

2009

EXPOSURE DRAFT

**CARBON POLLUTION REDUCTION
SCHEME (CHARGES – CUSTOMS) BILL
2009**

COMMENTARY

(Circulated by the authority of the Minister for Climate Change and
Water, Senator the Hon Penny Wong)

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Note

The Commentary has been prepared for the purpose of assisting readers to understand the exposure draft of the Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009. When the bills are introduced into Parliament, an explanatory memorandum will be tabled which may differ from this Commentary.

General outline

Charges for the issue of Australian emissions units

This draft bill provides for the possibility that the charge payable by a person to the Commonwealth for issue of an Australian emissions unit as the result of an auction, or for a fixed charge, is a tax within the meaning of section 55 of the Constitution and a duty of customs.

Date of effect: At the same time as section 3 of the proposed *Carbon Pollution Reduction Scheme Act 2009* commences.

Proposal announced: The measures are based on the positions included in the White Paper entitled *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future* released by the Government on 15 December 2009.

Chapter 1

Charges for the issue of Australian emissions units

Outline of chapter

1.1 The draft Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009 will impose charges for Australian emissions units issued as the result of an auction or for a fixed charge *if* those charges are ‘taxation’ within the meaning of section 55 of the Constitution and a duty of customs.

Context of amendments

1.2 The draft Carbon Pollution Reduction Scheme Bill 2009 is the Government’s primary policy tool to drive the reduction of greenhouse gas emissions. The objective is to reduce carbon pollution and to do so efficiently, by placing a cap on emissions.

1.3 The issue of Australian emissions units is an essential part of the ‘cap and trade’ scheme.

1.4 The Authority may issue units as a result of an auction it has conducted or, as a transitional measure for a limited period each year, for a fixed charge.

1.5 Clause 91 of the draft Carbon Pollution Reduction Scheme Bill 2009 provides that if a charge payable for the issue of an Australian emissions unit is taxation within the meaning of section 55 of the Constitution, then the charge is not imposed by that Act, but instead is imposed by the *Carbon Pollution Reduction Scheme (Charges – General) Act 2009*, *Carbon Pollution Reduction Scheme (Charges – Excise) Act 2009* or the *Carbon Pollution Reduction Scheme (Charges – Customs) Act 2009* (whichever is applicable).

1.6 The reason for the approach taken in clause 91 and the three draft charges bills is to deal with the possibility that a court may find that the charges payable for Australian emissions units are ‘taxation’ within the meaning of section 55 of the Constitution.

1.7 Section 55 of the Constitution provides:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Summary of new law

1.8 The draft Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009 will provide for the imposition of charges for Australian emissions units issued as the result of an auction or for a fixed charge *if* the charges are taxation within the meaning of section 55 of the Constitution and are a duty of customs.

Detailed explanation of new law

1.9 Each of these three draft bills is framed in similar terms.

1.10 If the amount payable to the Commonwealth for the issue of units as the result of an auction or for a fixed charge is taxation within the meaning of section 55 of the Constitution and is a duty of customs, then the charge is imposed under this Bill [*Clause 7*].

1.11 However, when enacted, the bill will have no effect to the extent, if any, to which it imposes a tax on property of any kind belonging to a State (where ‘property of any kind belonging to the State’ has the same meaning as in s 114 of the Constitution) [*Clause 8*].

1.12 Consistently with the draft Carbon Pollution Reduction Scheme Bill, this draft Bill will:

- extend to every external Territory [*clause 5*]
- extend to Australia’s exclusive economic zone and the continental shelf [*clause 6*].

1.13 The draft Bill will bind the Crown in right of each of the States, the ACT, the Northern Territory and Norfolk Island. However, it will not bind the Crown in right of the Commonwealth [*Clause 4*].

1.14 The short title of the proposed Act is the *Carbon Pollution Reduction Scheme (Charges – Customs) Act 2009* [clause 1].

1.15 Its substantive provisions will commence at the same time as section 3 of the proposed *Carbon Pollution Reduction Scheme Act 2009* [clause 2].

1.16 Significant terms, including ‘auction’ and ‘issue’ are defined by reference to the draft Carbon Pollution Reduction Scheme Bill 2009 [clause 3].

