

## **Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 [No. 2]**

*Portfolio: Environment*

*Introduced: House of Representatives, 23 June 2014*

1.77 The Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 [No. 2] is part of a package of bills that seeks to repeal the legislation that establishes carbon pricing by the end of the 2013-14 financial year. The bill repeals the following Acts:

- *Clean Energy Act 2011 (CE Act);*
- *Clean Energy (Charges—Customs) Act 2011;*
- *Clean Energy (Charges—Excise) Act 2011;*
- *Clean Energy (Unit Issue Charge—Auctions) Act 2011;*
- *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011;* and
- *Clean Energy (Unit Shortfall Charge—General) Act 2011.*

1.78 The bill also:

- makes consequential amendments to other legislation referring to the CE Act and the carbon pricing mechanism;
- provides for the collection of all carbon tax liabilities for 2012-13 and 2013-14 financial years;
- introduces new powers for the Australian Competition and Consumer Commission (ACCC) to take action to ensure price reductions relating to the carbon tax repeal are passed on to consumers; and
- makes arrangements for the finalisation and cessation of industry assistance through the Jobs & Competitiveness Program, the Energy Security Fund and the Steel Transformation Plan.

1.79 This bill is a re-introduction of the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 which the committee considered in its *First Report of the 44th Parliament* and subsequently in its *Third Report of the 44th Parliament*.<sup>1</sup>

1.80 The bill is accompanied by a statement of compatibility which provides detailed discussion as to how the bill engages the right to privacy, property rights, the right to a fair trial and fair hearing, the right to work and the right to an adequate standard of living.<sup>2</sup> The statement of compatibility concludes that:

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1 See Parliamentary Joint Committee on Human Rights, *First Report of the 44th Parliament*, 10 December 2013, pp 3-8 and *Third Report of the 44th Parliament*, 4 March 2014, p. 101.

2 Explanatory memorandum (EM), pp 13-18.

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The Carbon Tax Repeal Bills are compatible with human rights because the only potential limitations on human rights that the Carbon Tax Repeal Bills impose relate to the right to privacy and criminal process rights and they are reasonable, necessary and proportionate in achieving the Bills legitimate policy objectives of repealing the carbon tax and making appropriate transitional provisions for that purpose.<sup>3</sup>

**1.81 The committee considers that the bill does not appear to give rise to human rights concerns.**

1.82 However, in its *First Report of the 44th Parliament* the committee noted the detailed analysis of the compatibility of new civil penalty provisions inserted into the *Competition and Consumer Act 2010* by Schedule 2 of the bill. The committee was pleased to note that certain minimum guarantees applicable to criminal proceedings are protected, but expressed concern that the application of a civil standard of proof in such proceedings to determine an individual's liability for such penalties may not meet the requirements of the right to be presumed innocent.

1.83 The statement of compatibility notes that in regards to the use of the civil standard of proof in civil penalty proceedings that the non-application of the criminal standard of proof:

is compatible with Article 14(2) because the pecuniary penalty provisions have a long and well-litigated history, and it has not been shown that the failure to apply the criminal standard of proof has resulted in injustice. Indeed, the courts have on numerous occasions indicated that the gravity of the allegations being tested in the court will be taken into account, and that the graver the allegation, the greater the strictness of proof that will be required. In particular, more than just 'inexact proofs, indefinite testimony or indirection references' will be required (see, for example, *Australian Competition and Consumer Commission v TF Woolam & Sons Pty Ltd* (2011) 196 FCR 212 at [8]).<sup>4</sup>

1.84 While the committee notes these comments, it remains concerned that the application of the civil standard of proof in relation to civil penalties that are 'criminal' for the purposes of human rights law may not be compatible with the right to be presumed innocent in article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

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3 EM, p. 18.

4 EM, p. 17.