

South Australia

Climate Change and Greenhouse Emissions Reduction Bill 2006

A BILL FOR

An Act to provide for measures to address climate change with a view to assisting to achieve a sustainable future for the State; to set targets to achieve a reduction in greenhouse gas emissions within the State; to promote the use of renewable sources of energy; to promote business and community understanding about issues surrounding climate change; to facilitate the early development of policies and programs to address climate change; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Climate Change and Greenhouse Emissions Reduction Act 2006*.

2—Commencement

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

3—Objects of Act

(1) The objects of this Act are—

- 5 (a) to assist in the achievement of ecologically sustainable development in the State by addressing issues associated with climate change and, in particular—
- 10 (i) by setting a target (the *SA target*) to reduce by 31 December 2050 greenhouse gas emissions within the State by at least 60% to an amount that is equal to or less than 40% of 1990 levels as part of a national and international response to climate change; and
- 15 (ii) by setting related targets (the *renewable electricity targets*)—
- (A) to increase the proportion of renewable electricity generated so that it comprises at least 20% of electricity generated in the State by 31 December 2014;
- (B) to increase the proportion of renewable electricity consumed so that it comprises at least 20% of electricity consumed in the State by 31 December 2014; and
- 20 (b) to promote commitment to action within the State to address climate change through—
- (i) the development of specific targets (as appropriate) for various sectors of the State's economy; and
- (ii) the development of interim targets; and
- (iii) the development of policies and programs for the reduction of greenhouse gas emissions and for other relevant purposes; and
- 25 (c) to encourage energy efficiency and conservation; and
- (d) to promote research and development with respect to the development and use of technology to reduce or limit greenhouse gas emissions or to support adaptation to climate change, including by developing ways to remove greenhouse gases from the atmosphere; and
- 30 (e) to encourage the commercialisation of renewable energy and of technologies that will reduce or limit greenhouse gas emissions or support adaptation to climate change; and
- (f) to provide recognition to bodies and persons who commit to addressing climate change by achieving reductions in greenhouse gas emissions, by increasing the use of renewable energy sources, by introducing emissions off-set programs or by adopting other relevant initiatives; and
- 35 (g) to encourage and facilitate business and community consultation and early action with respect to issues surrounding climate change; and
- (h) to support measures to facilitate adaptation to circumstances that will inevitably be caused by climate change, including by supporting measures that will improve the ability of the community, species and ecosystems to deal with the effects of climate change; and
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- (i) to provide for reporting on progress being made within the State to meet the SA target, and other specific or interim targets associated with reductions in greenhouse gas emissions, and to meet targets associated with the use of renewable electricity; and
- (j) to promote action within South Australia that provides consistency with national and international schemes designed to address climate change, including schemes that relate to emissions trading and emissions reporting; and
- 10 (k) to enhance the ability of the State to contribute to, and to respond expeditiously to, national and international developments associated with issues surrounding climate change.
- (2) In seeking to further the objects of this Act, the achievement of ecologically sustainable development will be guided by the following principles:
- 15 (a) the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—
- (i) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- 20 (ii) safeguarding the life-supporting capacity of the environment; and
- (iii) avoiding, remedying or mitigating adverse effects of activities on the environment;
- (b) proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement;
- 25 (c) if there are threats of serious or irreversible damage to the environment, lack of full scientific certainty regarding climate change should not be used as a reason for postponing preventative measures.

4—Interpretation

30 In this Act, unless the contrary intention appears—

Australian jurisdictions means the jurisdictions comprising—

- (a) the Commonwealth; or
- (b) each of the States or Territories;

35 *emissions offset programs* are programs designed to recognise or achieve a reduction in greenhouse gas emissions, or the removal of greenhouse gas emissions, taking into account any criteria prescribed by the regulations for the purposes of this definition;

greenhouse gas emissions are emissions of—

- (a) carbon dioxide; or
- (b) methane; or
- 40 (c) nitrous oxide; or
- (d) hydro fluorocarbons; or

- (e) perfluorocarbons; or
- (f) sulphur hexafluoride; or
- (g) any other gas brought within the ambit of this definition by the regulations;

renewable electricity means electricity generated from renewable energy sources;

5 *SA target* means the target that applies under section 5(1) (subject to any Ministerial determination under that section);

sector agreements—see section 16.

Part 2—Targets

5—Targets

- 10 (1) The principal target under this Act is to reduce by 31 December 2050 greenhouse gas emissions within this State by at least 60% to an amount that is equal to or less than 40% of 1990 levels.
- (2) Two related targets under this Act are—
- 15 (a) to increase the proportion of renewable electricity generated so that it comprises at least 20% of electricity generated in the State by 31 December 2014;
- (b) to increase the proportion of renewable electricity consumed so that it comprises at least 20% of electricity consumed in the State by 31 December 2014.
- 20 (3) The Minister may, in connection with the operation of subsections (1) and (2) for the purposes of any other provision of this Act—
- (a) determine the method for calculating greenhouse gas emissions for the purposes of setting relevant 1990 levels (the *baseline*), and then determine a figure that represents that baseline;
- 25 (b) determine the method for calculating any reduction in greenhouse gas emissions;
- (c) set sector-based targets and interim targets;
- (d) set specific baselines for particular areas of activity (as components of the overall baseline);
- 30 (e) make other determinations that assist in measuring greenhouse gas emissions within the State.
- (4) The Minister must, in acting under subsection (3)—
- (a) seek to acknowledge action taken since 1990 to achieve reductions in greenhouse gas emissions; and
- 35 (b) seek to obtain the advice of relevant experts and to take into account relevant methodologies and principles that apply within other Australian jurisdictions; and
- (c) seek to provide consistency with best national and international practices with respect to setting the baseline and determining a method for calculating
- 40 reductions in greenhouse gas emissions or the use of renewable electricity.

(5) The Minister may make a determination or set a target under subsection (3) that relates to a particular enterprise or industry, a particular sector of the State's economy, a particular sector of the South Australian community, or the community more generally.

5 (6) The Minister may from time to time vary any determination or target under this section after taking into account new or updated methodologies or advice with respect to the calculation, assessment, measurement or reporting of greenhouse gas emissions, or any other factor considered relevant by the Minister.

(7) The Minister must publish any determination or target that applies under this section.

10 **Part 3—Administration**

Division 1—The Minister

6—Functions of Minister

(1) The functions of the Minister under this Act are—

- 15 (a) to keep issues relevant to climate change under review; and
- (b) to promote early action to meet the SA target, or any sector-based or interim target under this Act; and
- 20 (c) to develop, adopt or promote policies or programs that are relevant to addressing climate change and the effects of climate change in accordance with the objects of this Act (and taking into account any specific requirements under this Act); and
- (d) to promote consultation with business and within the community about issues associated with climate change; and
- 25 (e) to consider and promote business initiatives and technological advances that may assist in dealing with climate change or in reducing greenhouse gas emissions; and
- (f) to promote the involvement of the South Australian Government in relevant State, national or international forums about climate change; and
- 30 (g) to promote the commercialisation of renewable electricity technology and to support initiatives to develop a scheme to promote the generation and use of renewable electricity within the State, including by providing incentives to encourage South Australians to feed electricity generated from renewable sources into electricity grids; and
- (h) to promote the commercialisation and use of technologies that will reduce or limit greenhouse gas emissions within the State; and
- 35 (i) to promote research and development to promote the objects of this Act; and
- (j) to support initiatives to develop a national emissions trading scheme aimed at achieving greenhouse gas abatement; and
- (k) to support initiatives to develop systems and frameworks to provide for the removal of greenhouse gases from the atmosphere; and

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- (l) to consider, as the Minister thinks fit, whether it is necessary or desirable to amend any legislation (including this Act), or to modify any policies or administrative practices within government in order to achieve the objects of this Act, and to make recommendations in relation to these matters; and
- 5 (m) to undertake monitoring and other programs to assess the extent of climate change that may affect the State, and to collect, collate or assess information relevant to issues associated with climate change; and
- 10 (n) to provide reports and to publish other information associated with climate change or initiatives or activities to address climate change, and to support public education in relation to climate change; and
- 15 (o) to establish appropriate reporting frameworks across government with respect to issues relating to climate change or greenhouse gas emissions, with particular reference to the requirements of section 7 and in order to provide reports on progress being made towards targets that relate to government agencies and instrumentalities; and
- (p) such other functions assigned to the Minister by or under this or any other Act.
- (2) Without limiting any other provision of this Act, the Minister should—
- 20 (a) seek to promote action to develop a coherent policy framework within the State to address issues associated with climate change; and
- (b) seek to achieve consistency between policies or programs developed or implemented under this Act and initiatives, standards, schemes or commitments at the national and international levels to address issues associated with climate change.
- 25 (3) In performing functions under the Act, the Minister should seek—
- (a) to work collaboratively within international networks for regional governments; and
- (b) to work collaboratively with—
- 30 (i) the Governments of other Australian jurisdictions; and
- (ii) the local government sector; and
- (iii) the Premier's Climate Change Council; and
- (iv) other relevant international, business, environment and community groups and organisations.

7—Two-yearly reports

- 35 (1) The Minister must, on a two-yearly basis, prepare a report on the operation of this Act.
- (2) The report must include—
- (a) an assessment of the effectiveness of the initiatives that are being adopted in order to achieve the SA target; and
- 40 (b) a report on any determination or target made or set under section 5 during the reporting period; and

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- (c) an assessment of the progress being made to achieve the renewable electricity target; and
- (d) an assessment of the progress being made to achieve any sector-based or interim target under this Act, including a target set for the State Government, or any government agency or instrumentality; and
- (e) a report on any sector agreement between the Minister and any other person or entity entered into under this Act during the reporting period; and
- (f) a summary of—
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- (i) the levels of greenhouse gas emissions, and of the use of renewable energy, within the State (as determined or estimated at the time of reporting); and
- (ii) the development of technologies to reduce greenhouse gas emissions or to remove greenhouse gases from the atmosphere; and
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- (g) a report on any emissions offset programs established or recognised under this Act during the reporting period, and on progress in establishing a national emissions trading scheme; and
- (h) a report on any inter-governmental agreements relevant to climate change entered into by the South Australian Government during the reporting period; and
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- (i) a report on any significant national or international commitments or agreements relevant to climate change made or entered into during the reporting periods; and
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- (j) information on any relevant rates, trends or impacts associated with climate change, with particular reference to any identified or assessed impacts of climate change on South Australia or any expected future impacts of climate change that have emerged or become increasingly relevant during the reporting period.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is prepared.
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- (4) The first report under this section must be completed and tabled in Parliament by the end of 2009.
- (5) The first report under this section, and thereafter every alternate report, must incorporate a report from the Premier's Climate Change Council that assesses the extent to which any determination or target made or set under section 5 is being
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- achieved and, if it appears relevant, should be revised.

8—Power of delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this or any other Act.
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- (2) A delegation under this section—
- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and

- (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

5 **Division 2—Premier's Climate Change Council**

9—Premier's Climate Change Council

- (1) The *Premier's Climate Change Council* is established.
- (2) The Council will consist of at least 7 and not more than 9 members appointed by the Minister with a view to obtaining a reasonable range of persons from across the following sectors and a balance of expertise that is relevant to addressing or adapting to climate change:
- (a) the State Government;
 - (b) the local government sector;
 - (c) the business community;
 - 15 (d) the scientific community;
 - (e) other sectors of the State's community more generally.
- (3) The Minister should seek to appoint persons who can demonstrate—
- (a) a commitment to action to address climate change; and
 - (b) an understanding of the issues and impacts associated with climate change.
- 20 (4) The Minister should consult with the Local Government Association of South Australia before making an appointment for the purposes of subsection (2)(b).
- (5) At least 1 member of the Council must be a woman and at least 1 member must be a man.

10—Conditions of membership

- 25 (1) A member of the Council will be appointed on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.
- (2) The Minister may remove a member of the Council from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
 - 30 (b) for failing to carry out duties of office satisfactorily; or
 - (c) for neglect of duty; or
 - (d) for misconduct.
- (3) The office of a member of the Council becomes vacant if the member—
- (a) dies; or
 - 35 (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or

(d) is removed from office under subsection (2).

- (4) A member of the Council is entitled to fees, allowances and expenses determined by the Minister (subject to the qualification that a person appointed for the purposes of subsection (2)(a) will not be entitled to receive a sitting fee).

5 **11—Functions of Council**

(1) The primary function of the Council is to provide independent advice to the Minister about matters associated with reducing greenhouse gas emissions and adapting to climate change, including by achieving energy efficiencies, increasing the use of renewable energy, developing methods to remove greenhouse gases from the atmosphere, and establishing and achieving relevant targets.

(2) The Council has other functions conferred by the Minister.

(3) In the performance of its functions, the Council should seek—

(a) to provide advice to the Minister on—

(i) the impact of climate change on business and the wider community, and the development or implementation of policies or programs relevant to addressing climate change, including by the initiation of specific projects and plans; and

(ii) the impact of the operation and implementation of this Act on business and the wider community and, as appropriate, any amendments to relevant legislation (including this Act) that, in the opinion of the Council, should be considered or promoted by the Minister; and

(iii) costs associated with reducing or limiting climate change or greenhouse gas emissions, or with mitigating the effects of climate change or greenhouse gas emissions; and

(iv) costs associated with failing to take action to address climate change; and

(v) commercial or other opportunities associated with climate change or reducing or limiting greenhouse gas emissions, with mitigating the effects of climate change or greenhouse gas emissions or with increasing the use of renewable energy sources; and

(vi) any other matter on which the Minister requests the advice of the Council; and

(b) to take a leadership role in consulting with business and the wider community about issues associated with climate change and to assist in disseminating information to business and other groups in order to encourage the implementation of practices that will assist in addressing climate change or adapting to the effects of climate change.

40 **12—Procedure at meetings**

(1) A member appointed by the Minister as the presiding member of the Council will preside at a meeting of the Council or, in the absence of that member, a member chosen by those present will preside.

- (2) A majority of the members of the Council constitute a quorum of the Council.
- (3) Subject to any direction of the Minister, the Council may determine its own procedures.

13—Annual report

- 5 (1) The Council must, on or before 31 October in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is provided to the Minister.

Part 4—Policies, programs and other initiatives

14—Policies

- 10 (1) The Minister should seek to develop—
 - (a) policies that will assist in—
 - 15 (i) reducing or limiting climate change or greenhouse gas emissions, or mitigating the effects of climate change or greenhouse gas emissions; and
 - (ii) promoting or implementing measures to facilitate adaptation to circumstances that will inevitably be caused by climate change; and
 - (b) without limiting paragraph (a), policies that seek to adopt, promote or encourage opportunities or innovations that will further develop or support action within industry or other sectors of the State's economy, and within the community more generally, to increase the generation or use of renewable energy, including by the development of an industry plan for the State's renewable energy technologies industry; and
 - (c) policies that otherwise seek to secure the objects of this Act.
- 20 (2) The Minister must, in acting under this section—
 - 25 (a) seek to achieve consistency with policies adopted by the Government to promote sustainability within the State; and
 - (b) develop a policy or policies that demonstrate the Government's leadership in dealing with climate change through the management and reduction of its own greenhouse gas emissions, and through the development of related reporting mechanisms, in a manner that is consistent with the objects of this Act; and
 - 30 (c) seek to have regard to the most up-to-date science and research with respect to climate change rates, trends or impacts, and State, national and international developments with respect to climate change technologies and industry best practice; and
 - 35 (d) seek to apply up-to-date practices and methodologies in calculating greenhouse gas emissions, and the use of renewable energy, taking into account national and international developments; and
 - 40 (e) take into account the requirements of any relevant legislation (whether at the State or national level); and

(f) seek to take into account other relevant frameworks, policies, programs and initiatives.

(3) The Minister may vary a policy under this section at any time.

(4) The Minister must publish any policy developed under this section.

5 **15—Voluntary offset programs**

(1) The Minister may take steps for the purpose of recognising, promoting or facilitating emissions offset programs initiated on a voluntary basis.

(2) Without limiting any program established under subsection (1), the regulations may make provision to support emissions offset programs, including—

10 (a) by providing methods to identify or determining the types and extent of offsets that may form part of emissions offset programs recognised for the purposes of this Act; and

(b) by establishing a scheme for the registration of emissions offset programs; and

15 (c) by establishing criteria that allow for the recognition of emissions offset programs that deliver a number of benefits (such as the removal of greenhouse gases from the atmosphere, biodiversity enhancement and economic development).

20 (3) The Minister must, in conjunction with the operation of subsections (1) and (2), take into account the desirability of ensuring that emissions offset programs recognised in this State can also be recognised for the purposes of national and international programs in order to promote the tradeability of products and services.

16—Sector agreements

25 (1) The Minister may enter into agreements (*sector agreements*) with a particular person or industry or business group on a voluntary basis for the purpose of recognising, promoting or facilitating strategies to meet any target set under this Act.

(2) A sector agreement may provide for such matters as—

30 (a) objectives for a particular enterprise or industry, or a particular sector of the State's economy, with respect to reducing or limiting greenhouse gas emissions or mitigating the effects of greenhouse gas emissions;

(b) strategies to achieve any objectives, including strategies to achieve a reduction in energy use, to maximise efficiencies in the use of energy or to promote the use of renewable energy;

35 (c) strategies to promote or support research and development, and innovation in technologies or practices, to reduce greenhouse gas emissions or to adapt to climate change;

(d) methods to measure or acknowledge successes in meeting any targets.

(3) A sector agreement recognised under this section must—

(a) be consistent with the objects of this Act; and

- (b) include specific requirements for reviewing, and reporting on, the operation of the agreement (with particular reference to providing information for the purposes of section 7).
- (4) The Minister must establish and maintain—
 - (a) a register of sector agreements; and
 - (b) a scheme to provide for the inspection and independent assessment of sector agreements (subject to the operation of section 17).

Part 5—Miscellaneous

17—Protection of information

- 10 (1) A person must not disclose or use prescribed information gained by a person through involvement in the administration of this Act unless the person does so—
- (a) when necessary for the purposes of this Act; or
 - (b) when expressly authorised, in writing, by the person to whom the information relates; or
 - 15 (c) when required to do so by a court or tribunal constituted by law; or
 - (d) when authorised or required under the regulations.

Maximum penalty: \$50 000.

- 20 (2) This section does not apply to the recording, disclosure or use of information in a statistical or other form that could not reasonably be expected to cause any material detriment to a particular person.
- (3) In this section—
- prescribed information* means—
- 25 (a) information that is commercial, financial, scientific or technical in nature that would reveal proprietary business, competitive or trade secret information of significant value if released; or
 - (b) information that is commercially sensitive for some other reason; or
 - (c) information that is brought within the ambit of this definition by the regulations.

18—False or misleading information

- 30 A person who furnishes information to the Minister or another authority under this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$10 000.

19—Conflicts of interest

- (1) In this section—
- 35 *Council* means the Premier's Climate Change Council.

(2) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—

(a) must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and

5 (b) must not take part in any discussion by the Council relating to that matter; and

(c) must not vote in relation to that matter; and

(d) must be absent from the meeting room when any such discussion or voting is taking place.

10 Maximum penalty: \$15 000.

(3) If a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council, the member must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office.

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Maximum penalty: \$15 000.

(4) A disclosure under this section must be recorded in the minutes of the Council and reported to the Minister.

(5) If, in the opinion of the Minister, a particular interest or office of a member of the Council is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the Council (and non-compliance with the requirement constitutes a ground for removal of the member from the Council).

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(6) This section does not apply in relation to a matter in which a member of the Council has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.

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(7) This section does not apply in relation to an interest that arises by virtue only of the fact that a member of the Council has an interest in a particular sector of the State's economy or community more generally.

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20—Administrative unit report

(1) The annual report of the Minister's department must include a report on work undertaken within the department in relation to the development of climate change policy and related initiatives.

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(2) The Chief Executive of the Minister's department must consult with the Premier's Climate Change Council in connection with the preparation of the report required under subsection (1).

21—Review of Act

(1) The Minister must cause a review of this Act and its operation to be conducted on a four-yearly basis.

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- (2) The review must include a specific report on—
- (a) the extent to which the objects of this Act are being achieved; and
 - (b) the extent to which additional legislative measures (if any) are considered necessary to achieve the targets set by this Act within the periods contemplated by this Act, including by the introduction of performance standards and other mandatory requirements; and
 - (c) other matters determined by the Minister to be relevant to a review of this Act.
- (3) The Minister must take reasonable steps to ensure that, in the conduct of the review, there is consultation with—
- (a) the Premier's Climate Change Council; and
 - (b) other relevant business, environment and community groups and organisations.
- (4) The outcome of the review must be embodied in a written report.
- (5) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is presented to the Minister.

22—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) require the provision of reports, returns, documents and other forms of information to the Minister or any other prescribed person or body;
 - (b) require the keeping of records, statistics and any other information by any person or body;
 - (c) authorise the Minister (or any person authorised by the Minister) to inspect any information required to be kept under the regulations and require any person to permit or facilitate any such inspection;
 - (d) require the giving of notice before any prescribed class of activity is commenced, and the notification of the occurrence of any prescribed class of event;
 - (e) provide for a scheme under which the Minister may set targets, including interim targets, for the State Government, and specific targets for specific government agencies or instrumentalities, to reduce greenhouse gas emissions from their activities within the State that are at least equivalent to the SA target;
 - (f) provide for the service of any notice or document;
 - (g) regulate the release or publication of information of a specified kind obtained in the administration of this Act;
 - (h) prescribe fines, not exceeding \$10 000, for contravention of a regulation.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- 5 (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations.