



## **Product Emissions Standards Rules 2017**

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I, Josh Frydenberg, Minister for the Environment and Energy, make the following rules.

Dated 18 December 2017

Josh Frydenberg  
Minister for the Environment and Energy

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## Part 1—Preliminary

### 1 Name

This instrument is the *Product Emissions Standards Rules 2017*.

### 2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	5 January 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

### 3 Authority

This instrument is made under the *Product Emissions Standards Act 2017*.

### 4 Simplified outline

Part 2 of this instrument tells you what products are ***emissions-controlled products***. Most of the requirements of the Act, and liability for customs charge and excise charge, apply in relation to emissions-controlled products.

Under the Act, emissions-controlled products must not be imported into, or supplied in, Australia unless they are certified. Part 4 of this instrument provides that a product is certified for the purposes of the Act if the product is:

- (a) certified by the Secretary under Division 2 of that Part as meeting the Australian emissions standard for the product set out in Part 3; or
- (b) certified by a foreign regulatory authority as meeting the requirements of one of the foreign emissions standards specified in Division 3 of Part 4.

The Secretary may, under Part 5, grant exemptions from the requirements of the Act in certain circumstances. Exemptions can be subject to conditions.

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Part 6 sets out marking requirements for certified products imported into, or supplied in, Australia.

Importers and suppliers of emissions-controlled products must keep records in accordance with Part 7. Annual reports must be given to the Secretary about supplying emissions-controlled products manufactured in Australia.

Part 8 sets fees for applying for Australian certification or for an exemption.

Part 9 deals with the collection and recovery of customs charge and excise charge.

## 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australia;
- (b) emissions-controlled product;
- (c) emissions standard;
- (d) mark;
- (e) product;
- (f) regulatory authority;
- (g) Secretary;
- (h) supply.

In this instrument:

### **40 CFR:**

- (a) **40 CFR** means Title 40 of the Code of Federal Regulations of the United States of America, as in force from time to time; and
- (b) a reference, following 40 CFR, to a provision is a reference to that provision of 40 CFR.

Example: 40 CFR 1054 is a reference to part 1054 of Title 40 of the Code of Federal Regulations.

**Act** means the *Product Emissions Standards Act 2017*.

**all-terrain vehicle** has the same meaning as in 40 CFR 1051, as in force at the commencement of this section.

**Australian certificate of conformity** means a notice published under paragraph 20(1)(a).

**Australian certification number** has the meaning given by subsection 20(4).

**Australian certified:** a product is **Australian certified** if an Australian certificate of conformity for the product is in force.

**Australian emissions standard** for an emissions-controlled product has the meaning given by Part 3.

**competition engine** has the meaning given by subsection 9(2).

**complete**, in relation to a spark-ignition engine, has the meaning given by subsection 9(1).

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**customs charge** for a financial year means charge imposed by the *Product Emissions Standards (Customs) Charges Act 2017* on the importation of an emissions-controlled product that occurs during the year.

**emergency services organisation** has the meaning given by subsection 30(4).

**engine family** has the meaning given by subsection 18(2).

**excise charge** for a financial year means charge imposed by the *Product Emissions Standards (Excise) Charges Act 2017* on the manufacture of an emissions-controlled product that occurs during the year.

**exemption** means a notice under paragraph 32(1)(a).

**exemption category** has the meaning given by subsection 30(1).

**foreign certificate of conformity** has the meaning given by paragraph 26(1)(c).

**foreign certified** has the meaning given by paragraph 26(1)(d).

**go-kart** does not include an all-terrain vehicle.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**ILAC accreditation body** has the meaning given by subsection 13(2).

Note: ILAC is short for the International Laboratory Accreditation Cooperation.

**import declaration** has the meaning given by the *Customs Act 1901*.

**motor vehicle:**

- (a) includes a snowmobile and an all-terrain vehicle; and
- (b) does not include a go-kart.

**non-road engine** has the meaning given by section 8.

**organised competition** has the meaning given by subsection 30(5).

**portable or transportable** has the meaning given by subsection 9(4).

**price** has the meaning given by subsection 41(3).

**propulsion marine engine** has the meaning given by section 7.

**registered charity** means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

**scale model engine** has the meaning given by subsection 9(3).

**suitable alternative** has the meaning given by subsection 30(2).

**uncertified, unserviceable engine** has the meaning given by subsection 30(6).

## Part 2—Emissions-controlled products

### 6 Emissions-controlled products

For the purposes of section 9 of the Act, each of the following products is prescribed as an emissions-controlled product:

- (a) a propulsion marine engine;
- (b) a non-road engine.

### 7 Definition of *propulsion marine engine*

- (1) A *propulsion marine engine* is a new, complete, spark-ignition engine that:
- (a) is installed in or on a vessel (or is likely to be so installed in the future); and
  - (b) moves (or will move) the vessel through water, or directs (or will direct) the vessel's movement through water; and
  - (c) is none of the following:
    - (i) an engine powered by natural gas with maximum engine power of 250 kW or more;
    - (ii) an engine designed to be used to propel a motor vehicle or an aircraft;
    - (iii) a competition engine;
    - (iv) a scale model engine.

Note: An auxiliary marine engine (that is, a marine engine that is not used to propel a marine vessel) may be a non-road engine.

- (2) For the purposes of subsection (1), it does not matter whether the vessel is used in freshwater or saltwater.

### 8 Definition of *non-road engine*

- (1) A *non-road engine* is a new, complete, spark-ignition engine:
- (a) with maximum engine power of 19 kW or less; and
  - (b) to which any of the following subparagraphs apply:
    - (i) the engine is installed in or on equipment that is self-propelled, or in or on equipment that serves a dual purpose by both propelling itself and performing another function, (or is likely to be so installed in the future);
    - (ii) the engine is installed in or on equipment that is designed to be propelled while performing its function (or is likely to be so installed in the future);
    - (iii) the engine is portable or transportable; and

Example 1: For subparagraph (i), the equipment could be a ride-on lawnmower or a motorised go-kart.

Example 2: For subparagraph (ii), the equipment could be a lawnmower that is not self-propelled.

Example 3: For subparagraph (iii), the engine could be the engine in a chainsaw.

- (c) that is none of the following:



- (i) a propulsion marine engine;
- (ii) an engine designed to be used to propel a motor vehicle or an aircraft;
- (iii) a competition engine;
- (iv) a scale model engine.

Note: An auxiliary marine engine (that is, a marine engine that is not used to propel a marine vessel) may be a non-road engine.

## 9 Other definitions relating to engines

- (1) A spark-ignition engine is **complete** if no further manufacturing of the engine is necessary to enable it to be operated as a spark-ignition engine.

Example: Adding a fuel tank to an engine is not further manufacturing of the engine.

- (2) An engine is a **competition engine** if:
- (a) the engine is designed solely for use in competition consisting of races; and
  - (b) because of features of the engine that cannot easily be removed, or other characteristics of the engine, use of the engine other than in such competition would be unsafe or impractical.
- (3) An engine is a **scale model engine** if:
- (a) the engine is designed solely for use in a reduced-scale model of:
    - (i) a vehicle (including a locomotive); or
    - (ii) an aircraft; or
    - (iii) a vessel; and
  - (b) the model is not capable of transporting a person.
- (4) An engine is **portable or transportable** if it is designed to be, and is capable of being, (whether by itself or after being installed in or on equipment) carried or moved from one location to another. Indicia of portability or transportability include wheels, skids, carrying handles, a dolly, a trailer or a platform.

## Part 3—Australian Emissions Standards

### 10 Purposes of this Part

For the purposes of paragraph 10(2)(a) of the Act, this Part sets out emissions standards for emissions-controlled products.

### 11 Australian emissions standard for propulsion marine engines

- (1) The *Australian emissions standard* for a propulsion marine engine consists of the requirements set out in this section and subsection 13(1).

*Technical requirements*

- (2) The standard includes the requirements of the following provisions of 40 CFR 1045, subject to subsections (3) to (5) of this section:
- (a) paragraph 1045.101(a);
  - (b) section 1045.103, other than paragraph (b);
  - (c) section 1045.105, other than:
    - (i) Table 1, to the extent it relates to the 2010 model year; and
    - (ii) paragraph (b);
  - (d) section 1045.107;
  - (e) section 1045.110;
  - (f) section 1045.115, other than paragraph (c);
  - (g) section 1045.130, other than paragraphs (b)(2), (4) and (8);
  - (h) section 1045.140;
  - (i) section 1045.230, other than paragraph (d);
  - (j) section 1045.235, other than paragraph (d);
  - (k) section 1045.240;
  - (l) section 1045.245;
  - (m) subpart F, other than paragraph 1045.501(a);
  - (n) section 1045.660, other than paragraph (d);
  - (o) section 1045.801, other than the definitions mentioned in subsection (4) of this section;
  - (p) section 1045.805, other than the acronyms mentioned in subsection (5) of this section;
  - (q) Appendix II.
- (3) For the purposes of subsection (2):
- (a) 40 CFR is taken to apply to a propulsion marine engine (within the meaning of this instrument) in the same way as 40 CFR applies to a new, spark-ignition propulsion marine engine (within the meaning of 40 CFR 1045); and
  - (b) a reference in 40 CFR to “we” or “us” is taken to be a reference to the Secretary (within the meaning of the *Product Emissions Standards Act 2017*), and a reference to “our” is modified in a corresponding way; and

- 
- (c) a provision of 40 CFR is disregarded to the extent it relates to:
    - (i) averaging, banking, and trading (or ABT); or
    - (ii) the Clean Air Act; or
    - (iii) family emissions limits (or FEL); and
  - (d) the following references in 40 CFR 1045 to model years are disregarded:
    - (i) the words “Starting in the 2010 model year,” in paragraph 1045.103(a);
    - (ii) the words “Starting in the 2010 model year,” in paragraph 1045.105(a);
    - (iii) the first column of Table 1 to section 1045.105;
    - (iv) the words “Starting in the 2013 model year” in paragraph 1045.115(b);
    - (v) the second sentence of paragraph 1045.230(a);
    - (vi) the words “starting in the 2011 and 2012 model years, respectively” and “starting in the 2013 model” in paragraph 1045.235(g);
    - (vii) the words “in the same or earlier model years” in paragraph 1045.245(a); and
  - (e) the following words in 40 CFR 1045 are disregarded:
    - (i) the second sentence of paragraph 1045.130(b)(3);
    - (ii) the second sentence of paragraph 1045.140(c);
    - (iii) the words “based on your total U.S.-directed production volume of engines you produce from the engine family” in paragraph 1045.140(d);
    - (iv) the words “for which you neither generate nor use emission credits” in paragraph 1045.140(d)(1);
    - (v) the words “Small-volume engine manufacturers may omit measurement of N<sub>2</sub>O and CH<sub>4</sub>.” in paragraph 1045.235(g);
    - (vi) the fifth sentence of paragraph 1045.240(c); and
  - (f) 40 CFR 1045.501(c) is taken to allow the use of unleaded petrol or premium unleaded petrol as an alternative to using fuels specified in 40 CFR 1065, subpart H, if that petrol complies with the fuel standard (within the meaning of the *Fuel Quality Standards Act 2000*) to which the petrol is subject; and
  - (g) the reference in 40 CFR 1045.505(b) to Appendix I is taken to be a reference to Appendix II.

Note: In 2017, the relevant fuel standard was the *Fuel Standard (Petrol) Determination 2001*.

- (4) For the purposes of paragraph (2)(o), the definitions of *Amphibious vehicle*, *Carryover*, *Certified emission level*, *Clean Air Act*, *Date of manufacture*, *Days*, *Designated Compliance Officer*, *Designated Enforcement Officer*, *Emission-related maintenance*, *Engine*, *Engine manufacturer*, *Evaporative*, *Exempted*, *Family emission limit (FEL)*, *Fuel line*, *Fuel system*, *Identification number*, *Manufacturer*, *Marine engine*, *Marine vessel*, *Model year*, *New portable marine fuel tanks and fuel lines*, *New propulsion marine engine or new engine*, *New vessel*, *Noncompliant engine*, *Nonconforming engine*, *Nonroad*, *Nonroad engine*, *Owners manual*, *Placed into service*, *Point of first retail sale*, *Portable marine fuel tank*, *Revoke*, *Scheduled maintenance*, *Small-volume engine*

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*manufacturer, Small-volume vessel manufacturer, Stoichiometric, Suspend, Ultimate purchaser, Under-cowl fuel line, United States, Upcoming model year for an engine family, U.S.-directed production volume, Variable-speed engine, Vessel, Volatile liquid fuel and We (us, our) in section 40 CFR 1045.801 are disregarded.*

- (5) For the purposes of paragraph (2)(p), the acronyms ABT, FEL, NARA and U.S.C. in 40 CFR 1045.805 are disregarded.

### 12 Australian emissions standard for non-road engines

- (1) The ***Australian emissions standard*** for a non-road engine consists of the requirements set out in this section and subsection 13(1).

#### *Technical requirements*

- (2) The standard includes the requirements of the following provisions of 40 CFR 1054, subject to subsections (3) to (5) of this section:
- (a) section 1054.101, other than paragraphs (b), (c) and (f);
  - (b) section 1054.103, other than paragraph (b);
  - (c) section 1054.105, other than paragraph (b);
  - (d) section 1054.107;
  - (e) section 1054.115;
  - (f) section 1054.130, other than paragraphs (b)(2), (4) and (7);
  - (g) section 1054.140;
  - (h) section 1054.230, other than paragraphs (d) and (f);
  - (i) section 1054.235, other than paragraph (d);
  - (j) section 1054.240;
  - (k) section 1054.245;
  - (l) subpart F, other than paragraph 1054.501(a);
  - (m) section 1054.801, other than the definitions mentioned in subsection (4) of this section;
  - (n) section 1054.805, other than the acronyms mentioned in subsection (5) of this section;
  - (o) Appendix II.
- (3) For the purposes of subsection (2):
- (a) 40 CFR is taken to apply to a non-road engine (within the meaning of this instrument) in the same way as 40 CFR applies to a new, spark-ignition engine (within the meaning of 40 CFR 1054); and
  - (b) a reference in 40 CFR to “we” or “us” is taken to be a reference to the Secretary (within the meaning of the *Product Emissions Standards Act 2017*), and a reference to “our” is modified in a corresponding way; and
  - (c) a provision of 40 CFR is disregarded to the extent it relates to:
    - (i) averaging, banking, and trading (or ABT); or
    - (ii) the Clean Air Act; or
    - (iii) emissions credits; or
    - (iv) evaporative emissions requirements; or
    - (v) family emissions limits (or FEL); and

- (d) the following references in 40 CFR 1054 to model years are disregarded:
- (i) the second sentence of paragraph 1054.230(a);
  - (ii) the words “starting in the 2011 and 2012 model years, respectively” and “starting in the 2013 model year” in paragraph 1054.235(g);
  - (iii) the words “in the same or earlier model years” in paragraph 1054.245(a); and
- (e) the following words in 40 CFR 1054 are disregarded:
- (i) the second sentence of paragraph 1054.130(b)(3);
  - (ii) the second sentence of paragraph 1054.140(c);
  - (iii) the third sentence of paragraph 1054.235(g);
  - (iv) the sixth sentence of paragraph 1054.240(c); and
- (f) 40 CFR 1054.501(b)(2) is taken to allow the use of unleaded petrol or premium unleaded petrol as an alternative to using fuels specified in 40 CFR 1065, subpart H, if that petrol complies with the fuel standard (within the meaning of the *Fuel Quality Standards Act 2000*) to which the petrol is subject.

Note: In 2017, the relevant fuel standard was the *Fuel Standard (Petrol) Determination 2001*.

- (4) For the purposes of paragraph (2)(m), the definitions of *Amphibious vehicle*, *Carryover*, *Certified emission level*, *Clean Air Act*, *Cold-weather equipment*, *Date of manufacture*, *Days*, *Designated Compliance Officer*, *Designated Enforcement Officer*, *Emission-data equipment*, *Emission-related maintenance*, *Engine*, *Engine manufacturer*, *Equipment manufacturer*, *Evaporative*, *Exempted*, *Family emission limit (FEL)*, *Fuel line*, *Identification number*, *Integrated equipment manufacturer*, *Manufacturer*, *Marine engine*, *Marine generator engine*, *Marine vessel*, *Maximum test torque*, *Model year*, *Motor vehicle*, *New nonroad engine*, *New nonroad equipment*, *Noncompliant engine or non-compliant equipment*, *Nonconforming engine or nonconforming equipment*, *Nonintegrated equipment manufacturer*, *Nonroad*, *Nonroad engine*, *Owners manual*, *Permeation emissions*, *Placed into service*, *Pressurized oil system*, *Revoke*, *Running loss emissions*, *Scheduled maintenance*, *Side valve*, *Small-volume emission family*, *Small-volume engine manufacturer*, *Small-volume equipment manufacturer*, *Structurally integrated nylon fuel tank*, *Suspend*, *Tethered gas cap*, *Ultimate purchaser*, *United States*, *Upcoming model year*, *U.S.-directed production volume*, *Vessel*, *Volatile liquid fuel* and *We (us, our)* in section 40 CFR 1054.801 are disregarded.
- (5) For the purposes of paragraph (2)(n), the acronyms ABT, FEL and U.S.C. in 40 CFR 1054.805 are disregarded.

### 13 Test facilities

- (1) Testing required by an Australian emissions standard must be carried out at a test facility:
- (a) in relation to which both of the following subparagraphs apply:
    - (i) the test facility is accredited by an ILAC accreditation body in accordance with the requirements of ISO/IEC 17025:2005, *General requirements for the competence of testing and calibration laboratories*, published by the International Organization for

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- Standardization, as in force from time to time, or with any standard published by the International Organization for Standardization that replaces ISO/IEC 17025:2005;
- (ii) the scope of that accreditation encompasses testing of the type required by the Australian emissions standard; or
- (b) in relation to which both of the following subparagraphs apply:
- (i) testing to the requirements of the Australian emissions standard is able to be carried out at the facility;
  - (ii) systems in place in relation to the facility provide a level of assurance equivalent to that provided by the accreditation mentioned in paragraph (a) of this subsection.
- (2) Each of the following is an *ILAC accreditation body*:
- (a) National Association of Testing Authorities Australia;
  - (b) an accreditation body that:
    - (i) operates in accordance with ISO/IEC 17011:2004, *Conformity assessment - General requirements for accreditation bodies accrediting conformity assessment bodies*, published by the International Organization for Standardization, as in force from time to time, or with any standard published by the International Organization for Standardization that replaces ISO/IEC 17011:2004; and
    - (ii) is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

### **14 Secretary may have regard to how other regulatory authorities exercise powers**

In making a decision under an Australian emissions standard, the Secretary may have regard to decisions made by other regulatory authorities under other emissions standards.

Example: In considering whether to approve an alternative test cycle, the Secretary may have regard to test cycles approved by the United States Environmental Protection Agency under 40 CFR 1065.10.

### **15 Incorporation of instruments etc. as in force from time to time—prescribed organisations**

For the purposes of paragraph 51(3)(d) of the Act, the United States Environmental Protection Agency is prescribed.

## **Part 4—Certification**

### **Division 1—Preliminary**

#### **16 Purposes of this Part**

This Part is made for the purposes of section 10 of the Act.

#### **17 Types of certification**

For the purposes of subsection 10(1) of the Act, an emissions-controlled product is certified for the purposes of the Act if the product is:

- (a) Australian certified (see Division 2 of this Part); or
- (b) foreign certified (see Division 3 of this Part).

Section 18

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## Division 2—Australian certification

### Subdivision A—Australian certification

#### 18 Applying for certification

- (1) A person may apply to the Secretary for certification of specified emissions-controlled products in a single engine family.
- (2) An *engine family* is:
  - (a) the propulsion marine engines in an engine family (within the meaning of 40 CFR 1045, disregarding the requirement in that part that the engine family be limited to a single model year); or
  - (b) the non-road engines in an emissions family (within the meaning of 40 CFR 1054, disregarding the requirement in that part that the emissions family be limited to a single model year).
- (3) The application must:
  - (a) state the name and address of the applicant; and
  - (b) include the following:
    - (i) the results of emissions testing of a member of the engine family conducted in accordance with the Australian emissions standard for the products;
    - (ii) evidence that the testing was conducted in accordance with the standard; and
  - (c) be given to the Secretary in the manner and form (if any) approved under subsection (4); and
  - (d) be accompanied by the fee set by subsection 43(1) for receiving and processing the application, unless the fee has been waived under section 44.
- (4) For the purposes of paragraph (3)(c), the Secretary may approve, by notice in writing published on the Department's website, the manner and form in which an application must be given to the Secretary under this section.

#### 19 Request for further information

The Secretary may, within 60 days after receiving an application under section 18, request the applicant, in writing, to give to the Secretary specified information in relation to the application.

#### 20 Issuing Australian certificates of conformity

- (1) After receiving an application in accordance with section 18 for certification of emissions-controlled products, the Secretary may:
  - (a) if the Secretary is satisfied that all of the conditions mentioned in subsection (2) of this section are satisfied—certify, by notice published on the Department's website, that the products comply with the Australian emissions standard for the products; or
  - (b) otherwise—refuse the application, by written notice given to the applicant.



- (2) For the purposes of paragraph (1)(a), the conditions are the following:
  - (a) a member of the engine family to which the products belong has been emissions tested in accordance with the Australian emissions standard for the products;
  - (b) all of the products comply with the standard.
- (3) An Australian certificate of conformity comes into force on the day specified by the Secretary in the certificate.
- (4) Each Australian certificate of conformity must include a unique identifier (the *Australian certification number*).

## **21 Deemed refusal if Secretary does not make decision within 60 days**

- (1) If:
  - (a) the Secretary receives an application for certification of emissions-controlled products in accordance with section 18; and
  - (b) at the end of 60 days after the Secretary receives the application, the Secretary has not:
    - (i) certified the products; or
    - (ii) refused the application; or
    - (iii) made a request under section 19 in relation to the application;the Secretary is taken, for the purposes of section 50, to have refused the application on the last of the 60 days.
- (2) If:
  - (a) the Secretary receives an application for certification of emissions-controlled products in accordance with section 18; and
  - (b) the Secretary makes a request under section 19 for further information in relation to the application; and
  - (c) at the end of 60 days after the further information is given to the Secretary, the Secretary has not:
    - (i) certified the products; or
    - (ii) refused the application; or
    - (iii) made a further request under section 19 in relation to the application;the Secretary is taken, for the purposes of section 50, to have refused the application on the last of the 60 days.

## **Subdivision B—Varying, suspending and revoking Australian certificates of conformity**

### **22 Varying Australian certificates of conformity**

- (1) The Secretary may, at any time, by notice published on the Department's website, vary an Australian certificate of conformity.
- (2) The variation takes effect on the day specified in the notice.

## Section 23

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### 23 Suspending Australian certificates of conformity

#### *Suspending Australian certificates of conformity*

- (1) The Secretary may, by notice published on the Department's website, suspend an Australian certificate of conformity for emissions-controlled products if the Secretary reasonably suspects that any of the products do not comply with the Australian emissions standard for the products.
- (2) The suspension may apply in relation to:
  - (a) all of the emissions-controlled products; or
  - (b) specified emissions-controlled products.
- (3) The suspension takes effect on the day specified in the notice.
- (4) To avoid doubt, an Australian certificate of conformity is not in force in relation to an emissions-controlled product while it is suspended in relation to that product.

#### *Ending suspensions*

- (5) The Secretary may, by notice published on the Department's website, end a suspension of an Australian certificate of conformity, subject to subsection (7).
- (6) The ending of the suspension may apply in relation to:
  - (a) all of the emissions-controlled products to which the suspension applies; or
  - (b) specified emissions-controlled products.
- (7) The Secretary must not end the suspension, in relation to an emissions-controlled product, unless the Secretary is satisfied that the product complies with the Australian emissions standard for the product.
- (8) The ending of the suspension takes effect on the day specified in the notice.

### 24 Revoking Australian certificates of conformity

- (1) The Secretary may, by notice published on the Department's website, revoke an Australian certificate of conformity for emissions-controlled products if the Secretary is reasonably satisfied that any of the products do not comply with the Australian emissions standard for the products.
- (2) The revocation takes effect on the day specified in the notice.
- (3) To avoid doubt, the Secretary may revoke an Australian certificate of conformity whether or not the Secretary has suspended the certificate.

### Subdivision C—Secretary must give copies of notices to applicants

### 25 Secretary must give copies of notices to applicants

- (1) If the Secretary publishes on the Department's website under this Division any of the following notices relating to an Australian certificate of conformity, the Secretary must give a copy of the notice to the applicant for the certificate, if reasonably practicable:

- (a) the certificate;
  - (b) a notice varying, suspending or revoking the certificate;
  - (c) a notice ending a suspension of the certificate.
- (2) A failure to comply with subsection (1) does not affect the validity of the certificate, variation, suspension, revocation or ending of the suspension.

Section 26

**Division 3—Foreign certification**

**26 Foreign certification**

- (1) Each item of the following table has the following effects:
- (a) for the purposes of subparagraph 10(2)(b)(i) of the Act, the regulatory authority mentioned in column 2 of the item is specified for an emissions-controlled product mentioned in column 1 of the item;
  - (b) for the purposes of subparagraph 10(2)(b)(ii) of the Act, the emissions standard mentioned in column 3 of the item is specified for the product;
  - (c) for the purposes of this instrument, the document mentioned in column 4 of the item is a *foreign certificate of conformity*;
  - (d) for the purposes of this instrument, the product is *foreign certified* if:
    - (i) it is certified by that regulatory authority, by means of that kind of foreign certificate of conformity, as meeting that emissions standard; and
    - (ii) the certificate is not currently suspended or cancelled.

<b>Foreign certification</b>				
<b>Item</b>	<b>Column 1 Product</b>	<b>Column 2 Regulatory authority</b>	<b>Column 3 Emissions standard</b>	<b>Column 4 Foreign certificate of conformity</b>
1	marine propulsion engine	an EU approval authority (within the meaning of the Directive mentioned in column 3)	Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft, as in force from time to time	an EU type-approval certificate
2	marine propulsion engine	United States Environmental Protection Agency	40 CFR 1045	a certificate of conformity for model year 2013 or later issued under the emissions standard
3	marine propulsion engine	Environment and Climate Change Canada	Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations (SOR/2011-10) (Canada), as in force from time to time and applying to the 2013 model year or a later model year	a formal letter stating that evidence of conformity has been produced in a form and manner satisfactory to the Canadian Minister under subsection 35(2) of the emissions standard
4	marine	California Air	California Exhaust	an Executive Order

Section 26

<b>Foreign certification</b>				
<b>Item</b>	<b>Column 1 Product</b>	<b>Column 2 Regulatory authority</b>	<b>Column 3 Emissions standard</b>	<b>Column 4 Foreign certificate of conformity</b>
	propulsion engine	Resources Board	Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines (California), as in force from time to time	certifying a new spark-ignition marine engine under the emissions standard for model year 2013 or later
5	non-road engine	an EU approval authority (within the meaning of the Regulation mentioned in column 3)	Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as in force from time to time	an EU type-approval certificate
6	non-road engine	United States Environmental Protection Agency	40 CFR 1054	a certificate of conformity for model year 2013 or later issued under the emissions standard
7	non-road engine	Environment and Climate Change Canada	Off-Road Small Spark Ignition Engine Emission Regulations (SOR/2003-355) (Canada), as in force from time to time and applying to the 2013 model year or a later model year	a formal letter stating that evidence of conformity has been produced in a form and manner satisfactory to the Minister under section 17 of the emissions standard
8	non-road engine	California Air Resources Board	California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines (Part 1054) (California), as in force from time to time	an Executive Order certifying a new off-road spark-ignition engine at or below 19 kilowatts for use in small off-road equipment under the emissions standard for model year 2013 or later

**Part 4** Certification

**Division 3** Foreign certification

**Section 26**

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Note: Under the Act, the Minister may amend this instrument, including the table in this subsection. For example, if the Minister became satisfied, having regard to the objects of the Act, that certificates of conformity issued by a regulatory authority that is not specified in the table are equivalent in all relevant ways to foreign certificates of conformity specified in the table, the Minister could amend the table to specify that regulatory authority, the relevant emissions standard and the certificates of conformity issued by the authority.

- (2) Column 4 of an item of the table in subsection (1) does not apply to a document that:
- (a) applies for limited purposes; and
  - (b) is granted on the basis of criteria that are substantially less rigorous than those which usually apply to granting documents mentioned in that item.

Example: An export-only certificate of conformity mentioned in paragraph 40 CFR 1068.230(a).

## **Part 5—Exemptions**

### **Division 1—Preliminary**

#### **27 Purposes of this Part**

This Part is made for the purposes of section 11 of the Act.

#### **28 Circumstances in which products and persons are exempt from provisions of Part 3 and 4 of the Act**

For the purposes of paragraph 11(1)(b) of the Act:

- (a) a person is exempt from a provision of Part 3 or 4 of the Act in relation to an emissions-controlled product in the following circumstances:
  - (i) an exemption of the person from the provision in relation to the product is in force under this Part;
  - (ii) any conditions specified in the exemption in relation to importing or supplying the product are complied with; and
- (b) an emissions-controlled product is exempt from a provision of Part 3 or 4 of the Act in the following circumstances:
  - (i) an exemption of the product from the provision is in force under this Part;
  - (ii) any conditions specified in the exemption in relation to importing or supplying the product are complied with.

## Division 2—Granting exemptions

### 29 Applying for exemptions

- (1) A person may apply to the Secretary for:
  - (a) an exemption of the applicant, or of a class of persons including the applicant, from a specified provision of Part 3 or 4 of the Act in relation to a specified emissions-controlled product or products; or
  - (b) an exemption of a specified emissions-controlled product or products from a specified provision of Part 3 or 4 of the Act.
- (2) The application must:
  - (a) state the name and address of the applicant; and
  - (b) contain the following:
    - (i) the date on which, or the period in which, it is expected that the product or products will be imported or supplied under the exemption;
    - (ii) the number of products expected to be imported or supplied under the exemption;
    - (iii) a description of how the product or products are expected to be used or dealt with in Australia; and
  - (c) nominate a single exemption category in accordance with section 30; and
  - (d) be given to the Secretary in the manner and form (if any) approved under subsection (3); and
  - (e) be accompanied by the fee set by subsection 43(2) for receiving and processing the application, unless the fee is waived under section 44.
- (3) For the purposes of paragraph (2)(d), the Secretary may approve, by notice in writing published on the Department's website, the manner and form in which an application must be given to the Secretary under this section.

### 30 Exemption categories

- (1) An application made under section 29 in relation to an emissions-controlled product or products must nominate one of the following (the *exemption categories*):
  - (a) the product or products will be exported from Australia but not used in Australia;
  - (b) the product or products:
    - (i) will be tested, evaluated, displayed, advertised, offered for supply or pre-ordered; and
    - (ii) will not otherwise be used or supplied in Australia (and, if the product or products are pre-ordered, will not be imported) before the product or products are certified for the purposes of the Act;
  - (c) the product or products:
    - (i) will be used only by the Australian Defence Force or a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) and only for national security purposes; and



- (ii) have no suitable alternative (see subsection (2));
  - (d) the product or products:
    - (i) will be used only by an emergency services organisation (see subsection (4)) and only for rescue or emergency services purposes; and
    - (ii) have no suitable alternative;
  - (e) the product or products:
    - (i) will be used only in organised competition (see subsection (5)); and
    - (ii) have no suitable alternative;
  - (f) the product or products:
    - (i) are engines; and
    - (ii) will be used only as replacements of uncertified, unserviceable engines (see subsection (6)); and
    - (iii) have no suitable alternative.
- (2) A **suitable alternative** for an emissions-controlled product is a product that:
- (a) would be suitable for the use to which the emissions-controlled product will be put; and
  - (b) is available; and
  - (c) if the product is an emissions-controlled product—is Australian certified or foreign certified.
- (3) For the purposes of paragraph (2)(a), in determining whether the product would be suitable, the cost of the product is not relevant.
- (4) An **emergency services organisation** is a body that:
- (a) is, or is part of a body that is:
    - (i) established for a public purpose by or under a law of the Commonwealth, of a State or of a Territory; or
    - (ii) a registered charity; and
  - (b) is any of the following:
    - (i) a police force or service;
    - (ii) a fire service;
    - (iii) an ambulance service;
    - (iv) a coast guard service, rescue service or emergency service;
    - (v) a surf lifesaving organisation.
- (5) An **organised competition** is a competition that:
- (a) consists of a race or a series of races; and
  - (b) is managed and run:
    - (i) by an organisation that has restricted or licensed membership; and
    - (ii) in accordance with published rules and a published schedule.
- (6) An **uncertified, unserviceable engine** is an engine that:
- (a) is an emissions-controlled product; and
  - (b) was last supplied before 1 July 2019; and
  - (c) is not Australian certified or foreign certified; and
  - (d) has failed or become unserviceable.

## Section 31

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### 31 Request for further information

The Secretary may, within 60 days after receiving an application under section 29, request the applicant in writing to give to the Secretary specified information in relation to the application.

### 32 Granting exemptions

- (1) After receiving, in accordance with section 29, an application for an exemption from a provision of Part 3 or 4 of the Act, the Secretary may:
  - (a) if the Secretary is reasonably satisfied that the condition mentioned in subsection (2) of this section is satisfied—grant the exemption by notice in writing published on the Department’s website; or
  - (b) otherwise—refuse the application, by notice in writing given to the applicant.
- (2) For the purposes of paragraph (1)(a), the condition is that the product or products to which the application relates will be used or otherwise dealt with as mentioned in the exemption category nominated in the application.
- (3) An exemption comes into force on the day specified by the Secretary in the exemption.
- (4) An exemption may be, but is not required to be, expressed to remain in force until a specified date or during a specified period.

### 33 Deemed refusal if Secretary does not make decision within 60 days

- (1) If:
  - (a) the Secretary receives an application for an exemption under section 29; and
  - (b) at the end of 60 days after the Secretary receives the application, the Secretary has not:
    - (i) granted the exemption; or
    - (ii) refused the application; or
    - (iii) made a request under section 31 in relation to the application;the Secretary is taken, for the purposes of section 50, to have refused the application on the last of the 60 days.
- (2) If:
  - (a) the Secretary receives an application for an exemption under section 29; and
  - (b) the Secretary makes a request under section 31 for further information in relation to the application; and
  - (c) at the end of 60 days after the further information is given to the Secretary, the Secretary has not:
    - (i) granted the exemption; or
    - (ii) refused the application; or
    - (iii) made a further request under section 31 in relation to the application;

the Secretary is taken, for the purposes of section 50, to have refused the application on the last of the 60 days.

## Division 3—Conditions on exemptions

### 34 Conditions on exemptions

- (1) An exemption is subject to the condition that, when an emissions-controlled product is imported or supplied under the exemption:
  - (a) the importer or supplier must reasonably expect that the product will only be used or dealt with as mentioned in the exemption category nominated in the application for the exemption; and
  - (b) a copy of the exemption, or information about how the exemption can be viewed on the Department's website, is included with the product.
- (2) The Secretary may specify in an exemption other conditions to which it is subject.
- (3) Subsection (1) does not limit subsection (2) or section 35.

Note: Importing or supplying a covered product is not exempt from a provision of Part 3 of the Act if a condition is not complied with: see section 28.

## **Division 4—Varying, suspending and revoking exemptions**

### **35 Varying exemptions**

- (1) The Secretary may, at any time, by notice in writing published on the Department's website, vary an exemption to:
  - (a) include a condition; or
  - (b) amend or remove a condition included under subsection 34(2) or this subsection.
- (2) The variation takes effect on the day specified in the notice.

### **36 Suspending exemptions**

#### *Suspending exemptions*

- (1) The Secretary may, by notice in writing published on the Department's website, suspend an exemption, in whole or in part, if the Secretary reasonably suspects that:
  - (a) the product or products to which the exemption relates will not be used or otherwise dealt with as mentioned in the exemption category nominated in the application for the exemption; or
  - (b) a condition to which the exemption is subject has not been complied with.
- (2) The suspension takes effect on the day specified in the notice.
- (3) To avoid doubt, an exemption is not in force to the extent it is suspended.

#### *Ending suspensions*

- (4) The Secretary may, by notice in writing published on the Department's website, end a suspension of the exemption, in whole or in part.
- (5) The ending of the suspension takes effect on the day specified in the notice.

### **37 Revoking exemptions**

- (1) The Secretary may, by notice in writing published on the Department's website, revoke an exemption in whole or in part if the Secretary is reasonably satisfied that:
  - (a) the product or products to which the exemption relates will not be used or otherwise dealt with as mentioned in the exemption category nominated in the application for the exemption; or
  - (b) a condition to which the exemption is subject has not been complied with.
- (2) The revocation takes effect on the day specified in the notice.
- (3) To avoid doubt, the Secretary may revoke an exemption whether or not the Secretary has suspended the exemption.

**Part 5** Exemptions

**Division 5** Secretary must give copies of notices to applicants

Section 38

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**Division 5—Secretary must give copies of notices to applicants**

**38 Secretary must give copies of notices to applicants**

- (1) If the Secretary publishes on the Department's website under this Part any of the following notices in relation to an exemption, the Secretary must give a copy of the notice to the applicant for the exemption, if reasonably practicable:
  - (a) a notice granting, varying, suspending or revoking the exemption;
  - (b) a notice ending a suspension of the exemption.
- (2) A failure to comply with subsection (1) does not affect the validity of the exemption, variation, suspension, revocation or ending of the suspension.

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## Part 6—Marking

### 39 Marking requirements

- (1) For the purposes of sections 14, 16, 17 and 18 of the Act, a mark must be applied to an emissions-controlled product in accordance with this section.

#### *Australian-certified products*

- (2) If the product is Australian certified, the mark must:
- (a) contain all of the following:
    - (i) the manufacturer's name or business name;
    - (ii) a unique identification number for the product;
    - (iii) a description of the product;
    - (iv) the month and year of manufacture of the product;
    - (v) a statement that the product has been Australian certified;
    - (vi) the Australian certification number of the applicable Australian certificate of conformity; and
  - (b) be in English; and
  - (c) be durable and legible for the life of the product; and
  - (d) not be able to be removed from the product without being destroyed or defaced; and
  - (e) be located on the product such that the mark can be viewed conveniently without the use of specialised tools; and
  - (f) not be located on a component that is likely to be replaced during the life of the product.

Example: For subparagraph (a)(iii), the model name or number.

#### *Foreign-certified products*

- (3) If the product is foreign certified:
- (a) it must be marked, subject to paragraph (b), in accordance with the relevant emissions standard mentioned in the table in subsection 26(1); and
  - (b) the mark must be in English.
- (4) A reference in paragraph (3)(a) to an emissions standard is a reference to that standard as in force at the commencement of the relevant item of the table in subsection 26(1).

## Part 7—Record keeping

### 40 Record-keeping requirements

- (1) For the purposes of subsection 20(1) of the Act, a person (the *record keeper*) who imports or supplies emissions-controlled products during a financial year must make records that would be sufficient to satisfy the Secretary of the following:
  - (a) the identities and quantities of the products;
  - (b) the identities of the persons (if any) who supplied the products to the record keeper in Australia (whether before or during the year);
  - (c) whether the products are Australian certified or foreign certified;
  - (d) for each of the products that is Australian certified—the Australian certification number of the applicable Australian certificate of conformity;
  - (e) for each of the products that is foreign certified—the number of the applicable foreign certificate of conformity;
  - (f) for each of the products (if any) that the record keeper supplies to a person (the *recipient*) during the year:
    - (i) that it was reasonable for the record keeper not to believe that the recipient intended to supply the product to another person; or
    - (ii) the identity of the recipient;
  - (g) for each importation or supply under an exemption—that the conditions to which the exemption is subject have been complied with.
- (2) The record keeper must keep the records until 5 years after the end of the financial year.

### 41 Reporting on supply of products manufactured in Australia

- (1) For the purposes of subsection 22(1) of the Act, a reporting period of a financial year is prescribed for an emissions-controlled product that has not been imported.
- (2) For the purposes of subsection 22(2) of the Act, information that would be sufficient to satisfy the Secretary of the following in relation to the Australian-manufactured emissions-controlled products that a person has supplied as mentioned in that subsection during a reporting period for the products is prescribed:
  - (a) the identities and quantities of the products;
  - (b) the price (excluding GST) of the products;
  - (c) the dates of the supplies;
  - (d) whether the products were Australian certified or foreign certified;
  - (e) for each of the products that was Australian certified—the Australian certification number of the applicable Australian certificate of conformity;
  - (f) for each of the products that was foreign certified—the number of the applicable foreign certificate of conformity;
  - (g) for each of the products:



- (i) that it was reasonable not to believe that the person (the *recipient*) to whom the product was supplied intended to supply the product to another person; or
  - (ii) the identity of the recipient.
- (3) The *price* of an emissions-controlled product that is supplied as mentioned in subsection 22(2) of the Act is:
  - (a) so far as the consideration for the supply is consideration expressed as an amount of money—the amount; and
  - (b) so far as the consideration is not consideration expressed as an amount of money—the GST inclusive market value (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) of that consideration.

## Part 8—Fees

### 42 Purposes of this Part

This Part is made for the purposes of paragraph 51(2)(a) of the Act.

### 43 Charging fees

#### *Applications for Australian certification*

- (1) The fee for receiving and processing an application made under subsection 18(1) of this instrument is the amount set out in the following table for that application.

<b>Fees—applications for Australian certification</b>		
<b>Item</b>	<b>Column 1 Application</b>	<b>Column 2 Fee (\$)</b>
1	an application for which the relevant emissions testing was carried out at a test facility that was accredited as mentioned in paragraph 13(1)(a)	1,330
2	any other application	2,850

#### *Applications for exemptions*

- (2) The fee for receiving and processing an application made under subsection 29(1) is the amount set out in the following table for the exemption category nominated in the application.

<b>Fees—applications for exemptions</b>		
<b>Item</b>	<b>Column 1 Exemption category</b>	<b>Column 2 Fee (\$)</b>
1	Paragraph 30(1)(a)	1,470
2	Paragraph 30(1)(b)	390
3	Paragraph 30(1)(c)	550
4	Paragraph 30(1)(d)	1,470
5	Paragraph 30(1)(e)	1,470
6	Paragraph 30(1)(f)	1,470

### 44 Waiving fees

The Secretary may waive a fee set by this Part if the Secretary is reasonably satisfied that there are exceptional circumstances that justify the waiver.

### 45 Refunding fees

The Secretary must refund a fee set by this Part for receiving and processing an application if:

- (a) the application is withdrawn within the 14 days beginning on the day the application is made; and
- (b) when the application is withdrawn, the Secretary has not begun to assess the application.

## **Part 9—Collection and recovery of charges**

### **46 Purposes of this Part**

For the purposes of subsection 51(7) of the Act, this Part provides for the collection and recovery of customs charge and excise charge.

### **47 When charge due for payment**

- (1) Customs charge or excise charge for a financial year is due and payable on 30 November in the following financial year.
- (2) Customs charge or excise charge is payable to the Secretary on behalf of the Commonwealth.

### **48 Recovery of charge**

- (1) Customs charge or excise charge that is due and payable by a person may be recovered by the Commonwealth from the person as a debt due to the Commonwealth.
- (2) The Secretary is authorised, on behalf of the Commonwealth, to bring proceedings in the name of the Commonwealth for the recovery of a debt due to the Commonwealth of a kind mentioned in subsection (1).

### **49 Import declarations**

- (1) For the purposes of working out:
  - (a) whether a person is liable to pay customs charge for a financial year; or
  - (b) the amount of customs charge for a financial year a person is liable to pay;the matters stated in an import declaration, as existing on 1 October in the following financial year, are taken to be correct, unless the contrary is proved.
- (2) For the purposes of proving the contrary, a change to the import declaration made after that 1 October is not admissible in evidence.

## **Part 10—Miscellaneous**

### **50 Review of decisions**

For the purposes of paragraph 51(2)(b) of the Act, applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary made under this instrument:

- (a) a decision to refuse an application for certification under Subdivision A of Division 2 of Part 4;
- (b) a decision to vary, suspend or revoke, or not to end a suspension of, an Australian certificate of conformity under Subdivision B of Division 2 of Part 4;
- (c) a decision to refuse an application for an exemption under Division 2 of Part 5;
- (d) a decision to specify a condition in an exemption under Division 3 of Part 5;
- (e) a decision to vary, suspend or revoke, or not to end a suspension of, an exemption under Division 4 of Part 5;
- (f) a decision not to waive a fee under section 44.

## Part 11—Transitional provisions

### 51 Importing and supplying emissions-controlled products

For the purposes of paragraph 11(1)(b) of the Act, a propulsion marine engine or non-road engine is exempt from Part 3 of the Act:

- (a) to the extent that Part relates to the activity mentioned in column 1 of an item of the following table; and
- (b) in the circumstance set out in column 2 of the item.

<b>Importing and supplying emissions-controlled products</b>		
<b>Item</b>	<b>Column 1 Activity</b>	<b>Column 2 Circumstance</b>
1	importing an emissions-controlled product	the importation occurs on or before 30 June 2018
2	supplying an emissions-controlled product	the supply occurs on or before 30 June 2018
3	supplying an emissions-controlled product	(a) the supply occurs: (i) on or after 1 July 2018; and (ii) on or before 30 June 2019; and (b) if the product was manufactured in Australia—the supply is not the first supply of the product

### 52 Transitional provision—Directive 97/68/EC

#### *Definitions*

- (1) In this section:

**old EU Directive** means former Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery.

**old EU type-approval certificate** means an EU type-approval certificate granted under stage II of the old EU Directive.

#### *Importing*

- (2) For the purposes of paragraph 11(1)(b) of the Act, a non-road engine is exempt from section 13 of the Act if:
- (a) it is covered by an old EU type-approval certificate that was granted on or after 11 February 2003; and
  - (b) the certificate is not currently suspended or cancelled; and
  - (c) the engine is marked in the way required by the old EU Directive, as in force on 11 February 2003.

- (3) Subsection (2) ceases to apply on 1 July 2020.

*Supplying*

- (4) For the purposes of paragraph 11(1)(b) of the Act, a non-road engine is exempt from section 15 of the Act if:
- (a) it is covered by an old EU type-approval certificate that was granted on or after 11 February 2003; and
  - (b) the certificate is not currently suspended or cancelled; and
  - (c) the engine is marked in the way required by the old EU Directive, as in force on 11 February 2003.
- (5) This section is repealed on 1 July 2021.

### **53 Record-keeping requirements**

Section 40 applies in relation to:

- (a) importing an emissions-controlled product on or after 1 July 2018; and
- (b) supplying an emissions-controlled product on or after 1 July 2018 and on or before 30 June 2019 if:
  - (i) the product was manufactured in Australia; and
  - (ii) the supply is the first supply of the product; and
- (c) supplying an emissions-controlled product on or after 1 July 2019.

### **54 Reporting periods**

Subsection 41(1) applies to a financial year starting on or after 1 July 2018.