



# Clean Energy Act 2008

Reprinted as in force on 22 May 2009

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 22 May 2009.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

**Replacement reprint date** If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



Queensland

# Clean Energy Act 2008

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# Clean Energy Act 2008

[reprinted as in force on 22 May 2009]

**An Act to improve the efficiency and management of energy use, and the conservation of energy, by particular businesses and other activities, and to amend the *Coal Mining Safety and Health Act 1999*, the *Electricity Act 1994*, the *Mineral Resources Act 1989*, the *Mining and Quarrying Safety and Health Act 1999*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* for particular purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Clean Energy Act 2008*.

### 2 Commencement

The provisions of the Act, other than the following provisions, commence on a day to be fixed by proclamation—

- (a) part 11, other than sections 40, 41 and 48;
- (b) part 14, other than sections 108, 109 and 116.

### 3 Main object

The main object of this Act is to improve the efficiency and management of the use of energy, and the conservation of energy, in relation to particular businesses and other activities.

## Part 2 Interpretation

### 4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 5 Who is the *regulator*

The *regulator* is the chief executive.

### 6 Meaning of *participating business*

- (1) A *participating business* is a person—
  - (a) who operates a business or carries out another activity at a site that used 10 terajoules or more of energy, but less than 500 terajoules of energy, in the most recently completed baseline year for the person; and
  - (b) who is not registered, and is not required to be registered, under the *Energy Efficiency Opportunities Act 2006* (Cwlth), part 4.
- (2) If the person is a participating business for 2 or more sites, a provision of this Act that applies to a participating business applies to the person separately in relation to each site for which the person is a participating business.
- (3) A government entity within the meaning of the *Government Owned Corporations Act 1993*, section 5, other than a GOC issued with a generation authority under the *Electricity Act 1994*, is not a *participating business*.

### 7 Meaning of *energy use threshold*

- (1) An *energy use threshold*, for a financial year, is the total amount of energy used by a person's business or other activity at a site in the financial year, if the amount used is 10 terajoules or more, but less than 500 terajoules.

- (2) An energy use threshold for a financial year is a ***level 1 threshold*** if the total amount of energy used in the financial year is 100 terajoules or more, but less than 500 terajoules.
- (3) An energy use threshold for a financial year is a ***level 2 threshold*** if the total amount of energy used in the financial year is 30 terajoules or more, but less than 100 terajoules.
- (4) An energy use threshold for a financial year is a ***level 3 threshold*** if the total amount of energy used in the financial year is 10 terajoules or more, but less than 30 terajoules.

## Part 3 Energy use information

### 8 Energy provider must give regulator information about energy use

- (1) An energy provider must give the regulator, within 2 months after the end of a financial year, the name and address of any customer the energy provider has supplied with 10 terajoules or more of energy, but less than 500 terajoules of energy, at the site of the customer, in the financial year.

Maximum penalty—200 penalty units.

- (2) An energy provider does not commit an offence under subsection (1) if compliance with the provision would be unlawful under another law of the State or a law of the Commonwealth.

- (3) In this section—

***energy provider*** means any of the following entities if the regulator has given the entity written notice that this section applies to the entity—

- (a) the holder of a distribution authority, generation authority or retail authority under the *Electricity Act 1994*;
- (b) a special approval holder under the *Electricity Act 1994*;

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- (c) the holder of a distribution authority or retail authority under the *Gas Supply Act 2003*;
- (d) the holder of a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.

## 9 Obligation to record total energy consumption

- (1) If the regulator decides on reasonable grounds that a person is or may be a participating business, the regulator may give the person a written notice requiring the person to give the regulator sufficient information to establish the total amount of energy used by the person in the financial year (the *baseline year*) stated in the notice.

*Note—*

A written notice would be likely to be given under subsection (1) approximately every 5 years to ensure that a participating business has a current energy savings plan under section 16.

- (2) The person must give the regulator the information within 2 months after the end of the baseline year, or 2 months after receiving the notice, whichever is later.

Maximum penalty—200 penalty units.

- (3) The regulator must give the person an information notice for the decision of the regulator that the person is or may be a participating business.

# Part 4 Smart Energy Savings Register

## 10 Smart Energy Savings Register

- (1) The regulator must keep a register (the *Smart Energy Savings Register*) of each participating business that may be registered under subsection (2).
- (2) A participating business may be registered if—

- 
- (a) the regulator has given the participating business a notice under section 9(1); and
  - (b) the participating business has an energy use threshold that is—
    - (i) for a baseline year ending on or after 30 June 2010—a level 1 threshold; or
    - (ii) for a baseline year ending on or after 30 June 2011—a level 2 threshold; or
    - (iii) for a baseline year ending on or after 30 June 2015—a level 3 threshold.
  - (3) The register must include the following information—
    - (a) the name of the participating business;
    - (b) the address of the principal place of business of the participating business;
    - (c) if the participating business is a corporation, the address of the corporation's registered office;
    - (d) the energy use threshold of the participating business for its most recently completed baseline year.

## **11 Registration of a person as participating business**

- (1) A participating business that may be registered under section 10(2) must apply to the regulator for registration.  
Maximum penalty—100 penalty units.
- (2) The application must be made within 3 months after the end of each baseline year for the participating business.
- (3) The application must be in writing and include the information mentioned in section 10(3).

## **12 Exemption from registration**

- (1) A participating business may apply to the regulator for an exemption from registration under section 10 if the

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participating business does not ordinarily have an energy use threshold in a financial year.

- (2) The application must be in writing and include the following information—
  - (a) the total amount of energy used by the participating business in the most recently completed financial year;
  - (b) the total amount of energy expected to be used by the participating business in the current financial year and each of the following 2 financial years;
  - (c) the reason that the participating business does not ordinarily have an energy use threshold for a financial year.
- (3) The application must be made within 3 months after the end of the baseline year for the participating business.
- (4) The regulator may exempt the person from registration if the regulator is satisfied the participating business does not ordinarily have an energy use threshold for a financial year.
- (5) If the regulator decides to refuse the application, the regulator must give the participating business an information notice for the decision.

### **13 Deregistration**

- (1) A participating business may apply to the regulator for deregistration as a participating business.
- (2) The application must be in writing and include the following information—
  - (a) the total amount of energy used by the participating business in the most recently completed financial year;
  - (b) the total amount of energy expected to be used by the participating business in the current financial year and each of the following 2 financial years;
  - (c) the reason that the participating business is seeking to be deregistered.

- 
- (3) The regulator must deregister the participating business if the regulator is satisfied—
    - (a) the participating business will not have an energy use threshold in the current financial year or either of the following 2 financial years; or
    - (b) the participating business is registered, or is required to be registered, under the *Energy Efficiency Opportunities Act 2006* (Cwlth), part 4.
  - (4) If the regulator decides to refuse the application, the regulator must give the person an information notice for the decision.

#### **14 Change of information in register**

A participating business must, within 14 days of any change to the information contained in the Smart Energy Savings Register under section 10(3) about the participating business, give the regulator written notice about the change.

Maximum penalty—20 penalty units.

## **Part 5 Energy use audit**

#### **15 Participating business must carry out energy use audit**

- (1) A registered participating business must carry out an energy audit within 12 months after the end of each baseline year for the participating business.

Maximum penalty—100 penalty units.

*Note—*

Given the length of an energy savings plan under section 16, a baseline year could be expected to be established approximately every 5 years under section 9.

- (2) In this section—

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*energy audit* means an energy audit prescribed under a regulation, and if no energy audit is prescribed, an energy audit that complies with a level 2 energy audit under AS/NZS 3598:2000 (Energy Audits).

## Part 6 Energy Savings Plan

### 16 Participating business must give regulator energy savings plan

- (1) A registered participating business must give the regulator a plan (an *energy savings plan*) that complies with subsections (2) and (3), within 12 months after the end of each baseline year for the participating business.

Maximum penalty—200 penalty units.

- (2) The plan must be for a period that—
- (a) starts on the day the plan is given to the regulator; and
  - (b) ends on the day that is 5 years after the end of the baseline year.
- (3) The plan must—
- (a) be in the approved form; and
  - (b) include a copy of a report about the energy audit carried out by the participating business under section 15(1); and
  - (c) set out the measures the participating business intends to implement from the energy audit that are of the following type—
    - (i) efficiency measures;
    - (ii) conservation measures;
    - (iii) management measures; and

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- (d) state how the participating business intends to implement the measures.

## **17 Participating business may change energy savings plan**

- (1) A participating business may change an energy savings plan of the participating business to the extent that it relates to a matter mentioned in section 16(3)(c) or (d).
- (2) The participating business must, within 14 days of the change, give the regulator written notice setting out the change.

Maximum penalty—20 penalty units.

## **18 Review of energy savings plan**

- (1) This section applies if a participating business gives an energy savings plan to the regulator under section 16.
- (2) The participating business must give the regulator a report, in the third financial year in the 5 year period of the plan, stating how the plan has been implemented by the participating business and the results of the implementation.

Maximum penalty—100 penalty units.

- (3) In this section—

*5 year period*, of an energy savings plan, means the period of 5 years starting from the end of the most recent baseline year to which the plan relates.

## **19 Publication of energy savings plan implementation**

- (1) Within 28 days after a participating business gives the regulator an energy savings plan under section 16, the participating business must publish information, in the way stated in subsection (3), about the measures the participating business intends to implement under the plan that are of the following type—
- (a) efficiency measures;
- (b) conservation measures;

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(c) management measures.

Maximum penalty—20 penalty units.

- (2) Within 28 days of the start of the second and each subsequent financial year in the 5 year period of the plan, the participating business must publish information, in the way stated in subsection (3), about the implementation, and the results of implementation, of the measures mentioned in subsection (1).

Maximum penalty—20 penalty units.

- (3) Information under subsections (1) and (2) must be published in a way that is readily accessible to the public.

*Examples of how information may be published—*

- publishing on a website
- publishing in a local newspaper

- (4) The participating business must, within 28 days after it complies with subsection (1) or (2)—

(a) advise the regulator by written notice that the participating business has complied with the subsection; and

(b) give the regulator proof of compliance.

Maximum penalty—20 penalty units.

*Example of how a participating business may prove compliance—*

give the regulator a website address or a newspaper article

- (5) In this section—

**5 year period**, of an energy savings plan, means the period of 5 years starting from the end of the most recent baseline year to which the plan relates.



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- (a) made in connection with the administration of this Act; or
- (b) made with the consent of the person to whom the information relates; or
- (c) ordered by a court in relation to proceedings before it; or
- (d) made with other lawful excuse.

Maximum penalty—100 penalty units.

- (2) In this section—

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

## **Part 8                      Evidence and legal proceedings**

### **Division 1                Application**

#### **23        Application of part**

This part applies to a legal proceeding under this Act.

### **Division 2                Evidentiary aids**

#### **24        Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the regulator's appointment;
- (b) the authority of the Minister or the regulator to do anything under this Act.

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## 25 Signatures

A signature purporting to be the signature of the Minister or the regulator is evidence of the signature it purports to be.

## Division 3 Offence proceedings

### 26 Summary proceedings for offences

- (1) Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding for an offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### 27 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer

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exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) In this section—

*executive officer*, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

## **Part 9                      Appeal and review of decisions**

### **Division 1                Internal review**

#### **28            Application for internal review**

A person who is given, or is entitled to be given, an information notice about a decision of the regulator under this Act, may apply for an internal review of the decision.

#### **29            How to apply for internal review**

(1) An application for internal review of a decision must be—

(a) made—

(i) in the approved form; and

(ii) to the Minister; and

(b) supported by enough information to enable the Minister to decide the application.

(2) The application must be made within 20 business days after—

(a) the day the person is given the information notice about the decision; or

- 
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

### **30 Review decision**

- (1) The Minister must, within 30 business days after receiving the application—
  - (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (3) If the Minister does not comply with subsection (1), the Minister is taken to have made a decision confirming the original decision.

## **Division 2 Appeals**

### **31 Who may appeal**

A person who has applied for a review of a decision under division 1 and is dissatisfied with the decision (the *dissatisfied person*) may appeal to a Magistrates Court against the decision.

### **32 Starting an appeal**

- (1) An appeal is started by—

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- (a) filing a notice of appeal with the clerk of the Magistrates Court; and
  - (b) giving a copy of the notice to the regulator; and
  - (c) complying with the rules of court applicable to the appeal.
- (2) The notice must be filed within 28 days after—
- (a) the dissatisfied person receives notice of the decision appealed against; or
  - (b) the day the Minister is taken to have made the decision confirming the decision appealed against under section 30(3).
- (3) However, the court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **33 Stay of operation of decisions**

- (1) The Magistrates Court may stay a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
- (a) may be given on conditions the court considers appropriate; and
  - (b) has effect for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (3) The period of a stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or the carrying out of the decision, only if the decision is stayed.

### **34 Hearing procedures**

- (1) In deciding an appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
  - (b) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the decision appealed against.

### **35 Powers of court on appeal**

- (1) In deciding an appeal, the Magistrates Court may—
- (a) confirm the decision appealed against; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute another decision; or
  - (d) set aside the decision and return the matter to the regulator with directions the court considers appropriate.
- (2) The decision as varied may be any decision the regulator may make.
- (3) If the court substitutes another decision, the substituted decision is, for the purposes of this Act, other than this part, taken to be the decision of the regulator.
- (4) The court may make an order for costs it considers appropriate.

## **Part 10 Miscellaneous**

### **36 Delegations**

- (1) The Minister or the regulator may delegate his or her functions under this Act to an appropriately qualified officer or employee of the department.
- (2) In this section—

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*appropriately qualified* includes having the qualifications, experience or standing appropriate to perform the function.

*Example of standing for an employee of the department—*

the employee's classification level in the department

*functions* includes powers.

### **37 Approval of forms**

The regulator may approve forms for use under this Act.

### **38 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide for a maximum penalty of 20 penalty units for a contravention of the regulation.

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## Schedule 2      Dictionary

### section 4

***baseline year***, for a participating business, see section 9(1).

***conservation measures*** mean measures that will result in a reduction of energy used.

*Example of a conservation measure—*

turning off stand-by power on electronic equipment

***dissatisfied person*** see section 31.

***efficiency measures*** mean measures that will result in a reduction of energy used for the same or a higher output.

*Example of an efficiency measure—*

installing new technology to make a process more efficient

***energy*** means electricity or processed natural gas, or electricity and processed natural gas.

***energy savings plan*** see section 16(1).

***energy use threshold*** see section 7(1).

***information notice***, about a decision of the regulator, means a written notice stating each of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may, within 20 business days after the day the notice is given, ask the Minister to review the decision;
- (d) how the person may have the decision reviewed.

***level 1 threshold*** see section 7(2).

***level 2 threshold*** see section 7(3).

***level 3 threshold*** see section 7(4).

***management measures*** mean measures that will result in an improvement in a participating business' ability to implement conservation measures and efficiency measures.

*Example of a management measure—*

making it the responsibility of each person in a senior management position in a participating business to ensure that conservation measures and efficiency measures are implemented by the participating business

***participating business*** see section 6.

***processed natural gas*** see the *Gas Supply Act 2003*.

***registered participating business*** means a participating business that is registered under section 10.

***regulator*** see section 5.

***Smart Energy Savings Register*** see section 10(1).

# Endnotes

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## 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Clean Energy Act 2008 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

## 3 Key

### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	21 May 2008	certain provs commenced
0B	none	1 July 2008	certain provs commenced
1	none	22 May 2009	certain provs commenced

## 5 List of legislation

### **Clean Energy Act 2008 No. 33**

date of assent 21 May 2008

ss 1–2 commenced on date of assent

pt 11 (other than ss 40, 41, 48), pt 14 (other than ss 108, 109, 116) commenced on date of assent (see s 2(a)–(b))

pts 4–10 commenced 22 May 2009 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 July 2008 (2008 SL No. 191)

## 6 List of annotations

### **PART 11—AMENDMENT OF COAL MINING SAFETY AND HEALTH ACT 1999**

**pt hdg** om ROB (see RA s 7(1)(k))

#### **Act amended in pt 11**

**s 39** om R0A (see RA s 40)

#### **Amendment of s 10 (Meaning of on-site activities)**

**s 40** om ROB (see RA s 40)

#### **Insertion of new s 52A**

**s 41** om ROB (see RA s 40)

#### **Amendment of s 128 (Functions of inspectors and inspection officers)**

**s 42** om R0A (see RA s 40)

#### **Amendment of s 129D (Functions of authorised officers)**

**s 43** om R0A (see RA s 40)

#### **Amendment of s 139 (General powers after entering coal mine or other places)**

**s 44** om R0A (see RA s 40)

**Amendment of pt 11, div 1, hdg (Notification of accidents, incidents and inspections)**  
s 45 om R0A (see RA s 40)

**Amendment of s 198 (Notice of accidents, incidents, deaths or diseases)**  
s 46 om R0A (see RA s 40)

**Insertion of new s 198A**  
s 47 om R0A (see RA s 40)

**Amendment of sch 3 (Dictionary)**  
s 48 om R0B (see RA s 40)

**PART 12—AMENDMENT OF ELECTRICITY ACT 1994**  
pt 12 (ss 49–74) om R0B (see RA ss 7(1)(k) and 40)

**PART 13—AMENDMENT OF MINERAL RESOURCES ACT 1989**  
pt 13 (ss 75–106) om R0B (see RA ss 7(1)(k) and 40)

**PART 14—AMENDMENT OF MINING AND QUARRYING SAFETY AND HEALTH ACT 1999**  
pt hdg om R0B (see RA s 7(1)(k))

**Act amended in pt 14**  
s 107 om R0A (see RA s 40)

**Amendment of s 10 (Meaning of operations)**  
s 108 om R0B (see RA s 40)

**Insertion of new s 47A**  
s 109 om R0B (see RA s 40)

**Amendment of s 125 (Functions of inspectors and inspection officers)**  
s 110 om R0A (see RA s 40)

**Amendment of s 126D (Functions of authorised officers)**  
s 111 om R0A (see RA s 40)

**Amendment of s 136 (General powers after entering mine or other places)**  
s 112 om R0A (see RA s 40)

**Amendment of pt 11, div 1, hdg (Notification of accidents, incidents and inspections)**  
s 113 om R0A (see RA s 40)

**Amendment of s 195 (Notice of accidents, incidents, deaths and diseases)**  
s 114 om R0A (see RA s 40)

**Insertion of new s 195A**  
s 115 om R0A (see RA s 40)

**Amendment of sch 2 (Dictionary)**  
s 116 om R0B (see RA s 40)

**PART 15—AMENDMENT OF PETROLEUM AND GAS (PRODUCTION AND SAFETY) ACT 2004**  
pt 15 (ss 117–124) om R0B (see RA ss 7(1)(k) and 40)

**PART 16—AMENDMENT OF OTHER ACTS**

**pt 16 (s 125)** om ROB (see RA ss 7(1)(k) and 40)

**SCHEDULE 1—MINOR AMENDMENTS**

om ROB (see RA s 40)

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