section 128.

**low-value contract** has the meaning given by subsection 10(7).

**low-value contract threshold amount** has the meaning given by subsection 10(8).

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**major project** has the meaning given by section 8.

**major project threshold amount** has the meaning given by subsection 8(2).

**non-Australian entity** means an entity other than an Australian entity.

**operator**, in relation to a new relevant facility, means the person who is, or is to be, responsible for operating the facility.

Note: See also section 65, which deals with multiple operators.

**petroleum** has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

**petroleum facility** means one, or a combination of 2 or more, of the following things:

- (a) a well, or other thing, for use for the exploration for petroleum;
- (b) a well, or other thing, for use for the recovery of petroleum;
- (c) a thing for use for the processing of petroleum;
- (d) a thing for use for the storage of petroleum;
- (e) a thing for use for the offloading of petroleum;
- (f) a thing for use for the piped conveyance of petroleum.

**prescribed court** means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit and Family Court of Australia (Division 2).

**procurement entity**:

- (a) in relation to a project—means a person who is responsible for acquiring key goods or services for the project (for this purpose, it is immaterial whether the person is the project proponent for the project); or
- (b) in relation to a new relevant facility—means a person who is responsible for acquiring key goods or services for the

facility's initial operational phase (for this purpose, it is immaterial whether the person is the operator of the facility).

**productive facility** means a facility that is wholly or principally for use in carrying out one or more steps in:

- (a) the production or distribution, or both, of goods; or
- (b) the provision of services.

**project** includes:

- (a) a project as varied and in existence from time to time; and
- (b) a project that has been completed.

**project proponent**, in relation to a project, means the person who is responsible for carrying out the project.

Note: See also section 9 (which deals with persons responsible for carrying out projects) and section 63 (which deals with multiple project proponents).

**protected information** means information that:

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

**relevant facility**, in relation to a project, means:

- (a) to the extent to which the project involves establishing a new eligible facility—the new eligible facility; or
- (b) to the extent to which the project involves expanding, improving or upgrading an eligible facility—the expanded, improved or upgraded eligible facility.

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

**services** has the same meaning as in the *Competition and Consumer Act 2010*.

**sewage or wastewater facility** means one, or a combination of both, of the following:

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- (a) equipment, excavations and structures that are to be used for treating sewage, or other wastes in water, produced by the public:
  - (i) to reduce the damage caused by its disposal in the natural environment; or
  - (ii) to make any component of the things treated suitable for re-use;
- (b) channels, drains or pipelines for carrying sewage, or other wastes in water, produced by the public to or from the equipment and structures covered by paragraph (a).

**State/Territory government body** means:

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

**subsidiary** has the same meaning as in the *Corporations Act 2001*.

**supply** has the same meaning as in the *Competition and Consumer Act 2010*.

**telecommunications network** has the same meaning as in the *Telecommunications Act 1997*.

**trigger date**, in relation to a project, has the meaning given by section 13.

**water supply facility** means one, or a combination of 2 or more, of the following:

- (a) dams, weirs, reservoirs or tanks that are to be used for storing, and regulating the flow of, water for public consumption, or other use by the public;
- (b) bores that are to be used for extracting water for public consumption, or other use by the public;
- (c) channels or pipelines that are to be used:
  - (i) for supplying water for public consumption, or other use by the public; or
  - (ii) for carrying water between dams or other storage places from which it is to be supplied through channels or

- pipelines for public consumption, or other use by the public;
- (d) pumps and associated structures that are to be used:
    - (i) in extracting water from bores covered by paragraph (b); or
    - (ii) for pumping water along channels or pipelines covered by paragraph (c);
  - (e) equipment and structures that are to be used for treating water that is to be supplied to the public through pipelines to make it fit for the public to drink.

## **6 Eligible facility**

- (1) For the purposes of this Act, *eligible facility* means:
- (a) a mine or quarry, whether alone or in combination with one or more other facilities that are reasonably necessary for the mine or quarry to operate; or
  - (b) a land transport facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the land transport facility to operate; or
  - (c) a wharf or other port facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the wharf or other port facility to operate; or
  - (d) a petroleum facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the petroleum facility to operate; or
  - (e) an electricity facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the electricity facility to operate; or
  - (f) a factory, whether alone or in combination with one or more other facilities that are reasonably necessary for the factory to operate; or
  - (g) an airport, whether alone or in combination with one or more other facilities that are reasonably necessary for the airport to operate; or

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- (h) a passenger terminal, whether alone or in combination with one or more other facilities that are reasonably necessary for the passenger terminal to operate; or
  - (i) a water supply facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the water supply facility to operate; or
  - (j) a sewage or wastewater facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the sewage or wastewater facility to operate; or
  - (k) a telecommunications network; or
  - (l) any other productive facility, whether alone or in combination with one or more other facilities that are reasonably necessary for the productive facility to operate.
- (2) The legislative rules may declare that a specified thing is an ***eligible facility*** for the purposes of this Act.
- (3) The legislative rules may declare that a combination of 2 or more specified things is an ***eligible facility*** for the purposes of this Act.
- (4) Subsections (1), (2) and (3) have effect subject to subsections (5) and (6).

*Exceptions*

- (5) The Authority may, by legislative instrument, declare that a specified thing is not an ***eligible facility*** for the purposes of this Act.
- (6) The Authority may, by legislative instrument, declare that a combination of 2 or more specified things is not an ***eligible facility*** for the purposes of this Act.

*Interpretation*

- (7) To avoid doubt, for the purposes of subsections (2), (3), (5) and (6) it is immaterial whether the specified thing or things are in existence when the declaration is made.

## 7 Designated project

- (1) For the purposes of this Act, *designated project* means a project to do either or both of the following:
- (a) establish a new eligible facility;
  - (b) expand, improve or upgrade an existing eligible facility;
- to the extent to which:
- (c) one or more constitutional corporations are responsible for carrying out the project; or
  - (d) a relevant facility:
    - (i) is, or is to be, in one or more offshore areas (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) and outside the Greater Sunrise special regime area (within the meaning of the *Seas and Submerged Lands Act 1973*); and
    - (ii) relates to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf; or
  - (e) a relevant facility is, or is to be, for purposes related to trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory; or
    - (iv) between a State and a Territory; or
    - (v) between 2 Territories; or
  - (f) a relevant facility is, or is to be, in a Territory; or
  - (g) a relevant facility is, or is to be, in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).
- (2) However, subsection (1) does not apply to a project if the trigger date for the project is before the 90th day after the commencement of this section.

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**8 Major project**

- (1) If the total expenditure of a capital nature that has been incurred, or is reasonably likely to be incurred, in carrying out a designated project is greater than or equal to the major project threshold amount, the project is a **major project** for the purposes of this Act.
- (2) For the purposes of this Act, **major project threshold amount** means \$500 million.
- (3) For the purposes of this section, if a project is subject to one or more conditions, assume that those conditions will be satisfied.

*Arm's length transactions*

- (4) If:
  - (a) a person has incurred, or is reasonably likely to incur, expenditure in connection with a transaction; and
  - (b) the parties to the transaction did not, or are not likely to, deal with each other at arm's length in relation to the transaction; and
  - (c) the amount of the expenditure is, or is reasonably likely to be, less than is reasonable;

the amount of the expenditure is taken, for the purposes of this section, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

*Anti-avoidance*

- (5) If:
  - (a) at any time after the commencement of this section, one or more persons entered into, commenced to carry out, or carried out, a scheme; and
  - (b) the scheme involves carrying out 2 or more low-value designated projects; and
  - (c) the total expenditure of a capital nature that has been incurred, or is reasonably likely to be incurred, in carrying

out those projects is greater than or equal to the major project threshold amount; and

- (d) having regard to the following:
- (i) the manner in which the scheme was entered into or carried out;
  - (ii) the form and substance of the scheme;
  - (iii) the time when the scheme was entered into and the length of the period during which the scheme was, or is likely to be, carried out;
  - (iv) the result in relation to the operation of this Act that, but for this section, would be achieved by the scheme;
- it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of enabling a person to avoid the application of Part 2;

the Authority may, by writing, determine that each of those projects is a **major project** for the purposes of this Act.

- (6) For the purposes of subsection (5), it is immaterial whether the person last mentioned in paragraph (5)(d) is the person, or one of the persons, mentioned in paragraph (5)(a).
- (7) If the Authority makes a determination under subsection (5), the Authority must publish a copy of the determination on the Authority's website.
- (8) A determination under subsection (5) is not a legislative instrument.
- (9) For the purposes of subsection (5), if the total expenditure of a capital nature that has been incurred, or is reasonably likely to be incurred, in carrying out a designated project is less than the major project threshold amount, the project is a **low-value designated project**.
- (10) For the purposes of subsection (5), **scheme** means:
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not

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enforceable, or intended to be enforceable, by legal proceedings; or

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

## 9 Person responsible for carrying out project

### *Agreements*

- (1) If, under an agreement, a project, or a part of a project, is, or is to be, carried out by a person (the **contractor**) for and on behalf of another person, then, for the purposes of this Act:
- (a) the other person is taken to be the person responsible for carrying out the project, or the part of the project, as the case may be; and
- (b) the contractor is taken not to be responsible for carrying out the project, or the part of the project, as the case may be.
- (2) Subsection (1) has effect subject to subsections (3) and (5).

### *Declarations*

- (3) The Authority may, by writing, declare that, for the purposes of this Act:
- (a) a specified person is taken to be the person responsible for carrying out a specified project; and
- (b) no other person is taken to be responsible for carrying out the project.
- (4) If the Authority makes a declaration under subsection (3) in relation to a person, the Authority must give a copy of the declaration to the person.
- (5) The Authority may, by writing, declare that, for the purposes of this Act:
- (a) 2 or more specified persons are taken to have joint or several responsibility for carrying out a specified project; and

- (b) no other person is taken to be responsible for carrying out the project.

Note: See also section 63 (which deals with multiple project proponents).

- (6) If the Authority makes a declaration under subsection (5) in relation to 2 or more persons, the Authority must give a copy of the declaration to each of those persons.
- (7) A declaration under subsection (3) or (5) is not a legislative instrument.

## **10 Key goods or services**

- (1) For the purposes of this Act, *key goods or services* means goods or services other than goods or services supplied, or to be supplied, under a low-value contract.

### *Anti-avoidance*

- (2) If:
- (a) a person proposes to acquire goods or services for a major project under 2 or more low-value contracts; and
  - (b) the total expenditure incurred, or to be incurred, by the person under those contracts is likely to be greater than or equal to the low-value contract threshold amount; and
  - (c) having regard to the following:
    - (i) the manner in which the contracts are likely to be entered into;
    - (ii) the period of time over which the contracts are likely to be entered into;
    - (iii) the likely interval or intervals of time (if any) between the entering into of the contracts;
    - (iv) the locations at which the contracts are likely to be entered into;

it would be concluded that the person proposes to acquire those goods or services under those contracts for the sole or dominant purpose of enabling a person to avoid the

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application of an approved AIP plan to those goods or services;

the Authority may, by writing, determine that those goods or services are *key goods or services* for the purposes of this Act.

- (3) For the purposes of subsection (2), it is immaterial whether the person last mentioned in paragraph (2)(c) is the person mentioned in paragraph (2)(a).
- (4) If the Authority makes a determination under subsection (2), the Authority must publish a copy of the determination on the Authority's website.
- (5) A determination under subsection (2) is not a legislative instrument.

*Arm's length transactions*

- (6) If:
  - (a) a person has incurred, or is reasonably likely to incur, expenditure in connection with a transaction; and
  - (b) the parties to the transaction did not, or are not likely to, deal with each other at arm's length in relation to the transaction; and
  - (c) the amount of the expenditure is, or is reasonably likely to be, less than is reasonable;

the amount of the expenditure is taken, for the purposes of this section, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

*Low-value contract*

- (7) For the purposes of this Act, if the total expenditure incurred, or to be incurred, in acquiring goods or services under a contract is less than the low-value contract threshold amount, the contract is a *low-value contract*.

*Low-value contract threshold amount*

- (8) For the purposes of this Act, *low-value contract threshold amount* means \$1 million.

**11 Key goods or services for a project**

For the purposes of this Act, key goods or services are *key goods or services for a project* if, and only if, the goods or services are for use, wholly or partly, in connection with carrying out the project.

**12 Key goods or services for a new relevant facility's initial operational phase**

For the purposes of this Act, key goods or services are *key goods or services for a new relevant facility's initial operational phase* if, and only if, the goods or services are for use, wholly or partly, in connection with the operation of the new relevant facility during the 2-year period starting when the establishment of the facility is completed.

**13 Trigger date**

- (1) For the purposes of this Act, the *trigger date* for a project means:
- (a) if a trigger event for the project happens during the interim period—the first or only day during the interim period on which a trigger event for the project happens; or
  - (b) if the earliest trigger event for the project happens on a day after the interim period—that day; or
  - (c) if the Authority, by written notice given to the project proponent for the project, specifies another day—that other day.

Note 1: For *trigger event*, see subsection (4).

Note 2: For *interim period*, see subsection (5).

- (2) The Authority may specify a day under paragraph (1)(c):
- (a) on the Authority's own initiative; or
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- (b) on application made to the Authority by the project proponent for the project.
- (3) A day specified under paragraph (1)(c) must not be earlier than 120 days after the notice is given.

*Trigger event*

- (4) For the purposes of this section, each of the following is a ***trigger event*** for a project:
  - (a) block diagrams for the project are developed;
  - (b) process flow diagrams for the project are developed;
  - (c) a project proponent enters into a contract with another person under which the other person becomes a procurement entity in relation to the project;
  - (d) a request for bids for the supply of key goods or services for the project is made;
  - (e) technical specifications for the project are prepared;
  - (f) a project proponent determines which standard or standards will apply to any of the key goods or services that are to be acquired for the project;
  - (g) an equipment list for the project is prepared;
  - (h) a project proponent first contacts a supplier with a request for pricing details for any of the key goods or services for the project;
  - (i) a construction and contracting methodology for the project is developed;
  - (j) an environmental submission is made in relation to the project;
  - (k) a detailed schedule for the project is prepared;
  - (l) a high-level scoping of the goods and services for the project is conducted.

*Interim period*

- (5) For the purposes of this section, the ***interim period*** means the period:
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- (a) beginning immediately after the end of the 90th day after the commencement of this section; and
- (b) ending 2 years after the commencement of this section.

#### **14 Crown to be bound**

This Act binds the Crown in each of its capacities.

#### **15 Extension to external Territories**

This Act extends to every external Territory.

#### **16 Extension to exclusive economic zone and continental shelf**

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

## **Part 2—Australian Industry Participation plans**

### **Division 1—Australian Industry Participation plans**

#### **17 Project proponent must give draft AIP plan to the Authority**

- (1) The project proponent for a major project must give the Authority a draft AIP plan for the project:
  - (a) at least 90 days before the trigger date for the project; or
  - (b) if the Authority, by written notice given to the project proponent, specifies a later time—before that later time.
- (2) The Authority may specify a day under paragraph (1)(b):
  - (a) on the Authority’s own initiative; or
  - (b) on application made to the Authority by the project proponent for the project.
- (3) Subsection (1) does not apply if the project proponent is not aware that the project is a major project.
- (4) If:
  - (a) no draft AIP plan for a major project has been given under subsection (1); and
  - (b) a draft AIP plan would have been required to have been given under subsection (1) if the project proponent for the project had been aware that the project was a major project; and
  - (c) the project proponent for the project becomes aware that the project is a major project;the project proponent for the project must:
  - (d) give the Authority a draft AIP plan for the project; and
  - (e) do so within 60 days after becoming so aware.

*Exceptions*

- (5) This section does not apply to the project proponent if the project proponent has prepared a plan that:
  - (a) has been given to a State or Territory; and
  - (b) complies with the conditions specified in the legislative rules.
- (6) This section does not apply to the project proponent if the conditions specified in the legislative rules are satisfied.

**18 Approval of draft AIP plan**

- (1) If the project proponent for a major project gives the Authority a draft AIP plan for the project under section 17, the Authority must:
  - (a) approve the plan; or
  - (b) refuse to approve the plan.

*Approval of plan*

- (2) The Authority must not approve a draft AIP plan under subsection (1) unless:
  - (a) the draft AIP plan complies with the AIP plan rules; and
  - (b) the Authority is satisfied that the steps specified in accordance with subsections 35(2), 36(2), 39(2) and 40(2) are adequate.
- (3) If the Authority approves the draft AIP plan under subsection (1), the plan becomes the approved AIP plan for the project.
- (4) If the Authority approves the draft AIP plan under subsection (1), the Authority must give the project proponent a written notice setting out the decision.

*Refusal to approve plan—direction to give revised plan*

- (5) If the Authority refuses to approve the draft AIP plan under subsection (1), the Authority must, by written notice given to the project proponent, direct the project proponent to:
  - (a) give the Authority a revised draft AIP plan that:

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- (i) complies with the AIP plan rules; and
    - (ii) sets out adequate steps specified in accordance with subsections 35(2), 36(2), 39(2) and 40(2); and
  - (b) do so within 30 days after the notice is given.
- (6) The project proponent must comply with a direction under subsection (5).

### *Approval of revised plan*

- (7) If:
- (a) the project proponent for a major project gives the Authority a revised draft AIP plan for the project; and
  - (b) the revised draft AIP plan is given as a result of a direction under subsection (5); and
  - (c) the revised draft AIP plan complies with that direction;
- the Authority must approve the revised draft AIP plan.
- (8) If the Authority approves the revised draft AIP plan under subsection (7), the plan becomes the approved AIP plan for the project.
- (9) If the Authority approves the revised draft AIP plan under subsection (7), the Authority must give the project proponent a written notice setting out the decision.

### *Timing*

- (10) The Authority must take all reasonable steps to ensure that a decision is made on a draft AIP plan for a project within 30 days after the Authority is given the draft AIP plan.

## **19 Replacement of approved AIP plan before completion of project**

- (1) If:
- (a) an approved AIP plan (the *original plan*) for a major project is in force; and
  - (b) the project has not been completed;

the project proponent for the project may give the Authority a draft AIP plan that is expressed to replace the original plan.

- (2) If the project proponent gives the Authority a draft AIP plan for the project under subsection (1), the Authority must:
- (a) approve the plan; or
  - (b) refuse to approve the plan.

*Approval of replacement plan*

- (3) The Authority must not approve a draft AIP plan under subsection (2) unless:
- (a) the draft AIP plan complies with the AIP plan rules; and
  - (b) the Authority is satisfied that the steps specified in accordance with subsections 35(2), 36(2), 39(2) and 40(2) are adequate.
- (4) If the Authority approves the draft AIP plan under subsection (2), the plan becomes the approved AIP plan for the project.
- (5) If the draft AIP plan becomes the approved AIP plan for the project, the original plan ceases to be in force.

*Notice of decision*

- (6) If the Authority approves the draft AIP plan under subsection (2), the Authority must give the project proponent a written notice setting out the decision.
- (7) If the Authority refuses to approve the draft AIP plan under subsection (2), the Authority must give the project proponent a written notice setting out the decision.

*Timing*

- (8) The Authority must take all reasonable steps to ensure that a decision is made on a draft AIP plan for a project within 30 days after the Authority is given the draft AIP plan.

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**20 Replacement of approved AIP plan after completion of project**

- (1) If:
- (a) an approved AIP plan (the *original plan*) for a major project is in force; and
  - (b) the project involves establishing a new relevant facility; and
  - (c) the project has been completed;
- the operator of the new relevant facility may give the Authority a draft AIP plan:
- (d) that is expressed to replace the original plan; and
  - (e) Part B of which is identical to Part B of the original plan.

Note: Section 30 deals with Parts of AIP plans.

- (2) If the operator gives the Authority a draft AIP plan for the project under subsection (1), the Authority must:
- (a) approve the plan; or
  - (b) refuse to approve the plan.

*Approval of replacement plan*

- (3) The Authority must not approve a draft AIP plan under subsection (2) unless:
- (a) the draft AIP plan complies with the AIP plan rules (other than Subdivision C of Division 2); and
  - (b) the Authority is satisfied that steps specified in accordance with subsections 39(2) and 40(2) are adequate.
- (4) If the Authority approves the draft AIP plan under subsection (2), the plan becomes the approved AIP plan for the project.
- (5) If the draft AIP plan becomes the approved AIP plan for the project, the original plan ceases to be in force.

*Notice of decision*

- (6) If the Authority approves the draft AIP plan under subsection (2), the Authority must give the operator a written notice setting out the decision.

- (7) If the Authority refuses to approve the draft AIP plan under subsection (2), the Authority must give the operator a written notice setting out the decision.

*Timing*

- (8) The Authority must take all reasonable steps to ensure that a decision is made on a draft AIP plan for a project within 30 days after the Authority is given the draft AIP plan.

## **21 Duration of approved AIP plan**

*Project involves establishing a new relevant facility*

- (1) If a major project involves establishing a new relevant facility, an approved AIP plan for the project:
- (a) comes into force when the Authority approves the plan; and
  - (b) subject to this Division, continues in force until the end of the 2-year period beginning when the project is completed.

*Project does not involve establishing a new relevant facility*

- (2) If a major project does not involve establishing a new relevant facility, an approved AIP plan for the project:
- (a) comes into force when the Authority approves the plan; and
  - (b) subject to this Division, continues in force until the project is completed.

## **22 Summary of specified steps**

- (1) If a person gives the Authority a draft AIP plan for a major project, the person must also give the Authority a summary of the steps specified in accordance with whichever of subsections 35(2), 36(2), 39(2) and 40(2) are applicable.
- (2) The summary must be in a form approved, in writing, by the Authority.

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- (3) The Authority must ensure that the summary is available on the Authority's website throughout the 15-day period beginning on the day after the summary was received by the Authority.

**22A Project proponent must notify estimated completion date for a new relevant facility**

- (1) If:
- (a) the project proponent for a major project gives a draft AIP plan for the project to the Authority; and
  - (b) the project involves establishing a new relevant facility; and
  - (c) the establishment of the facility has not been completed;
- the project proponent must:
- (d) notify the Authority of the estimated date of completion of the establishment of the facility; and
  - (e) do so at or about the same time as the draft AIP plan is given to the Authority.
- (2) A notification under subsection (1) must be in a form approved, in writing, by the Authority.

**23 Register of approved AIP plans**

- (1) The Authority must maintain a register in which the Authority includes all approved AIP plans that are in force.
- (2) The register may be kept in electronic form.

**24 Compliance with approved AIP plan**

*Project proponent*

- (1) If an approved AIP plan for a major project is in force, the project proponent for the major project must comply with Part B of the plan.

Note: Section 30 deals with Parts of AIP plans.

*Operator of new relevant facility*

- (2) If:
- (a) an approved AIP plan for a major project is in force; and
  - (b) the project involves establishing a new relevant facility;
- the operator of the new relevant facility must comply with Part C of the plan.

Note: Section 30 deals with Parts of AIP plans.

## **25 Compliance report—project proponent**

*Scope*

- (1) This section applies to a major project if an approved AIP plan for the project is, or has been, in force.

*Reporting period*

- (2) For the purposes of this section, a **reporting period** for the plan is:
- (a) the period of 6 months beginning on the day on which the plan is approved; and
  - (b) each subsequent 6-month period during any part of which:
    - (i) the plan is in force; and
    - (ii) the project proponent for the project is subject to any obligations under Part B of the plan.

Note: Section 30 deals with Parts of AIP plans.

- (3) Subsection (2) has effect subject to subsection (4).
- (4) The Authority may, by written notice given to the project proponent for the project, determine that, for the purposes of this section, a **reporting period** for the plan has the meaning given by the determination.
- (5) A determination under subsection (4) is not a legislative instrument.

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### *Compliance report—project proponent*

- (6) The project proponent for the project must, within 3 months after the end of each reporting period, prepare and give the Authority a report relating to compliance with Part B of the plan during the reporting period.

Note: Section 30 deals with Parts of AIP plans.

- (7) A report under subsection (6) must:
- (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

## **26 Compliance report—operator of new relevant facility**

### *Scope*

- (1) This section applies to a major project if:
- (a) an approved AIP plan for the project is, or has been, in force; and
  - (b) the project involves establishing a new relevant facility.

### *Reporting period*

- (2) For the purposes of this section, a **reporting period** for the plan is:
- (a) the period of 6 months beginning on the day on which the plan is approved; and
  - (b) each subsequent 6-month period during any part of which:
    - (i) the plan is in force; and
    - (ii) the operator of the new relevant facility is subject to any obligations under Part C of the plan.

Note: Section 30 deals with Parts of AIP plans.

### *Compliance report—operator of new relevant facility*

- (3) The operator of the new relevant facility must, within 3 months after the end of each reporting period, prepare and give the

Authority a report relating to compliance with Part C of the plan during the reporting period.

- (4) A report under subsection (3) must:
- (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

## **27 Record-keeping—project proponent**

If an approved AIP plan is, or has been, in force for a major project, the project proponent for the project must:

- (a) keep such records as are reasonably necessary to enable the Authority to ascertain whether Part B of the plan has been complied with; and
- (b) retain those records for 5 years.

Note: Section 30 deals with Parts of AIP plans.

## **28 Record-keeping—operator of new relevant facility**

If:

- (a) an approved AIP plan is, or has been, in force for a major project; and
  - (b) the project involves establishing a new relevant facility;
- the operator of the new relevant facility must:
- (c) keep such records as are reasonably necessary to enable the Authority to ascertain whether Part C of the plan has been complied with; and
  - (d) retain those records for 5 years.

Note: Section 30 deals with Parts of AIP plans.

## **Division 2—AIP plan rules**

### **Subdivision A—General rules**

#### **29 AIP plan rules**

This Division sets out the AIP plan rules.

#### **30 AIP plan must have Parts**

- (1) If a major project involves establishing a new relevant facility, an AIP plan for the project must be divided into the following Parts:
  - (a) Part A—Title;
  - (b) Part B—Project Phase;
  - (c) Part C—Initial Facility Operational Phase.
- (2) If a major project does not involve establishing a new relevant facility, an AIP plan for the project must be divided into the following Parts:
  - (a) Part A—Title;
  - (b) Part B—Project Phase.

#### **31 AIP plan must be in the approved form**

An AIP plan must be in a form approved, in writing, by the Authority.

### **Subdivision B—Rule for Part A of the plan (Title)**

#### **32 Title**

Part A of an AIP plan for a major project must state that the plan is the AIP plan for the project.

## **Subdivision C—Rules for Part B of the plan (Project Phase)**

### **33 Part B of AIP plan binds project proponent**

Part B of an AIP plan for a major project must state that Part B of the plan binds the project proponent for the project from time to time.

### **34 Key objective**

Part B of an AIP plan for a major project must state that the *key objective* of Part B of the plan is that Australian entities should have full, fair and reasonable opportunity to bid for the supply of key goods or services for the project.

### **35 Primary obligations of project proponent**

- (1) Part B of an AIP plan for a major project must state that, until the project is completed, the project proponent for the project will take all reasonable steps to ensure that each procurement entity for the project will achieve the following objectives:
  - (a) the key objective of Part B of the plan;
  - (b) the objective that the procurement entity will have a publicly accessible website;
  - (c) the objective that the procurement entity will not request bids to supply key goods or services for the project unless the procurement entity has a broad understanding of the capability and capacity of Australian entities generally to supply those goods or services;
  - (d) the objective that requirements that potential bidders must satisfy in order to bid to supply key goods or services for the project:
    - (i) will be published on the website of the procurement entity; and
    - (ii) will be so published at a reasonable time before the request for bids is made;
  - (e) the objective that:

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- (i) standards for key goods or services for the project that are to be acquired by the procurement entity will be published on the website of the procurement entity; and
  - (ii) if the standards are neither Australian standards nor international standards—the procurement entity will publish on its website a statement explaining why neither Australian standards nor international standards are being used;
  - (f) the objective that the procurement entity will not discriminate against Australian entities in relation to timeframes for responding to requests for bids to supply key goods or services for the project;
  - (g) the objective that the procurement entity will:
    - (i) provide feedback to Australian entities whose bids to supply key goods or services for the project have not been successful; and
    - (ii) ensure that such feedback includes recommendations about any relevant training and any relevant skills capability and capacity development;
  - (h) the objective that the procurement entity will:
    - (i) at all times have an employee who is designated as the procurement contact officer for the project; and
    - (ii) publish the procurement contact officer's contact details on the procurement entity's website.
- (2) Part B of an AIP plan must state that, until the project is completed, the project proponent will take specified steps directed towards ensuring that the objectives set out in subsection (1) are achieved by each procurement entity for the project.

### 36 Other obligations of project proponent

- (1) Part B of an AIP plan for a major project must state that, until the project is completed, the project proponent for the project will:
- (a) have a publicly accessible website; and

- (b) conduct awareness programs about opportunities for Australian entities to supply key goods or services for the project; and
- (c) conduct training programs that are:
  - (i) for employees of procurement entities for the project; and
  - (ii) directed towards ensuring that the objectives set out in section 35 are achieved; and
- (d) publish on its website a statement of the proponent's expectations in relation to:
  - (i) key goods or services that are likely to be acquired for the project; and
  - (ii) opportunities for Australian entities to supply key goods or services for the project; and
  - (iii) opportunities for non-Australian entities to supply key goods or services for the project;broken down into categories of goods or services in the way specified in the legislative rules; and
- (e) both:
  - (i) cause to be published on a publicly accessible website statements about available opportunities to supply key goods or services for the project; and
  - (ii) notify the Authority of the URL of the website; and
- (f) if the project proponent has a global supply chain—encourage Australian entities that are supplying, or have supplied, key goods or services for the project to:
  - (i) develop the capability and capacity to supply key goods or services to the project proponent's global supply chain; and
  - (ii) integrate into the project proponent's global supply chain; and
- (g) both:
  - (i) at all times have an employee who is designated as the project proponent's contact officer for the purposes of this Act; and

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- (ii) notify the Authority of the contact officer's contact details.
- (2) Part B of an AIP plan must state that, until the project is completed, the project proponent will take specified steps directed towards the fulfilment of the obligations set out in subsection (1).

### **Subdivision D—Rules for Part C of the plan (Initial Facility Operational Phase)**

#### **37 Part C of the plan binds operator of new relevant facility**

Part C of an AIP plan for a major project must state that Part C of the plan binds the operator of the new relevant facility from time to time.

#### **38 Key objective**

Part C of an AIP plan for a major project must state that the *key objective* of Part C of the plan is that Australian entities should have full, fair and reasonable opportunity to bid for the supply of key goods or services for the new relevant facility's initial operational phase.

#### **39 Primary obligations of operator of new relevant facility**

- (1) Part C of an AIP plan for a major project must state that the operator of the new relevant facility will take all reasonable steps to ensure that each procurement entity for the new relevant facility will achieve the following objectives:
  - (a) the key objective of Part C of the plan;
  - (b) the objective that the procurement entity will have a publicly accessible website;
  - (c) the objective that the procurement entity will not request bids to supply key goods or services for the new relevant facility's initial operational phase unless the procurement entity has a broad understanding of the capability and capacity of

Australian entities generally to supply those goods or services;

- (d) the objective that requirements that potential bidders must satisfy in order to bid to supply key goods or services for the new relevant facility's initial operational phase:
  - (i) will be published on the website of the procurement entity; and
  - (ii) will be so published at a reasonable time before the request for bids is made;
- (e) the objective that:
  - (i) standards for key goods or services that are to be acquired for the new relevant facility's initial operational phase by the procurement entity will be published on the website of the procurement entity; and
  - (ii) if the standards are neither Australian standards nor international standards—the procurement entity will publish on its website a statement explaining why neither Australian standards nor international standards are being used;
- (f) the objective that the procurement entity will not discriminate against Australian entities in relation to timeframes for responding to requests for bids to supply key goods or services for the new relevant facility's initial operational phase;
- (g) the objective that the procurement entity will:
  - (i) provide feedback to Australian entities whose bids to supply key goods or services for the new relevant facility's initial operational phase have not been successful; and
  - (ii) ensure that such feedback includes recommendations about any relevant training and any relevant skills capability and capacity development;
- (h) the objective that the procurement entity will:
  - (i) at all times have an employee who is designated as the procurement contact officer for the new relevant facility; and

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- (ii) publish the procurement contact officer's contact details on the procurement entity's website.
- (2) Part C of an AIP plan must state that the operator of the new relevant facility will take specified steps directed towards ensuring that the objectives set out in subsection (1) are achieved by each procurement entity for the new relevant facility.

**40 Other obligations of operator of new relevant facility**

- (1) Part C of an AIP plan for a major project must state that the operator of the new relevant facility will:
  - (a) have a publicly accessible website; and
  - (b) conduct awareness programs about opportunities for Australian entities to supply key goods or services for the new relevant facility's initial operational phase; and
  - (c) conduct training programs that are:
    - (i) for employees of procurement entities for the new relevant facility; and
    - (ii) directed towards ensuring that the objectives set out in section 39 are achieved; and
  - (d) publish on its website a statement of the operator's expectations in relation to:
    - (i) key goods or services that are likely to be acquired for the new relevant facility's initial operational phase; and
    - (ii) opportunities for Australian entities to supply key goods or services for the new relevant facility's initial operational phase; and
    - (iii) opportunities for non-Australian entities to supply key goods or services for the new relevant facility's initial operational phase;broken down into categories of goods or services in the way specified in the legislative rules; and
  - (e) both:
    - (i) cause to be published on a publicly accessible website statements about available opportunities to supply key

- goods or services for the new relevant facility's initial operational phase; and
  - (ii) notify the Authority of the URL of the website; and
  - (f) if the operator has a global supply chain—encourage Australian entities that are supplying, or have supplied, key goods or services for the new relevant facility's initial operational phase to:
    - (i) develop the capability and capacity to supply key goods or services to the operator's global supply chain; and
    - (ii) integrate into the operator's global supply chain; and
  - (g) both:
    - (i) at all times have an employee who is designated as the operator's contact officer for the purposes of this Act; and
    - (ii) notify the Authority of the contact officer's contact details.
- (2) Part C of an AIP plan must state that the operator of the new relevant facility will take specified steps directed towards the fulfilment of the obligations set out in subsection (1).

## **Part 3—Notification obligations**

### **Division 1—Major projects**

#### **41 Authority to be notified of preliminary trigger day for major project**

- (1) If:
  - (a) the preliminary trigger day for a designated project occurs after the commencement of this section; and
  - (b) at any time on the preliminary trigger day, the project proponent for the project was aware that it was reasonably likely that the project would be a major project;the project proponent must:
  - (c) notify the Authority of the preliminary trigger day; and
  - (d) do so within 60 days after the preliminary trigger day.
- (2) If:
  - (a) the preliminary trigger day for a designated project occurs after the commencement of this section; and
  - (b) the project proponent for the project was not aware, at any time on the preliminary trigger day, that it was reasonably likely that the project would be a major project; and
  - (c) the project proponent becomes aware that the project is, or is reasonably likely to be, a major project;the project proponent must:
  - (d) notify the Authority of the preliminary trigger day; and
  - (e) do so within 14 days after becoming so aware.
- (3) A notification under this section must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules; and
  - (c) be accompanied by such documents (if any) as are specified in the legislative rules.

*Preliminary trigger day*

- (4) For the purposes of this section, the ***preliminary trigger day*** for a project means the day on which the earliest of the following events happens:
- (a) the project concept design begins;
  - (b) an environmental assessment begins to be carried out by a project proponent;
  - (c) a project proponent enters into a contract with another person to carry out an environmental assessment of the project;
  - (d) the raw materials for the project are estimated;
  - (e) the utility consumption for the project is estimated.

**43 Person must notify Authority if the person becomes a project proponent for a major project**

- (1) If a person becomes a project proponent for a major project, the person must:
- (a) notify the Authority that the person has become a project proponent for the project; and
  - (b) do so within 60 days after becoming a project proponent.
- (2) A notification under subsection (1) must:
- (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

**44 Person must notify Authority if the person ceases to be a project proponent for a major project**

- (1) If a person ceases to be a project proponent for a major project, the person must:
- (a) notify the Authority of the cessation; and
  - (b) do so within 60 days after the cessation occurs.
- (2) A notification under subsection (1) must:
- (a) be in a form approved, in writing, by the Authority; and

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- (b) be accompanied by such information as is specified in the legislative rules.

**45 Project proponent must notify Authority if major project is abandoned or cancelled**

- (1) If a major project is abandoned or cancelled, the project proponent for the project must:
  - (a) notify the Authority of the abandonment or cancellation; and
  - (b) do so within 60 days after the project is abandoned or cancelled.
- (2) A notification under subsection (1) must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

**46 Project proponent must notify Authority of certain events**

- (1) If:
  - (a) a person is the project proponent for a major project; and
  - (b) a notifiable event occurs;the person must:
  - (c) notify the Authority of the event; and
  - (d) do so within 60 days after the event occurs.
- (2) A notification under subsection (1) must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.
- (3) The legislative rules may declare that a specified event is a ***notifiable event*** for the purposes of this section.

## **Division 2—New relevant facilities**

### **47 Person must notify Authority if the person becomes an operator of new relevant facility**

- (1) If:
  - (a) a major project involves establishing a new relevant facility;  
and
  - (b) a person becomes an operator of the new relevant facility;the person must:
  - (c) notify the Authority; and
  - (d) do so within 60 days after becoming an operator.
- (2) A notification under subsection (1) must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

### **48 Person must notify Authority if the person ceases to be an operator of new relevant facility**

- (1) If:
  - (a) a major project involves establishing a new relevant facility;  
and
  - (b) a person ceases to be an operator of the new relevant facility;the person must:
  - (c) notify the Authority of the cessation; and
  - (d) do so within 60 days after the cessation occurs.
- (2) A notification under subsection (1) must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.

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**49 Operator of new relevant facility must notify Authority of certain events**

- (1) If:
  - (a) a major project involves establishing a new relevant facility;  
and
  - (b) a notifiable event occurs;the operator of the new relevant facility must:
  - (c) notify the Authority of the event; and
  - (d) do so within 60 days after the event occurs.
- (2) A notification under subsection (1) must:
  - (a) be in a form approved, in writing, by the Authority; and
  - (b) be accompanied by such information as is specified in the legislative rules.
- (3) The legislative rules may declare that a specified event is a ***notifiable event*** for the purposes of this section.

## **Part 4—Information-gathering powers**

### **Division 1—General powers**

#### **50 Authority may obtain information or documents**

##### *Scope*

- (1) This section applies to a person if the Authority believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act.

##### *Requirement*

- (2) The Authority may, by written notice given to the person, require the person to:
  - (a) give to the Authority, within the period and in the manner and form specified in the notice, any such information; or
  - (b) produce to the Authority, within the period and in the manner specified in the notice, any such documents; or
  - (c) make copies of any such documents and to produce to the Authority, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

##### *Compliance*

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

#### **51 Copying documents—compensation**

A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 50(2)(c).

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**52 Copies of documents**

- (1) The Authority may:
  - (a) inspect a document or copy produced under subsection 50(2);  
and
  - (b) make and retain copies of, or take and retain extracts from,  
such a document.
- (2) The Authority may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 50(2)(c).

**53 Authority may retain documents**

- (1) The Authority may take, and retain for as long as is necessary, possession of a document produced under subsection 50(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Authority to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Authority must, at such times and places as the Authority thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

**54 Self-incrimination**

An individual is excused from giving information or producing a document under section 50 on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

## **Division 2—Powers to obtain information from project proponent**

### **55 Authority may obtain information from project proponent**

#### *Scope*

- (1) This section applies to the project proponent for a major project if an approved AIP plan is, or has been, in force for the project.

#### *Requirement*

- (2) The Authority may, by written notice given to the project proponent, require the proponent to:
  - (a) give to the Authority such information relating to the project as is specified in the notice; and
  - (b) do so within the period and in the manner and form specified in the notice.
- (3) A period specified under paragraph (2)(b) must not be shorter than 14 days after the notice is given.

#### *Compliance*

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

#### *Self-incrimination*

- (5) An individual is excused from giving information under this section on the ground that the information might tend to incriminate the individual or expose the individual to a penalty.

#### *General information-gathering power not limited*

- (6) This section does not, by implication, limit section 50.

### **Division 3—Powers to obtain information from operator of facility**

#### **56 Authority may obtain information from operator of new relevant facility**

*Scope*

- (1) If:
  - (a) an approved AIP plan is, or has been, in force for a major project; and
  - (b) the project involves establishing a new relevant facility; this section applies to the operator of the new relevant facility.

*Requirement*

- (2) The Authority may, by written notice given to the operator, require the operator to:
  - (a) give to the Authority such information relating to the operation of the new relevant facility as is specified in the notice; and
  - (b) do so within the period and in the manner and form specified in the notice.
- (3) A period specified under paragraph (2)(b) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

*Self-incrimination*

- (5) An individual is excused from giving information under this section on the ground that the information might tend to incriminate the individual or expose the individual to a penalty.

*General information-gathering power not limited*

- (6) This section does not, by implication, limit section 50.

## Part 5—Consequences of non-compliance

### Division 1—Administrative consequences of non-compliance

#### 57 Administrative consequences of non-compliance

*Scope*

- (1) This section applies if a person (the *relevant person*), without reasonable excuse, contravenes Part 2, 3 or 4.

*Adverse publicity notice*

- (2) The Authority may, by written notice given to the relevant person, require the relevant person to:
- (a) take either or both of the following actions within the period specified in the notice:
    - (i) to publicise, in the way specified in the notice, the contravention, the details of the contravention, and any other related matter;
    - (ii) to notify a specified person or specified class of person, in the way specified in the notice, of the contravention, the details of the contravention, and any other related matter; and
  - (b) give the Authority, within 7 days after the end of the period specified in the notice, evidence that the action or actions were taken by the relevant person in accordance with the notice.
- (3) If the relevant person is a subsidiary of a constitutional corporation, the Authority may, by written notice given to the corporation, require the corporation to:
- (a) take either or both of the following actions within the period specified in the notice:

- (i) to publicise, in the way specified in the notice, the name of the relevant person, the relevant person's contravention, the details of the contravention, the fact that the relevant person is a subsidiary of the corporation, and any other related matter;
  - (ii) to notify a specified person or specified class of person, in the way specified in the notice, of the relevant person's contravention, the details of the contravention, the fact that the relevant person is a subsidiary of the corporation, and any other related matter;
- (b) give the Authority, within 7 days after the end of the period specified in the notice, evidence that the action or actions were taken by the corporation in accordance with the notice.

*Naming relevant person etc. in annual report*

- (4) The Authority may, in a report under section 83:
- (a) name the relevant person as having contravened Part 2, 3 or 4, and set out details of the contravention; and
  - (b) if the relevant person is a subsidiary of a body corporate— name the relevant person as a subsidiary of the body corporate.

*Naming relevant person etc. in other ways*

- (5) The Authority may, by electronic or other means:
- (a) name the relevant person as having contravened Part 2, 3 or 4, and set out details of the contravention; and
  - (b) if the relevant person is a subsidiary of a body corporate— name the relevant person as a subsidiary of the body corporate.

*Prior notice to relevant person etc.*

- (6) If the Authority proposes to:
- (a) give a notice to a person under subsection (2) or (3); or
  - (b) name a person in a report in accordance with subsection (4);
- or

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- (c) name a person under subsection (5);
- the Authority must:
- (d) give the person notice in writing of the proposal and the reasons for the proposal; and
  - (e) invite the person to:
    - (i) make written representations to the Authority about the proposal; and
    - (ii) do so within the period of 28 days beginning on the day specified in the notice; and
  - (f) have regard to any written representations made by the person within that period.

## Division 2—Injunctions

### 58 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of Part 2, 3 or 4, a prescribed court may, on the application of the Authority, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of Part 2, 3 or 4;a prescribed court may, on the application of the Authority, grant an injunction requiring the person to do that act or thing.

### 59 Interim injunctions

#### *Grant of interim injunction*

- (1) If an application is made to a prescribed court for an injunction under section 58, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) A prescribed court is not to require the Authority, as a condition of granting an interim injunction, to give any undertakings as to damages.

## 60 Discharge etc. of injunctions

A prescribed court may discharge or vary an injunction granted under this Division.

## 61 Certain limits on granting injunctions not to apply

### *Restraining injunctions*

- (1) The power of a prescribed court under this Division to grant an injunction 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
  - (b) if it appears to the court that, if an injunction is not granted, 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.

### *Performance injunctions*

- (2) The power of a prescribed court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—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 do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing.

## **62 Other powers of the court unaffected**

The powers conferred on a prescribed court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 6—Multiple project proponents and multiple facility operators

### Division 1—Multiple project proponents

#### 63 References to project proponents

If there are 2 or more persons (the *multiple project proponents*) who have joint or several responsibility for carrying out a project, or a part of a project, then:

- (a) for the purposes of this Act, each of the multiple project proponents is a project proponent for the project; and
- (b) a reference in:
  - (i) this Act; or
  - (ii) the legislative rules; or
  - (iii) another instrument made under this Act; or
  - (iv) an approved AIP plan; or
  - (v) a draft AIP plan;

to the project proponent for the project is to be read as a reference to each of the multiple project proponents.

#### 64 Obligations of multiple project proponents

##### *Scope*

- (1) This section applies if:
    - (a) there are 2 or more project proponents (the *multiple project proponents*) for a project; and
    - (b) either of the following:
      - (i) this Act;
      - (ii) an approved AIP plan for the project;
- imposes an obligation on the project proponent for the project.

*Obligations of project proponent*

- (2) The obligation is imposed on each of the multiple project proponents, but may be discharged by any of the multiple project proponents.

## Division 2—Multiple facility operators

### 65 References to operators of new relevant facilities

If:

- (a) a major project involves establishing a new relevant facility; and
- (b) there are 2 or more persons (the *multiple operators*) who have, or are to have, joint or several responsibility for operating the new relevant facility, or a part of the new relevant facility;

then:

- (c) for the purposes of this Act, each of the multiple operators is an operator of the new relevant facility; and
- (d) a reference in:
  - (i) this Act; or
  - (ii) the legislative rules; or
  - (iii) another instrument made under this Act; or
  - (iv) an approved AIP plan; or
  - (v) a draft AIP plan;

to the operator of the new relevant facility is to be read as a reference to each of the multiple operators.

### 66 Obligations of multiple operators of new relevant facility

#### *Scope*

- (1) This section applies if:
  - (a) a major project involves establishing a new relevant facility; and
  - (b) there are 2 or more operators (the *multiple operators*) of the new relevant facility; and
  - (c) either of the following:
    - (i) this Act;
    - (ii) an approved AIP plan for the project;

imposes an obligation on the operator of the facility.

*Obligations of operators*

- (2) The obligation is imposed on each of the multiple operators, but, if the multiple operators have, or are to have, joint responsibility for operating the new relevant facility, the obligation may be discharged by any of the multiple operators.

## **Part 7—Australian Industry Participation Authority**

### **Division 1—Office and functions of the Australian Industry Participation Authority**

#### **67 Establishment of the Australian Industry Participation Authority**

There is to be an Australian Industry Participation Authority.

Note: In this Act, *Authority* means the Australian Industry Participation Authority (see section 5).

#### **68 Functions of the Authority**

- (1) The functions of the Authority are:
- (a) such functions as are conferred on the Authority by this Act; and
  - (b) to advise and assist persons in relation to their obligations under this Act; and
  - (c) to monitor compliance with this Act; and
  - (d) to promote compliance with this Act; and
  - (e) to collect, analyse, interpret and disseminate information relating to AIP matters; and
  - (f) to support, encourage, conduct and evaluate training programs that are directed towards improving the skills and knowledge of people involved in AIP matters; and
  - (g) to support, encourage, conduct and evaluate educational, promotional and community awareness programs that are relevant to AIP matters; and
  - (h) to support, encourage, conduct and evaluate research about AIP matters; and
  - (i) to advise the Minister about AIP matters; and
  - (j) to consult and cooperate with other persons, organisations and governments on AIP matters; and

- (k) on behalf of the Commonwealth, to administer such schemes and programs as are specified in the legislative rules; and
  - (l) such functions as are conferred on the Authority by a law other than this Act; and
  - (m) such other functions (if any) as are specified in the legislative rules; and
  - (n) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) Section 3 does not, by implication, limit subsection (1).

## Division 2—Appointment of the Authority

### 69 Appointment of the Authority

- (1) The Authority is to be appointed by the Minister by written instrument.
- (2) A person is not eligible for appointment as the Authority unless the Minister is satisfied that the person has:
  - (a) substantial experience or knowledge; and
  - (b) significant standing;in at least one of the following fields:
  - (c) economics;
  - (d) industry;
  - (e) public administration.
- (3) The Authority holds office on a full-time basis.

### 70 Period of appointment for the Authority

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

Note: The Authority may be reappointed: see the *Acts Interpretation Act 1901*.

### 71 Acting appointments

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

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

- (2) A person is not eligible for appointment to act as the Authority unless the person is eligible for appointment as the Authority.

## **Division 3—Terms and conditions for the Authority**

### **72 Remuneration and allowances**

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

### **73 Leave of absence**

- (1) The Authority has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Authority leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **74 Outside employment**

The Authority must not engage in paid employment outside the duties of his or her office without the Minister's approval.

### **75 Disclosure of interests to the Minister**

The Authority must give written notice to the Minister of all interests, pecuniary or otherwise, that the Authority has or acquires and that conflict or could conflict with the proper performance of the Authority's functions.

## **76 Resignation**

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

## **77 Termination of appointment**

- (1) The Minister may terminate the appointment of the Authority:
  - (a) for misbehaviour; or
  - (b) if the Authority is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Authority if:
  - (a) the Authority:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Authority is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Authority engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 74); or
  - (d) the Authority fails, without reasonable excuse, to comply with section 75.

## **78 Other terms and conditions**

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

## Division 4—Delegation

### 79 Delegation by Authority

- (1) The Authority may, by writing, delegate any or all of the Authority's functions or powers to:
  - (a) an SES employee; or
  - (b) an acting SES employee; or
  - (c) an APS employee who holds or performs the duties of:
    - (i) an Executive Level 2 position; or
    - (ii) an equivalent position.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) A delegate must comply with any written directions of the Authority.

## **Division 5—Staff and consultants**

### **80 Staff assisting the Authority**

The staff assisting the Authority are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

### **81 Other persons assisting the Authority**

The Authority may also be assisted:

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

whose services are made available to the Authority in connection with the performance of any of the Authority's functions.

### **82 Consultants**

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

## Division 6—Reports

### 83 Annual report

The Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Authority during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

## **Division 7—Directions by Minister**

### **84 Minister may give directions to the Authority**

- (1) The Minister may, by legislative instrument, give directions to the Authority about the performance of the Authority's functions.

Note 1: For variation and revocation, see the *Acts Interpretation Act 1901*.

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

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Authority must comply with a direction under subsection (1).

## **Part 8—Australian Industry Participation Advisory Board**

### **Division 1—Australian Industry Participation Advisory Board**

#### **85 Establishment of Australian Industry Participation Advisory Board**

- (1) The Minister may, by writing, establish a committee to be known as the Australian Industry Participation Advisory Board.

Note: In this Act, *AIP advisory board* means the Australian Industry Participation Advisory Board (see section 5).

- (2) Before establishing the AIP advisory board, the Minister must consult the Authority.
- (3) An instrument made under subsection (1) is not a legislative instrument.

#### **86 Functions of AIP advisory board**

The AIP advisory board has the following functions:

- (a) to advise the Authority, at the Authority's request, about matters relating to the performance of the Authority's functions;
- (b) to advise the Minister, at the Minister's request, about AIP matters;
- (c) to do anything incidental to or conducive to the performance of either of the above functions.

## **Division 2—Appointment etc. of AIP advisory board members**

### **87 Membership of AIP advisory board**

The AIP advisory board consists of the following members:

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

### **88 Appointment of advisory board members etc.**

- (1) Each advisory board member is to be appointed by the Minister by written instrument.
- (2) An advisory board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: A board member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (3) An advisory board member holds office on a part-time basis.
- (4) The Minister must ensure that the members of the AIP advisory board collectively possess experience or knowledge in all of the following fields:
  - (a) economics;
  - (b) industry;
  - (c) project management;
  - (d) procurement of goods or services.

### **89 Vacancy in the membership of AIP advisory board**

For the purposes of a reference in the *Acts Interpretation Act 1901* to a vacancy in the membership of a body, there are taken to be 2 offices of members of the AIP advisory board in addition to the Chair of the AIP advisory board.

## **Division 3—Terms and conditions for advisory board members**

### **90 Remuneration and allowances**

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

### **91 Leave of absence**

The Minister may grant leave of absence to an advisory board member on the terms and conditions that the Minister determines.

### **92 Disclosure of interests to the Minister**

An advisory board member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

### **93 Disclosure of interests to AIP advisory board**

- (1) An advisory board member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the AIP advisory board must disclose that interest to a meeting of the advisory board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the advisory board member's knowledge.

- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the AIP advisory board otherwise determines, the advisory board member:
  - (a) must not be present during any deliberation of the advisory board on the matter; and
  - (b) must not take part in the making of a decision by the advisory board in relation to the matter.
- (5) For the purposes of making a determination under subsection (4), the advisory board member:
  - (a) must not be present during any deliberation of the advisory board for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the advisory board.

#### **94 Resignation**

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

#### **95 Termination of appointment**

The Minister may terminate the appointment of an advisory board member.

## **Division 4—AIP advisory board procedures etc.**

### **96 Procedures of AIP advisory board**

- (1) The AIP advisory board must hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the AIP advisory board:
  - (a) may convene a meeting; and
  - (b) must convene a meeting if requested in writing by:
    - (i) the Authority; or
    - (ii) the Minister.

### **97 Presiding at meetings**

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

### **98 Quorum**

- (1) At a meeting of the AIP advisory board, a quorum is constituted by a majority of the advisory board members.
- (2) However, if:
  - (a) an advisory board member is required by section 93 not to be present during the deliberations, or to take part in any decision, of the advisory board with respect to a particular matter; and
  - (b) when the advisory board member leaves the meeting concerned, there is no longer a quorum present;the remaining advisory board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

### **99 Voting at meetings**

- (1) A question arising at a meeting is to be determined by a majority of the votes of the advisory board members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

### **100 Conduct of meetings**

- (1) Subject to this Division, the AIP advisory board may regulate proceedings at its meetings as it considers appropriate.
- (2) For the purposes of section 33B of the *Acts Interpretation Act 1901*, the AIP advisory board is taken to have been established by this Act.

Note: Section 33B of the *Acts Interpretation Act 1901* contains extra rules about meetings by telephone etc.

### **101 Minutes**

The AIP advisory board must keep minutes of its meetings.

## Part 9—Secrecy

### 102 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted official; and
  - (b) the person has obtained protected information in the person's capacity as an entrusted official; and
  - (c) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information; and
  - (d) the disclosure or use is not:
    - (i) authorised by a provision of this Part; or
    - (ii) in compliance with a requirement under a law of the Commonwealth; or
    - (iii) in compliance with a designated law of a State or Territory.

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

#### *Exceptions*

- (2) Except where it is necessary to do so for the purposes of giving effect to this Act, an entrusted official is not to be required:
- (a) to produce to a court or tribunal a document containing protected information; or
  - (b) to disclose protected information to a court or tribunal.

#### *Designated law*

- (3) The legislative rules may declare that a specified law of a State or Territory is a **designated law** for the purposes of this section.

**103 Disclosure or use for the purposes of this Act etc.**

An entrusted official may disclose or use protected information if:

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Authority; or
- (c) the disclosure or use is for the purposes of the performance of the functions of the AIP advisory board; or
- (d) the disclosure or use is in the course of the official's employment or service as an entrusted official.

**104 Disclosure to Minister**

An entrusted official may disclose protected information to the Minister.

**105 Disclosure to Secretary etc.**

An entrusted official may disclose protected information to:

- (a) the Secretary of the Department; or
  - (b) an officer of the Department who is authorised by the Secretary, in writing, for the purposes of this section;
- if the disclosure is for the purposes of advising the Minister.

**106 Disclosure to a Royal Commission**

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

## 107 Disclosure to certain agencies, bodies and persons

### *Scope*

- (1) This section applies if the Authority is satisfied that particular protected information will enable or assist any of the following agencies, bodies or persons:
- (a) the Australian Communications and Media Authority;
  - (b) the Australian Competition and Consumer Commission;
  - (c) the Australian Prudential Regulation Authority;
  - (d) the Australian Securities and Investments Commission;
  - (e) the National Competition Council;
  - (f) the Productivity Commission;
  - (g) the Australian Statistician;
  - (h) the Commissioner of Taxation;
  - (i) the Australian Competition Tribunal;
  - (j) the Director of Public Prosecutions;
  - (k) the Australian Transaction Reports and Analysis Centre;
  - (l) the Reserve Bank of Australia;
  - (m) Industry Capability Network Limited (ACN 068 571 513);
  - (n) the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*);
  - (o) a State/Territory government body whose functions include a function that corresponds to a function of the Authority;
  - (p) a designated State/Territory government body;
  - (q) a designated professional disciplinary body;
- to perform or exercise any of the functions or powers of the agency, body or person.

### *Disclosure*

- (2) If an entrusted official is authorised by the Authority, in writing, for the purposes of this section, the official may disclose that protected information to the agency, body or person concerned.

- (3) The Authority may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (4) A person commits an offence if:
- (a) the person is subject to a condition under subsection (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.
- Penalty: Imprisonment for 2 years or 120 penalty units, or both.
- (5) An instrument under subsection (3) is not a legislative instrument.

*Designated professional disciplinary bodies*

- (6) A person commits an offence if:
- (a) the person is:
    - (i) a designated professional disciplinary body; or
    - (ii) a member of a designated professional disciplinary body; and
  - (b) protected information has been disclosed under subsection (2) to the body; and
  - (c) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information; and
  - (d) the disclosure or use is not:
    - (i) with the consent of the Authority; or
    - (ii) for the purpose of deciding whether or not to take disciplinary or other action; or
    - (iii) for the purpose of taking disciplinary or other action.

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

*Designated State/Territory government body*

- (7) The legislative rules may declare that a specified State/Territory government body is a **designated State/Territory government body** for the purposes of this section.

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*Designated professional disciplinary body*

- (8) The legislative rules may declare that a specified professional disciplinary body is a *designated professional disciplinary body* for the purposes of this section.

**108 Disclosure with consent**

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

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

**109 Disclosure of publicly available information**

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

**110 Disclosure of summaries or statistics**

An entrusted official may disclose:

- (a) summaries of protected information; or
- (b) statistics derived from protected information;

if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

**111 Disclosure for purposes of law enforcement**

*Scope*

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

*Disclosure*

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

*Secondary disclosure and use*

- (4) A person commits an offence if:
- (a) the person is, or has been, an employee or officer of:
    - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
    - (ii) an Australian police force; and
  - (b) protected information has been disclosed under subsection (2) or (3) to the Department, agency, authority or police force, as the case may be; and
  - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
  - (d) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information; and
  - (e) the disclosure or use is not:
    - (i) with the consent of the Authority; or

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- (ii) for the purpose of enforcing the criminal law; or
- (iii) for the purpose of enforcing a law imposing a pecuniary penalty; or
- (iv) for the purpose of protecting the public revenue.

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

*Conditions*

- (5) The Authority may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2) or (3).
- (6) A person commits an offence if:
  - (a) the person is subject to a condition under subsection (5); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.

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

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

## Part 10—Review of decisions

### 112 Review by the Administrative Review Tribunal

Applications may be made to the Administrative Review Tribunal for review of any of the following decisions of the Authority:

<b>Reviewable decisions</b>	
<b>Item</b>	<b>Decision</b>
1	A decision to make a determination under subsection 8(5).
2	A decision to make a declaration under subsection 9(3) or (5).
3	A decision to make a determination under subsection 10(2).
4	A decision to refuse to specify a day under paragraph 13(1)(c).
5	A decision to specify a day under paragraph 13(1)(c).
6	A decision to refuse to specify a later time under paragraph 17(1)(b).
7	A decision to specify a later time under paragraph 17(1)(b).
8	A decision under section 18, 19 or 20 to refuse to approve a draft AIP plan.
9	A decision to make a determination under subsection 25(4).
10	A decision to give a notice under subsection 57(2) or (3).
11	A decision to name a person in a report in accordance with subsection 57(4).
12	A decision to name a person under subsection 57(5).

## Part 11—Miscellaneous

### 117 Operation of new relevant facility—constitutional basis

- (1) This Act does not apply to the operation of a new relevant facility in relation to a designated project except to the extent to which:
- (a) one or more constitutional corporations are responsible for operating the facility; or
  - (b) the facility:
    - (i) is in one or more offshore areas (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) and outside the Greater Sunrise special regime area (within the meaning of the *Seas and Submerged Lands Act 1973*); and
    - (ii) relates to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf; or
  - (c) the facility is for purposes related to trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory; or
    - (iv) between a State and a Territory; or
    - (v) between 2 Territories; or
  - (d) the facility is in a Territory; or
  - (e) the facility is in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).
- (2) Subsection (1) is to be disregarded in determining whether a project is a designated project.

**118 Concurrent operation of State and Territory laws**

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

**119 Constitutional limitations***Commonwealth not to give preference*

- (1) A function or power conferred by this Act must not be performed or exercised in such a way as to give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

*Trade to be absolutely free*

- (2) A function or power conferred by this Act must not be performed or exercised in such a way that the performance of the function, or the exercise of the power, would infringe section 92 of the Constitution.

Note: Section 92 of the Constitution requires trade among the States to be absolutely free.

**120 No interference with powers and functions of another jurisdiction**

- (1) If:
  - (a) apart from this subsection, this Act would operate so as to prevent or interfere with the exercise of the powers, or the performance of the functions or duties, of the government of a State; and
  - (b) that operation would be invalid because of the Constitution; this Act does not so operate.
- (2) If:
  - (a) apart from this subsection, this Act would operate so as to prevent or interfere with the exercise of the powers, or the

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performance of the functions or duties, of the government of the Australian Capital Territory or the Northern Territory; and

(b) that operation would be invalid because of the Constitution if it were assumed that the Territory were a State; this Act does not so operate.

### 121 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### 122 Validity of transactions in contravention of Act

A contravention of this Act does not affect the validity of any transaction.

### 123 Consideration not in cash

For the purposes of this Act, if a transaction has involved, or will involve, non-cash consideration, assume that the monetary value of that consideration has been, or will be, incurred.

**124 Translation of amounts into Australian currency**

- (1) For the purposes of this Act, an amount in a foreign currency is to be translated into Australian currency.
- (2) The amount of foreign currency is to be translated to Australian currency at the exchange rate applicable at the relevant time.

**125 Law relating to legal professional privilege not affected**

This Act does not affect the law relating to legal professional privilege.

**126 Liability for damages**

None of the following:

- (a) the Minister;
- (b) the Authority;
- (c) a delegate of the Authority;
- (d) a member of the staff assisting the Authority;
- (e) a person assisting the Authority under section 81;
- (f) the AIP advisory board;
- (g) an advisory board member;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

- (h) in the performance or purported performance of any function;  
or
- (i) in the exercise or purported exercise of any power;  
conferred by this Act.

**127 Review of operation of Act**

- (1) Before the end of the period of 5 years after the commencement of this section, the Minister must cause to be conducted a review of the operation of this Act.

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- (2) A review under subsection (1) must be conducted in a manner that provides for wide public consultation.
- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.

**128 Legislative rules**

The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:

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

## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history

### Abbreviation key—Endnote 2

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

### Legislation history and amendment history—Endnotes 3 and 4

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

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

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

### Editorial changes

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

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

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be

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## Endnotes

### Endnote 1—About the endnotes

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incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

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

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Jobs Act 2013	69, 2013	27 June 2013	s 3–128: 27 Dec 2013 (s 2(1) item 2) Remainder: 27 June 2013 (s 2(1) item 1)	
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 6 (items 14, 15) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 6 (item 15) and Sch 9
<b>as amended by</b> Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 50): 5 Mar 2016 (s 2(1) item 2)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (item 2): 30 Aug 2019 (s 2(1) item 2) Sch 2 (item 1): <u>awaiting commencement (s 2(1) item 3)</u>	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 107): 1 Sept 2021 (s 2(1) item 5)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024	39, 2024	31 May 2024	Sch 11 (items 1, 2): 14 Oct 2024 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 5.....	am No 13, 2021
s 7.....	am No 57, 2019 (Sch 2 item 1)
<b>Part 7</b>	
<b>Division 7</b>	
s 84.....	am No 126, 2015
<b>Part 9</b>	
s 107.....	am No 41, 2015
<b>Part 10</b>	
s 112.....	am No 39, 2024
<b>Part 11</b>	
s 117.....	am No 57, 2019 (Sch 2 item 1)

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