

## Introduction

### Referral of the bills

- 1.1 On 20 September 2012, the Selection Committee referred the following bills to the House of Representatives Standing Committee on Economics (the committee) for inquiry and report:
- Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012;
  - Clean Energy (Charges – Excise) Amendment Bill 2012;
  - Clean Energy (Charges – Customs) Amendment Bill 2012;
  - Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
  - Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
  - Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012; and
  - Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012.
- 1.2 These bills will be referred to as the Clean Energy Amendment Bills in this report.

### Origins of the bills

- 1.3 In November 2011, the Australian Parliament passed the Clean Energy Legislative Package. The package introduced a carbon pricing mechanism

to reduce Australia's carbon pollution and move to a clean energy future. The design of the Government's climate change plan has been the subject of considerable public debate and policy development. The Joint Select Committee on Australia's Clean Energy Future Legislation examined the package in 2011 and noted that 'the science of climate change and climate change mitigation policy have been subject to extensive review and inquiry'.<sup>1</sup>

- 1.4 The Australian Government announced on 10 July 2011 that its plan to address climate change would include putting a price on carbon. Australia will move from a fixed carbon price to an emissions trading scheme. The price of each tonne of carbon pollution commenced at \$23 on 1 July 2012 for a fixed three year period. From 1 July 2015, a cap and trade emissions trading scheme will come into effect.<sup>2</sup>
- 1.5 In the Government's initial plan, the carbon price mechanism was to include a price floor of \$15 a tonne to commence on 1 July 2015, and rise at four per cent in real terms each year. This would mean that the carbon price could not fall below that level. It was intended 'to reduce the risk of sharp downward movements in the price, which could undermine long-term investment in clean technologies'.<sup>3</sup> The Clean Energy Legislative Package made provision to 'implement the price floor by combining a minimum auction reserve price for domestic carbon units with a surrender charge for international units'.<sup>4</sup> It was intended that the surrender charge would be based on the estimated international price for a unit class and the floor price.
- 1.6 In January 2012, the Department of Climate Change and Energy Efficiency (DCCEE) sought public comment on its discussion paper *Price floor for Australia's carbon pricing mechanism: Implementing a surrender charge for international units*. The discussion paper covered four options for implementing the surrender charge on international units.
- 1.7 On 28 August 2012, in a joint media release, the Australian Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP,

---

1 Joint Select Committee on Australia's Clean Energy Future Legislation (JSCACEFL), *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, October 2011, p. 6.

2 Prime Minister, Deputy Prime Minister and Treasurer, Minister for Climate Change and Energy Efficiency, Joint media release, *Putting a price on carbon pollution*, 10 July 2011, <<http://www.pm.gov.au/press-office/putting-price-carbon-pollution>>, viewed 21 September 2012.

3 Australian Government, *Securing a clean energy future: The Australian Government's climate change plan*, 2011, p. 27.

4 Department of Climate Change and Energy Efficiency (DCCEE), *Price floor for Australia's carbon pricing mechanism: Implementing a surrender charge for international units*, December 2011, p. 5.

and the European Commissioner for Climate Change, Ms Connie Hedegaard, announced linking the Australian and the European Union emissions trading schemes.<sup>5</sup>

1.8 The European Union Emissions Trading System (EU ETS) commenced operation in 2005 and is a mandatory scheme that covers the 27 member states of the European Union (EU), and Norway, Iceland and Liechtenstein.<sup>6</sup>

1.9 It is planned that a full two-way link for carbon emissions trading should commence by 1 July 2018, which would allow businesses in Australia and Europe to use carbon units from either scheme to comply with their respective carbon pollution obligations. In the interim period, from 2015 Australian businesses will be able to use EU allowances to meet their obligations under the Australian scheme. The Minister announced that:

To facilitate linking, the Australian Government will make two changes to the design of the Australian carbon price. These are that:

- the price floor will not be implemented
- a new sub-limit will apply to the use of eligible Kyoto units. While liable entities in Australia will still be able to meet up to 50 per cent of their liabilities through purchasing eligible international units, only 12.5 per cent of their liabilities will be able to be met by Kyoto units.<sup>7</sup>

1.10 The result of these arrangements is that Australia's carbon price will reflect that in the EU ETS and be consistent with at least 30 other countries.

1.11 The seven bills referred to the committee build on the existing Clean Energy legislative framework and according to the Explanatory Memorandum:

The amendment bills package makes provision for the linking of the Australian carbon pricing mechanism with overseas emissions

---

5 DCCEE, Media release, *Australia and European Commission agree on pathway towards fully linking emissions trading systems*, 28 August 2012, <<http://www.climatechange.gov.au/minister/greg-combet/2012/media-releases/August/JMR-20120828.aspx>>, viewed 21 September 2012.

6 European Commission, Climate Action, <[http://ec.europa.eu/clima/policies/ets/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/index_en.htm)>, viewed 21 September 2012

7 DCCEE, Media release, *Australia and European Commission agree on pathway towards fully linking emissions trading systems*, 28 August 2012, p. 1, <<http://www.climatechange.gov.au/minister/greg-combet/2012/media-releases/August/JMR-20120828.aspx>>, viewed 21 September 2012.

trading schemes, including the EU ETS. The amendments are designed to enable the Government to make and implement arrangements to link with a variety of schemes, and are therefore designed to provide appropriate flexibility for the Government in implementing these technical arrangements.<sup>8</sup>

1.12 Provided below is an overview of the amendments and the bills.<sup>9</sup>

## Overview of the amendments

1.13 The proposed amendments related to linking with overseas emissions trading schemes, include:

- the use of eligible international emissions units for compliance under the carbon pricing mechanism;
- registry amendments to facilitate indirect linking;
- removal of the price floor; and
- equivalent carbon pricing for liquid fuels and synthetic greenhouse gases.

1.14 Other amendments include:

- advance auctions of carbon units;
- changes to the treatment of relinquished carbon units;
- changes related to measuring and adjusting amounts of fuels to ascertain potential greenhouse gas emissions;
- changes to the treatment of some natural gas supply and use arrangements; and
- changes to the Opt-in Scheme eligibility test.

---

8 Explanatory Memorandum (Combined), Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, Clean Energy (Charges – Excise) Amendment Bill 2012, Clean Energy (Charges – Customs) Amendment Bill 2012, Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, and Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012, p. 8.

9 Also see Appendix D which provides a summary of the Explanatory Memorandum.

## Financial impact of the amendments

1.15 The Explanatory Memorandum stated that the amendments 'are not anticipated to have a financial impact'.<sup>10</sup> The 2012-2013 Budget set out carbon price projections based on Treasury modelling in the *Strong Growth, Low Pollution* report.<sup>11</sup> According to the Explanatory Memorandum:

... there would be no impact on domestic carbon prices of establishing a partial link to the EU ETS under these interim arrangements. This is because the international carbon price is projected to be above the price floor and because the projections assume a single international unit price and do not distinguish between Kyoto unit and European allowance unit prices.<sup>12</sup>

1.16 When addressing possible market price differences between Australian units and EU and Kyoto units, the Explanatory Memorandum stated:

On balance, the advantages of providing liable entities with access to another secure source of international units, greater effective assistance to recipients of free permits and reduced administrative complexity outweigh these costs.<sup>13</sup>

## Overview of the bills

### Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

1.17 The Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 will amend the *Clean Energy Act 2011* to:

- facilitate linking Australia's emissions trading scheme and the EU ETS;
- remove the floor price for carbon units;
- limit the use of Kyoto units to 12.5 per cent of an entity's liability;

---

10 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 12.

11 Department of the Treasury, *Strong Growth, Low Pollution: Modelling a carbon price*, <[http://cache.treasury.gov.au/treasury/carbonpricemodelling/content/report/downloads/Modelling\\_Report\\_Consolidated.pdf](http://cache.treasury.gov.au/treasury/carbonpricemodelling/content/report/downloads/Modelling_Report_Consolidated.pdf)>.

12 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 13.

13 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 14.

- provide for the calculation of an equivalent carbon price that reflects liable entities' cost of compliance under the arrangement;
- prevent units being issued at auction more than three years in advance of their vintage year (the first year from which the unit can be surrendered);
- change the treatment of relinquished carbon units, by cancelling a relinquished carbon unit rather than transferring it to the Commonwealth relinquished units account – the Regulator will issue a new carbon unit if the vintage year is a flexible charge year; and
- allow regulations to be made to determine how specific circumstances relating to the supply and use of natural gas are treated.<sup>14</sup>

1.18 The amendments will also increase the limit on 'advance auctioned' carbon units from 15 million to 20 million to be auctioned in the financial year before their vintage year, if no carbon pollution cap has been set for that vintage year. In 2013-2014, up to 40 million carbon units of the 2015-2016 vintage can be auctioned if no carbon pollution cap has been set for 2015-2016.<sup>15</sup>

1.19 The bill also amends the *Australian National Registry of Emission Units Act 2011* to:

- enable European allowance units to be held in the Australian National Registry of Emissions Units (ANREU), and used for compliance purposes under the Clean Energy Act; and
- in the event that a direct link with a foreign emissions trading scheme, including the EU ETS, is not possible, to enable the Clean Energy Regulator to issue Australian-issued international units which correspond to foreign emissions units withdrawn from circulation within the relevant foreign registry, and which can be used for compliance purposes under the Clean Energy Act.<sup>16</sup>

1.20 The Clean Energy Legislation Package provided that gaseous fuels would be subject to an equivalent carbon price through the fuel tax system. The bill amends the *Fuel Tax Act 2006* to adjust the calculation of the equivalent carbon price to ensure that it remains equivalent to the effective carbon price for liable entities under the carbon pricing mechanism.<sup>17</sup>

---

14 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 15.

15 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 54.

16 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

17 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

- 1.21 These amendments aim to ensure that the equivalent carbon price applied to liquid fuels and synthetic greenhouse gases will reflect the impact of quantitative limits on the surrender of eligible international units.<sup>18</sup> The Explanatory Memorandum stated:
- In making these changes, it is also necessary to ensure that the equivalent carbon price paid by users of liquid fuels and synthetic greenhouse gases is more clearly reflective of the carbon price under the linking arrangements. To this end, the application of an equivalent carbon price is amended in the Fuel Tax Act, the Excise Tariff Act, the SGG (Import) Act and the SGG (Manufacture) Act to introduce a new concept: the ‘per-tonne carbon price equivalent’.<sup>19</sup>
- 1.22 The other significant amendment in the bill is to repeal the *Clean Energy (International Unit Surrender Charge) Act 2011*, which imposes a charge for surrender of an eligible international emissions unit during the eligible financial years from 2015 to 2017. The references to the surrender charge in the CE Act will also be removed. These changes will remove the price floor completely from the Clean Energy Legislative Package.
- 1.23 The bill also amends the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to provide the Minister for Climate Change and Energy Efficiency the power to determine the measurement methods and to adjust the amounts of designated fuels for the purposes of ascertaining potential greenhouse gas emissions.<sup>20</sup>
- 1.24 Sections 1, 2 and 3 commence on the date the bill receives the Royal Assent. Schedule 1, Parts 1 and 3, which make general amendments to the ANREU Act and the CE Act, will commence on the day after the bill receives the Royal Assent.
- 1.25 Schedule 1, Part 2, which makes amendments relating to fuel to the CE Act and the NGER Act, will commence on 1 July 2013. The amendments to the NGER Act made by this Part apply to reports relating to the 2012-2013 financial year and all subsequent years.
- 1.26 The other related bills make minor and technical amendments to give effect to the substantive changes outlined above. These six related bills do

---

18 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 23.

19 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 9.

20 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

not contain any substantive provisions of their own.<sup>21</sup> These bills will be covered briefly below.

## Clean Energy Charges Excise and Customs Bills

- 1.27 The Clean Energy (Charges – Excise) Amendment Bill 2012 and the Clean Energy (Charges – Customs) Amendment Bill 2012 amend the *Clean Energy (Charges–Excise) Act 2011* and *Clean Energy (Charges–Customs) Act 2012*, respectively, to facilitate the removal of the price floor.
- 1.28 These bills repeal the definition of ‘eligible international emissions unit’ and make changes to the ‘reserve charge amount’ in relation to auctions for emissions units, removing the requirement for a minimum auction reserve charge. The changes include providing that the Minister may determine, by legislative instrument, the reserve charge amount in relation to a specified auction.
- 1.29 The first schedule in both bills will take effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. The remainder of the bills take effect the day the Act receives the Royal Assent.

## Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

- 1.30 The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Excise Tariff Act 1921* to introduce the new category of ‘per-tonne carbon price equivalent’ and set the parameters for its calculation. This provides that the per-tonne carbon price equivalent, instead of the average carbon unit auction price, is applied to liquid fuels.<sup>22</sup>
- 1.31 Schedule 1 takes effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. All other sections of the bill take effect the day that Act receives the Royal Assent.

---

21 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 23.

22 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, p. 5.



## Ozone Protection and Synthetic Greenhouse Gas Import and Manufacturing Levy Bills

- 1.32 Synthetic greenhouse gases listed under the Kyoto Protocol have an equivalent carbon price applied through the Ozone Protection and Synthetic Greenhouse Gas Management legislation.
- 1.33 The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*. The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.
- 1.34 The amendments in these bills repeal the definition of ‘benchmark average auction charge’ and introduce a ‘per-tonne carbon price equivalent’. They provide that the per-tonne carbon equivalent is applied to the import and manufacture of synthetic greenhouse gas.<sup>23</sup>
- 1.35 The effect of the amendments is to adjust the calculation of the equivalent carbon price to ensure that it remains clearly equivalent to the effective carbon price for liable entities under the scheme.<sup>24</sup>
- 1.36 The first schedule in both bills will take effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. All other sections of the bills take effect the day that Act receives the Royal Assent.

## Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012

- 1.37 The Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012 amends the *Clean Energy (Unit Issue Charge – Auctions) Amendment Act 2011* to remove the requirement for a minimum auction reserve price.<sup>25</sup>
- 1.38 Schedule 1 takes effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. The remainder of the bill takes effect the day that Act receives the Royal Assent.

---

23 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, pp. 5-6.

24 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

25 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, p. 6.

## Consultation

- 1.39 On 31 August 2012, the Government released the document *Implementing links to overseas emissions trading schemes – Draft legislation*.<sup>26</sup> It included the draft legislation of the Clean Energy Legislation Amendment (International Emissions Trading and Other Measures) Bill 2012 and the six related bills. The purpose of this document was to inform stakeholders about the implementation of the Government's commitment to link Australia's scheme with the EU ETS, as announced on 28 August 2012, and to also provide a legislative framework to link to other overseas emissions trading schemes in future.
- 1.40 The Government indicated that the legislation would be introduced in the 2012 Spring Parliamentary sitting period, and provided stakeholders with the opportunity to comment on the draft legislation.
- 1.41 The Government held several public consultation sessions, including in Sydney, Melbourne and Canberra, and received 20 submissions on the draft legislation.

## Objective and scope of the inquiry

- 1.42 The objective of the review is to scrutinise whether the bills in their current form will deliver their policy intent. In referring the bills, the Selection Committee stated:

REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR  
CONSIDERATION:

The domestic economic implications of abolishing the floor price and linking the emissions trading scheme to the EU scheme.<sup>27</sup>

- 1.43 The purpose of this report is to identify and address matters surrounding the provisions of the Clean Energy Amendment Bills 2012. This report does not canvass the broader policy questions around the merits of a carbon price, which have been the subject of widespread public debate, or the existing clean energy laws, which were scrutinised by the Joint Select

---

26 DCCEE website, <<http://www.climatechange.gov.au/government/clean-energy-future/legislation.aspx>>, viewed 21 September 2012.

27 House of Representatives Selection Committee, Report No. 66, 20 September 2012, p. 3.

Committee on Australia's Clean Energy Future Legislation.<sup>28</sup> The report focuses on the provisions of the amendment bills, and in particular, upon the four central outcomes proposed by the bills, namely:

- the linking of Australia's carbon trading scheme with international schemes, including the EU ETS;
- the removal of the price floor;
- the limits placed on the use of international carbon units to discharge an emitter's liability; and
- the treatment of natural gas supply and use.

## Conduct of the inquiry

- 1.44 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Friday, 21 September 2012.
- 1.45 Twelve submissions and two exhibits were received. They are listed at Appendix A.
- 1.46 A roundtable public hearing was held in Canberra on Thursday, 27 September 2012. A list of the witnesses who appeared is in Appendix B. The submissions and transcript of evidence are available on the committee's website at:  
<http://www.aph.gov.au/house/committee/economics/index.htm>.

---

28 Joint Select Committee on Australia's Clean Energy Future Legislation, *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, Parliament of Australia, Canberra, October 2011.