



# **Petroleum and Other Fuels Reporting Act 2017**

**No. 90, 2017**

## **Compilation No. 3**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Petroleum and Other Fuels Reporting Act 2017* that shows the text of the law as amended and in force on 30 June 2021 (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 Legislation 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 series page on the Legislation 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 to provide for the reporting and dissemination of information relating to petroleum, other fuels and fuel-related products, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act is the *Petroleum and Other Fuels Reporting Act 2017*.

### **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.

| <b>Commencement information</b> |   |                     |
|---------------------------------|---|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>                                   | <b>Column 3</b>     |
| <b>Provisions</b>               | <b>Commencement</b>                               | <b>Date/Details</b> |
| 1. The whole of this Act        | The day after this Act receives the Royal Assent. | 24 August 2017      |

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.

- (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 Objects of this Act**

The objects of this Act are the following:

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- (a) to assist the Commonwealth to monitor fuel security to aid the Commonwealth to develop policy relating to the prevention of, or preparation for, fuel supply disruptions or potential disruptions;
- (b) to assist the Commonwealth to give effect to Australia's obligations under the Agreement, or under any other international agreement to which Australia is a party relating to:
  - (i) international energy security; or
  - (ii) the reporting of data relating to petroleum, other fuels or fuel-related products;
- (c) to facilitate the publication of information relating to Australia's petroleum and other fuel markets;
- (d) to support the implementation of the *Fuel Security Act 2021*.

### 4 Simplified outline of this Act

This Act requires the reporting of certain information relating to fuels and fuel-related products.

The Secretary may collect information relating to fuels and fuel-related products. The Secretary may publish such information, unless the information is likely to enable the identification of a person or is commercial-in-confidence.

There are protections for sensitive information.

### 5 Definitions

- (1) In this Act:

***affected***: see subsection 13C(2).

***Agreement*** means the Agreement on an International Energy Program, done at Paris on 18 November 1974.

Note: The Agreement is in Australian Treaty Series 1979 No. 7 ([1979] ATS 7) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

***commercial-in-confidence*** has the meaning given by section 6.

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

***constitutional trade and commerce*** means the following:

- (a) trade or commerce between Australia and places outside Australia;
- (b) trade or commerce among the States;
- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

***covered activity*** means:

- (a) producing a covered product; or
- (b) refining a covered product; or
- (c) wholesaling a covered product; or
- (d) holding stock of a covered product; or
- (e) importing a covered product; or
- (f) exporting a covered product; or
- (g) any other activity, in relation to a covered product, prescribed by the rules for the purposes of this paragraph.

***covered product*** means:

- (a) crude oil; or
- (b) condensate; or
- (c) liquefied petroleum gas; or
- (d) natural gas liquid; or
- (e) gasoline; or
- (f) diesel; or
- (g) kerosene; or

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- (h) fuel oil; or
- (i) heating oil; or
- (j) naphtha; or
- (k) compressed natural gas; or
- (l) liquefied natural gas; or
- (m) an oil, lubricant or grease; or
- (n) paraffin wax; or
- (o) a petroleum-based solvent; or
- (p) petroleum coke; or
- (q) bitumen; or
- (r) biofuel; or
- (s) hydrogen; or
- (t) any other fuel prescribed by the rules for the purposes of this paragraph; or
- (u) any other fuel-related product prescribed by the rules for the purposes of this paragraph.

***entrusted person*** means:

- (a) the Secretary; or
- (b) an APS employee in the Department; or
- (c) any other person employed or engaged by the Department.

***fuel*** means any product that produces energy through a chemical reaction.

Note: Examples of a fuel include petroleum, hydrogen and biofuel.

***fuel information*** means:

- (a) any raw data, or any value added information product, that relates to:
  - (i) covered activities; or
  - (ii) the quantity, quality or characteristics of covered products; or
  - (iii) the holding (within the meaning of section 19 of the *Fuel Security Act 2021*) of stocks of covered products

that are MSO products (within the meaning of that Act);  
or

- (b) any metadata that describes data of a kind referred to in paragraph (a);

and includes contextual information relating to covered products (such as the location, control and ownership of covered products).

***fuel-related product*** means a product that is not a fuel, but:

- (a) is derived from a fuel; or
- (b) is an input into or an output from the production or refining of a fuel.

***holding stock*** of a covered product means:

- (a) keeping a covered product in storage (whether on land or at sea), but does not include:
  - (i) storing a covered product in a service station, retail store, personal vehicle, road tanker, rail tank car or pipeline; or
  - (ii) keeping a covered product wholly or principally for private or domestic use; or
- (b) holding, in circumstances prescribed by the rules for the purposes of this paragraph, a contractual right to take possession of a covered product.

Note: See also subsection (4).

***international energy security body*** means a body established under:

- (a) the Agreement; or
- (b) any other agreement with one or more countries, to which Australia is a party, relating to:
  - (i) international energy security; or
  - (ii) the reporting of data relating to petroleum, other fuels or fuel-related products.

***offence against this Act*** includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

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**offshore area**, in relation to a State or Territory, has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

**person** has a meaning affected by section 38.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**producing** a covered product means recovering a covered product through a process of extraction or otherwise creating a covered product, but does not include refining a covered product.

**protected information** means fuel information that is personal information, or fuel information that is commercial-in-confidence, that:

- (a) is obtained under, or in accordance with, this Act, the *Fuel Security Act 2021*, section 95ZPA of the *Competition and Consumer Act 2010* or subsection 355-65(8) in Schedule 1 to the *Taxation Administration Act 1953*; or
- (b) is derived from a record of personal information, or information that is commercial-in-confidence, that was made under, or in accordance with, this Act, the *Fuel Security Act 2021* or a provision referred to in paragraph (a); or
- (c) is derived from a disclosure or use of personal information, or information that is commercial-in-confidence, that was made under, or in accordance with, this Act, the *Fuel Security Act 2021* or a provision referred to in paragraph (a).

Note: For the meaning of **commercial-in-confidence**, see section 6.

**refining** a covered product means transforming a covered product into another covered product, or recycling or re-refining a covered product.

**regulated entity** means:

- (a) a constitutional corporation; or
- (b) a trust, all of the trustees of which are constitutional corporations; or
- (c) a body corporate that is incorporated in a Territory; or

- (d) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
- (e) a trust, if the proper law of the trust and the law of the trust's administration are the law of a Territory; or
- (f) an entity, the core or routine activities of which are carried out in or in connection with a Territory.

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

**rules** means rules made under section 41.

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

**statistical fuel information** means fuel information that is statistical information.

**wholesaling** a covered product means:

- (a) entering a covered product for home consumption (within the meaning of the *Customs Act 1901* or the *Excise Act 1901*); or
  - (b) if a covered product is not subject to duty of excise or duty of customs—removing the covered product from an import terminal or domestic production facilities (such as a refinery); or
  - (c) if another activity is prescribed by the rules for the purposes of this paragraph for a kind of covered product—undertaking that activity in relation to the kind of product.
- (2) The rules must not prescribe a fuel for the purposes of paragraph (t) of the definition of **covered product** in subsection (1) unless the Minister is satisfied that prescribing the fuel will promote the objects of this Act.
- (3) The rules must not prescribe a fuel-related product for the purposes of paragraph (u) of the definition of **covered product** in subsection (1) unless the Minister is satisfied that prescribing the product will assist the Commonwealth to give effect to Australia's obligations, relating to the reporting of data relating to petroleum, other fuels or fuel-related products, under:

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- (a) the Agreement; or
  - (b) any other agreement with one or more countries.
- (4) A person is taken to be **holding stock** of a covered product that is an MSO product within the meaning of the *Fuel Security Act 2021* if the person holds stocks of that product within the meaning of section 19 of that Act.

## 6 Meaning of commercial-in-confidence

Information is **commercial-in-confidence** if the Secretary is satisfied that:

- (a) release of the information would cause competitive detriment to a person; and
- (b) the information is not in the public domain; and
- (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
- (d) the information is not readily discoverable.

## 7 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
  - (a) prosecuted for an offence; or
  - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
  - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

## 8 Offshore areas

- (1) This Act applies in relation to the offshore areas in respect of the States and Territories as if references in this Act to Australia, when used in a geographical sense, included references to the offshore areas in respect of the States and Territories.

- (2) The extended application given to this Act by subsection (1) extends only in relation to:
- (a) acts, matters and things directly or indirectly connected with exploration of, or exploitation of the natural resources of, the continental shelf of Australia; and
  - (b) acts done by or in relation to, and matters, circumstances and things affecting, a person who is in an offshore area for a reason directly or indirectly connected with such exploration or exploitation.

### **9 Concurrent operation of State and Territory laws**

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

## Part 2—Reports of fuel information

### 10 Simplified outline of this Part

Reports must be given to the Secretary if certain activities (called covered activities) are undertaken in relation to certain fuels and fuel-related products (called covered products).

The rules may set out exceptions to the duty to report. The Secretary may determine that a particular person is not required to give a report in particular circumstances.

### 11 Reports of fuel information to be given to the Secretary

- (1) This section applies if:
  - (a) a covered activity of a kind prescribed by the rules for the purposes of this subsection is undertaken in relation to a covered product of a kind prescribed by the rules in relation to the covered activity for the purposes of this subsection; and
  - (b) the covered activity is undertaken by a regulated entity; and
  - (c) the covered activity is undertaken in whichever of the following circumstances is prescribed by the rules in relation to the covered activity:
    - (i) in Australia;
    - (ii) outside Australia, in connection with business carried on in Australia by the regulated entity;
    - (iii) in the Greater Sunrise special regime area (within the meaning of the *Seas and Submerged Lands Act 1973*), in connection with business carried on in that area by the regulated entity.
- (2) The person prescribed by the rules must give the Secretary a report in accordance with this section.

Civil penalty: 250 penalty units.

- (3) To avoid doubt, rules made for the purposes of subsection (2) may prescribe more than one person who must give a report in relation to the same kind of covered activity and the same kind of covered product.
- (4) A report under subsection (2) must:
- (a) include the fuel information, in relation to the covered activity or the covered product, that is prescribed by the rules; and
  - (b) be given in the manner and form approved in writing by the Secretary; and
  - (c) be given to the Secretary within the period prescribed by the rules.
- Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*). There is also a civil penalty for persons providing false or misleading information in relation to the *Fuel Security Act 2021* (see section 13A of this Act).
- (5) Rules made for the purposes of paragraph (4)(a) may prescribe different requirements for:
- (a) different covered activities; or
  - (b) different covered products; or
  - (c) reports by different persons.
- (6) Without limiting paragraph (4)(b), the Secretary may approve:
- (a) electronic communication as a manner in which a report must be given; or
  - (b) more than one manner for giving a report; or
  - (c) different forms for different covered activities, different covered products or reports by different persons; or
  - (d) a single form for more than one report.

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- (7) Rules made for the purposes of paragraph (4)(c) may prescribe different periods for:
  - (a) different covered activities; or
  - (b) different covered products; or
  - (c) reports by different persons.
- (8) Subsections (5), (6) and (7) do not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (9) A covered activity that is importing or exporting a covered product is taken to be undertaken in Australia for the purposes of subparagraph (1)(c)(i) if:
  - (a) for importing—the product is imported to Australia; or
  - (b) for exporting—the product is exported from Australia.

**12 Extended application of section 11**

- (1) Without limiting the effect of section 11 apart from this section, section 11 also has effect as provided by this section.
- (2) To avoid doubt, no subsection of this section limits the operation of any other subsection of this section.

*Census and statistics power*

- (3) Section 11 also has the effect it would have if:
  - (a) each reference in subsection 11(1) to a regulated entity included a reference to a person who is not a regulated entity; and
  - (b) the reference in paragraph 11(4)(a) to fuel information were expressly confined to a reference to statistical fuel information.

*External affairs power*

- (4) Section 11 also has the effect it would have if:

- (a) each reference in subsection 11(1) to a regulated entity included a reference to a person who is not a regulated entity; and
  - (b) the reference in paragraph 11(4)(a) to fuel information were expressly confined to fuel information that is necessary to give effect to Australia's rights or obligations under:
    - (i) the Agreement; or
    - (ii) any other agreement with one or more countries.
- (5) Section 11 also has the effect it would have if:
- (a) each reference in subsection 11(1) to a regulated entity included a reference to a person who is not a regulated entity; and
  - (b) subparagraph 11(1)(c)(i) were omitted.

*Trade and commerce power*

- (6) Section 11 also has the effect it would have if:
- (a) each reference in subsection 11(1) to a regulated entity included a reference to a person who is not a regulated entity; and
  - (b) the following paragraph were added at the end of that subsection:  
“; and (d) the covered activity is undertaken in the course of or in relation to constitutional trade and commerce.”.

### **13 Exceptions to duty to report**

*Exceptions prescribed by the rules*

- (1) Subsection 11(2) does not apply in the circumstances prescribed by the rules.

Note: A person bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (2) Without limiting subsection (1), the rules must prescribe that subsection 11(2) does not apply in circumstances relating to a

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threshold or thresholds prescribed by, or worked out in accordance with, the rules.

*Exemptions by the Secretary*

- (3) Subsection 11(2) does not apply to a particular person, in relation to a particular kind of covered activity and a particular kind of covered product, if the Secretary:
- (a) is satisfied that, in all the circumstances, it is not appropriate for that subsection to apply to the person in relation to the covered activity and the covered product; and
  - (b) makes a written determination to that effect.
- Note: A person bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).
- (4) A determination under paragraph (3)(b) is not a legislative instrument.

**13A Civil penalty for false or misleading information relating to *Fuel Security Act 2021***

A person must not, in a report under section 11, provide information that:

- (a) relates to:
  - (i) whether a regulated entity that is subject to the minimum stockholding obligation under the *Fuel Security Act 2021* is complying with section 7 of that Act; or
  - (ii) whether fuel security services payment is payable to a constitutional corporation under the *Fuel Security Act 2021*; and
- (b) is false or misleading in a material particular, or omits a matter or thing without which the information is misleading in a material particular.

Civil penalty: 300 penalty units.

**13B Compliance audits relating to the *Fuel Security Act 2021***

- (1) The rules may make provision in relation to the auditing of compliance with section 11, so far as that section relates to the giving of reports that relate to:
  - (a) MSO activities undertaken in relation to MSO products by regulated entities; or
  - (b) the refining of FSSP fuels.
- (2) Without limiting subsection (1), rules made for the purposes of that subsection may do any of the following:
  - (a) empower the Secretary to require an audit to be conducted;
  - (b) prescribe matters to which an audit may relate or be required by the Secretary to relate;
  - (c) prescribe persons who are authorised to conduct audits;
  - (d) require reports of audits to accompany reports given under section 11 or otherwise be given to the Secretary.
- (3) The following expressions used in subsection (1) have the same meaning as in the *Fuel Security Act 2021*:
  - (a) FSSP fuels;
  - (b) MSO activity;
  - (c) MSO product;
  - (d) regulated entity.

**13C Duty to provide reasonable facilities and assistance for audit**

- (1) A person affected by an audit required to be conducted under rules made for the purposes of subsection 13B(1) must provide the person conducting the audit (the ***audit team leader***), and any person assisting the audit team leader in the conduct of the audit, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties in relation to the audit.

Civil penalty: 250 penalty units.

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- (2) A person is *affected* by an audit if the person is any of the following:
- (a) the person being audited;
  - (b) if the audit relates to compliance with section 11 so far as that section relates to the giving of reports that relate to MSO activities undertaken in relation to MSO products by a regulated entity:
    - (i) the regulated entity; or
    - (ii) if the regulated entity has an Australian controlling corporation—the Australian controlling corporation; or
    - (iii) any entity in possession of stocks of an MSO product that are held (within the meaning of section 19 of the *Fuel Security Act 2021*) by the regulated entity;
  - (c) if the audit relates to compliance with section 11 so far as that section relates to the giving of reports that relate to the refining of FSSP fuels by a constitutional corporation—the constitutional corporation.
- (3) The following expressions used in subsection (2) have the same meaning as in the *Fuel Security Act 2021*:
- (a) FSSP fuels;
  - (b) MSO activity;
  - (c) MSO product;
  - (d) regulated entity.

**13D Duty to comply with requirements in relation to report of audit**

- (1) A person who is required to give the Secretary a report under section 11 must comply with any rules prescribed for the purposes of subsection 13B(1) requiring a report of an audit to accompany the report under section 11.

Civil penalty: 250 penalty units.

- (2) A person who is required by any rules prescribed for the purposes of subsection 13B(1) to give a report of an audit to the Secretary

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must give the report of the audit to the Secretary in accordance with the rules.

Civil penalty: 250 penalty units.

## **Part 3—Collection and publication of fuel information**

### **14 Simplified outline of this Part**

This Part permits the Secretary to collect fuel information.

Fuel information is raw data or value added information product that relates to covered activities, or to the quantity, quality or characteristics of covered products, or to the holding (within the meaning of the *Fuel Security Act 2021*) of certain covered products. Fuel information includes metadata describing such data, and contextual information.

The Secretary may publish or make available fuel information. The information must not be likely to enable the identification of a person or be commercial-in-confidence.

### **15 Collection of fuel information**

The Secretary may collect fuel information.

### **16 Publication of fuel information**

- (1) The Secretary may, in such manner as the Secretary thinks appropriate, cause to be published or made available statistical fuel information.
- (2) The Secretary may, in such manner as the Secretary thinks appropriate, cause to be published or made available fuel information that is not statistical fuel information.
- (3) The Secretary must not cause to be published or made available information under this section if the information is:
  - (a) likely to enable the identification of a person; or

(b) commercial-in-confidence.

Note: An entrusted person may make a record of or use protected information for the purpose of the publication or making available of information under this section: see section 22.

### **17 Severability—publication of fuel information**

- (1) Without limiting the effect of subsection 16(2) apart from this section, subsection 16(2) also has effect as provided by this section.
- (2) To avoid doubt, no subsection of this section limits the operation of any other subsection of this section.
- (3) Subsection 16(2) also has the effect it would have if that subsection were, by express provision, confined to the communication of information by electronic means.
- (4) Subsection 16(2) also has the effect it would have if the reference in that subsection to fuel information that is not statistical fuel information were, by express provision, confined to information that relates to the affairs of a regulated entity or was obtained from a regulated entity.
- (5) Subsection 16(2) also has the effect it would have if the reference in that subsection to fuel information that is not statistical fuel information were, by express provision, confined to information the publication or making available of which is necessary to give effect to Australia's rights or obligations under:
  - (a) the Agreement; or
  - (b) any other agreement with one or more countries.
- (6) Subsection 16(2) also has the effect it would have if the reference in that subsection to fuel information that is not statistical fuel information were, by express provision, confined to information relating to acts or omissions that occur outside Australia.
- (7) Subsection 16(2) also has the effect it would have if the reference in that subsection to fuel information that is not statistical fuel information were, by express provision, confined to information

**Part 3** Collection and publication of fuel information

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relating to acts or omissions in the course of or in relation to constitutional trade and commerce.

**18 Other powers or functions not affected**

This Part does not, by implication, limit any other power or function of the Secretary to collect, publish, or otherwise deal with information.

## **Part 4—Secrecy and disclosure**

### **Division 1—Introduction**

#### **19 Simplified outline of this Part**

This Part makes it an offence for an entrusted person to record, use or disclose protected information, except in circumstances set out in this Part.

This Part also authorises certain fuel information to be disclosed to the Secretary.

## Division 2—Secrecy

### 20 Secrecy

#### *Offence*

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
  - (b) the person has obtained information in his or her capacity as an entrusted person; and
  - (c) the information is protected information; and
  - (d) the person:
    - (i) makes a record of the information; or
    - (ii) uses the information; or
    - (iii) discloses the information to another person.

Penalty: Imprisonment for 2 years.

#### *Exceptions*

- (2) Subsection (1) does not apply if:
- (a) the conduct is authorised by:
    - (i) this Act or another law of the Commonwealth; or
    - (ii) a law of a State or Territory prescribed by the rules; or
  - (b) the conduct is in compliance with a requirement under:
    - (i) this Act or another law of the Commonwealth; or
    - (ii) a law of a State or a Territory prescribed by the rules.
- (3) Subsection (1) does not apply if:
- (a) the person makes a record of, discloses or otherwise uses information; and
  - (b) the information is commercial-in-confidence; and
  - (c) the person does not know that the information is commercial-in-confidence.

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

*Implied freedom of political communication*

- (4) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

**21 Exercising powers, or performing functions or duties, as an entrusted person**

An entrusted person may make a record of, use or disclose protected information if the record is made, or the information is used or disclosed, in the course of exercising powers, or performing functions or duties, as an entrusted person.

Note: The powers, functions and duties of entrusted persons are not limited to those conferred or imposed by this Act.

**22 Recording and use of protected information in relation to the publication of fuel information**

An entrusted person may:

- (a) make a record of protected information; or
- (b) use protected information;

for the purpose of the publication or making available of fuel information under section 16.

**23 Disclosure to the Minister**

- (1) An entrusted person may:
- (a) disclose protected information to the Minister; and
  - (b) make a record of or use protected information for the purpose of disclosing protected information to the Minister.

- (2) An entrusted person may:

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- (a) disclose protected information to a person employed under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of the Minister; and
- (b) make a record of or use protected information for the purposes of disclosing the information under paragraph (a).

**24 Disclosure to certain agencies, bodies or persons**

- (1) The Secretary may disclose:
  - (a) protected information to an agency, body or person referred to in paragraph (2)(a), (b), (c) or (d); or
  - (b) protected information that is statistical information to a body referred to in paragraph (2)(e);if the Secretary reasonably believes that the information will enable or assist the agency, body or person to exercise its powers, or perform its functions or duties.
- (2) The agencies, bodies and persons to which protected information may be disclosed under this section are the following:
  - (a) the Australian Competition and Consumer Commission;
  - (b) the Commissioner of Taxation;
  - (c) an agency or authority of the Commonwealth prescribed by the rules;
  - (d) a State or Territory government, agency or authority prescribed by the rules;
  - (e) the International Energy Agency or any other international energy security body prescribed by the rules.
- (3) The Secretary may, in writing, authorise an entrusted person to disclose:
  - (a) protected information to an agency, body or person referred to in paragraph (2)(a), (b), (c) or (d); or
  - (b) protected information that is statistical information to a body referred to in paragraph (2)(e);if the Secretary reasonably believes that the information will enable or assist the agency, body or person to exercise its powers, or perform its functions or duties.

- (4) If an entrusted person is authorised to disclose information under subsection (3), that person may disclose the information.
- (5) An entrusted person may:
- (a) make a record of protected information; or
  - (b) use protected information;
- for the purpose of disclosing protected information under subsection (1) or (4).

*Conditions*

- (6) The Secretary may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (1) or (4), other than information disclosed to the Australian Competition and Consumer Commission.
- (7) A person commits an offence if:
- (a) the person is subject to a condition under subsection (6); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years.

- (8) An instrument under subsection (6) is not a legislative instrument.

*Protected information disclosed to the Australian Competition and Consumer Commission*

- (9) Protected information disclosed under subsection (1) or (4) to the Australian Competition and Consumer Commission is taken, for the purposes of Part VIIA of the *Competition and Consumer Act 2010*, to be protected information within the meaning of section 95ZP of that Act.

## **25 Disclosure with consent**

An entrusted person may make a record of, use or disclose protected information that relates to the affairs of a person if:

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

## **26 Disclosure of publicly available information**

An entrusted person may:

- (a) make a record of protected information; or
  - (b) use protected information; or
  - (c) disclose protected information to another person;
- if the protected information has already been lawfully made available to the public.

## **27 Disclosure to the person to whom the protected information relates**

An entrusted person may disclose protected information to the person to whom the protected information relates.

## **28 Disclosure to the person from whom the protected information was obtained**

An entrusted person may disclose protected information to the person from whom the information was obtained.

## **29 Disclosure to a court, tribunal etc.**

An entrusted person may make a record of, use or disclose protected information, or a document containing protected information:

- (a) for the purposes of proceedings before:
  - (i) a court; or
  - (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or
- (b) in accordance with an order of:

- (i) a court; or
- (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

### **30 Disclosure for purposes of law enforcement**

- (1) The Secretary may disclose protected information to an agency referred to in subsection (2), if:
  - (a) the Secretary reasonably believes that the disclosure of the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - or
    - (iii) the protection of the public revenue; and
  - (b) the protected information is disclosed for the purposes of that enforcement or protection.
- (2) The agencies to which the Secretary may disclose protected information under this section are:
  - (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
  - (b) the Australian Federal Police; or
  - (c) the police force or police service of a State or Territory; whose functions include that enforcement or protection.
- (3) The Secretary may, in writing, authorise an entrusted person to disclose protected information to an agency referred to in subsection (2), if:
  - (a) the Secretary reasonably believes that the disclosure of the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - or
    - (iii) the protection of the public revenue; and

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- (b) the protected information is disclosed for the purposes of that enforcement or protection.
- (4) If a person is authorised to disclose information under subsection (3), that person may disclose the information.
- (5) An entrusted person may:
  - (a) make a record of protected information; or
  - (b) use protected information;for the purpose of disclosing protected information under subsection (1) or (4).

*Conditions*

- (6) The Secretary may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (1) or (4).
- (7) A person commits an offence if:
  - (a) the person is subject to a condition under subsection (6); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years.

- (8) An instrument under subsection (6) is not a legislative instrument.

## **Division 3—Disclosure**

### **31 Disclosure of information to the Secretary**

- (1) An entrusted person (within the meaning of the *Australian Border Force Act 2015*) may give:
  - (a) the Secretary; or
  - (b) an entrusted person (within the meaning of this Act) authorised under subsection (3);such Immigration and Border Protection information (within the meaning of the *Australian Border Force Act 2015*) that is fuel information as the Secretary reasonably believes will enable or assist him or her to perform or exercise any of his or her functions or powers under this Act or the *Fuel Security Act 2021*.
- (2) The information mentioned in subsection (1) may include personal information.
- (3) The Secretary may, in writing, authorise an entrusted person for the purposes of paragraph (1)(b).

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988*, paragraph 42(2)(c) of the *Australian Border Force Act 2015* and other laws.

## Part 5—Compliance and enforcement

### 32 Simplified outline of this Part

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of the requirement in section 11 to give reports to the Secretary.

An authorised person may enter premises under a warrant or with consent of the occupier and exercise monitoring powers there under Part 2 of the Regulatory Powers Act, for the purposes of determining whether information given in compliance or purported compliance with section 11 is correct.

A person can be given an infringement notice under Part 5 of the Regulatory Powers Act for contravening section 11.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for the contravention. If the person does not choose to pay the amount, proceedings can be brought against the person for the contravention.

### 33 Monitoring powers

#### *Information subject to monitoring*

- (1) Information given in compliance or purported compliance with section 11 is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

*Related provisions*

- (1A) For the purposes of Part 2 of the Regulatory Powers Act, as that Act applies in relation to the information mentioned in subsection (1), each of the following provisions is related to the provision mentioned in subsection (1):
- (a) a civil penalty provision of the *Fuel Security Act 2021*;
  - (b) a civil penalty provision of the *Fuel Quality Standards Act 2000*;
  - (c) an offence provision of the *Fuel Quality Standards Act 2000*.

*Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the information mentioned in subsection (1):
- (b) the Secretary is an authorised applicant; and
  - (c) a person appointed under section 34 is an authorised person; and
  - (d) a magistrate is an issuing officer; and
  - (e) the Secretary is the relevant chief executive; and
  - (f) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

*Extension to offshore areas*

- (3) Part 2 of the Regulatory Powers Act, as that Part applies in relation to information mentioned in subsection (1), extends to each offshore area.

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**34 Appointment of authorised persons**

- (1) The Secretary may, in writing, appoint a person who is one of the following as an authorised person for the purposes of this Act:
  - (a) an APS employee in the Department;
  - (b) a person who is engaged as a consultant or contractor to perform services in relation to this Act.
- (2) The Secretary must not appoint a person as an authorised person unless the Secretary is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an authorised person.
- (3) An authorised person must, in exercising powers as such, comply with any directions of the Secretary.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

**35 Civil penalty provisions**

*Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

*Authorised applicant and relevant court*

- (2) For the purposes of Part 4 of the Regulatory Powers Act:
  - (a) the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act; and
  - (b) each of the following is a relevant court in relation to the civil penalty provisions of this Act:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;

- (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

*Extension to offshore areas*

- (3) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions mentioned in subsection (1), extends to each offshore area.

### **36 Infringement notices**

*Provisions subject to an infringement notice*

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

*Infringement officer and relevant chief executive*

- (2) For the purposes of Part 5 of the Regulatory Powers Act:
- (a) the Secretary is an infringement officer in relation to the provisions mentioned in subsection (1); and
  - (b) the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

*Extension to offshore areas*

- (3) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to each offshore area.

## Part 6—Miscellaneous

### 37 Simplified outline of this Part

This Part deals with other matters, such as delegations, reviews of this Act and rules.

### 38 Treatment of trusts

- (1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

*Trusts with a single trustee*

- (2) If the trust has a single trustee:
- (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and
  - (b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.

*Trusts with multiple trustees*

- (3) If the trust has 2 or more trustees:
- (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and
  - (b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the offence was committed, who:
    - (i) did the relevant act or made the relevant omission; or
    - (ii) aided, abetted, counselled or procured the relevant act or omission; or

- (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

*Contraventions of civil penalty provisions*

- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

### **39 Delegations**

- (1) The Secretary may, in writing, delegate any or all of his or her functions or powers under:
- (a) section 6 (about commercial-in-confidence information); or
  - (b) paragraph 11(4)(b) (about approving manners and forms); or
  - (c) subsection 13(3) (about exemptions from the duty to report); or
  - (ca) rules made for the purposes of subsection 13B(1) (about compliance audits relating to the *Fuel Security Act 2021*); or
  - (d) section 15 (about collection of fuel information); or
  - (e) section 16 (about publication of fuel information); or
  - (f) section 34 (about appointment of authorised persons); or
  - (g) section 35 of the Regulatory Powers Act as the relevant chief executive to issue identity cards to authorised persons;
- to an SES employee, or an acting SES employee, in the Department.

Note: **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In performing a function, or exercising a power, under a delegation, the delegate must comply with any directions of the Secretary.

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**40 Review of operation of this Act**

- (1) The Minister must cause an independent review to be conducted of the operation of this Act and the rules.
- (2) Without limiting the matters to be covered by the review, the review must consider the following:
  - (a) the definition of *fuel information* in section 5;
  - (b) the definition of *covered product* in section 5;
  - (c) the definition of *covered activity* in section 5.
- (3) The review must be conducted as soon as practicable after the end of 3 years after this section commences.
- (4) The persons who conduct the review must give the Minister a written report of the review.
- (5) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

**41 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

## Endnotes

Endnote 1—About the endnotes

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## 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 the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### 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)<br>/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<br>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<br>effect               | SLI = Select Legislative Instrument                                    |
| (md not incorp) = misdescribed amendment<br>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<br>commenced or to be commenced |

## Endnote 3—Legislation history

**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> |
|---|------------------------|---------------|---|--|
| Petroleum and Other Fuels Reporting Act 2017  | 90, 2017               | 23 Aug 2017   | 24 Aug 2017 (s 2(1) item 1)   |  |
| Australian Border Force Amendment (Protected Information) Act 2017  | 115, 2017              | 30 Oct 2017   | Sch 1 (item 32): 31 Oct 2017 (s 2(1) item 4)                                    | —  |
| Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019  | 57, 2019               | 7 Aug 2019    | Sch 1 (item 138): 30 Aug 2019 (s 2(1) item 2)                                   | —  |
| Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021 | 13, 2021               | 1 Mar 2021    | Sch 2 (item 685): <u>awaiting commencement</u> (s 2(1) item 5)                  | —  |
| Fuel Security (Consequential and Transitional Provisions) Act 2021  | 66, 2021               | 29 June 2021  | Sch 1 (items 3–17, 19) and Sch 2 (items 1, 2): 30 June 2021 (s 2(1) items 2, 4) | Sch 1 (item 19) and Sch 2 (items 1, 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 3 .....                 | am No 66, 2021                      |
| s 5 .....                 | am No 66, 2021                      |
| <b>Part 2</b>             |                                     |
| s 11 .....                | am No 57, 2019; No 66, 2021         |
| s 13A .....               | ad No 66, 2021                      |
| s 13B.....                | ad No 66, 2021                      |
| s 13C.....                | ad No 66, 2021                      |
| s 13D .....               | ad No 66, 2021                      |
| <b>Part 3</b>             |                                     |
| s 14 .....                | am No 66, 2021                      |
| <b>Part 4</b>             |                                     |
| <b>Division 2</b>         |                                     |
| s 21 .....                | am No 66, 2021                      |
| <b>Division 3</b>         |                                     |
| s 31 .....                | am No 115, 2017; No 66, 2021        |
| <b>Part 5</b>             |                                     |
| s 33 .....                | am <u>No 13, 2021</u> ; No 66, 2021 |
| s 35 .....                | am <u>No 13, 2021</u>               |
| <b>Part 6</b>             |                                     |
| s 39 .....                | am No 66, 2021                      |

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