

## Chapter 2

### Overview of the bills

2.1 As noted at the start of the preceding chapter, the Clean Energy Amendment Bills make amendments to the CE Act and other acts.

2.2 The most important of these amendments, and those which submissions focused on, relate to:

- the linking of Australia's CPM with other countries' trading schemes, including the EU ETS;
- the removal of the floor price and surrender charges on international permits;
- a new limit of 12.5 per cent on the Kyoto units that Australian liable entities can use to meet their liability, and a new concept of 'designated limit' that can be applied in the future to specific types of carbon permits and offsets; and
- the treatment of natural gas under the CPM.

2.3 In addition, the Clean Energy Amendment Bills also cover:

- consequential changes to the equivalent carbon pricing of liquid fuels and synthetic greenhouse gases;
- the streamlining of arrangements for relinquished carbon units;
- limits on the issue of carbon units at auction without a pollution cap in place;
- the content of measurement determinations under the NGER Act; and
- the treatment of GST joint venture operators in the Opt-in Scheme.

2.4 After a brief overview of each of the bills, the provisions in the legislation relating to all of the above matters are addressed, under the heading, 'Effects of the Amendments'.

#### Overview of each bill

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

2.5 The Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 amends the CE Act to facilitate the linking of the CPM to the EU ETS; remove the floor price; limit the use of Kyoto units to 12.5 per cent of an entity's liability; provide for the calculation of an equivalent carbon price that reflects liable entities' cost under the arrangement; limit advance auctions of carbon permits to no more than three years in advance of their vintage year, while increasing the volume of advanced auctioned carbon units; change the treatment of relinquished carbon units; and allow regulations to be made relating to the treatment of natural gas.

2.6 The bill also amends the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) to enable European allowance units to be held in the Australian National Registry of Emissions Units (ANREU), and used for compliance purposes

under the CE 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 (AIUs) which correspond to foreign emissions units withdrawn from circulation within the relevant foreign registry, and which can be used for compliance purposes under the CE Act.

2.7 The bill also 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 CPM.

2.8 The bill also repeals the *Clean Energy (International Unit Surrender Charge) Act 2011*, which imposed a surrender charge on eligible international emissions units.

2.9 Finally, the bill amends the NGER Act to provide the Minister for Climate Change and Energy Efficiency the power to determine the measurement methods to adjust the amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions.

2.10 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 CE Act and the ANREU Act, will commence on the day after the bill receives the Royal Assent.

2.11 Schedule 1, Part 2, which makes amendments relating the 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 will apply to reports relating to the 2012-13 financial year and all subsequent years.

#### ***Clean Energy (Charges—Excise) Amendment Bill 2012***

2.12 The Clean Energy (Charges—Excise) Amendment Bill 2012 will amend the *Clean Energy (Charges—Excise) Act 2011* by repealing the definition of 'eligible international emissions units' and the methods by which the units are auctioned, providing that the reserve price is removed. It also provides for the creation of a legislative instrument by a Minister to set a 'reserve charge amount' to a specified auction.

2.13 The first schedule in the bill 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 bill will take effect the day the Act receives the Royal Assent.

#### ***Clean Energy (Charges—Customs) Amendment Bill 2012***

2.14 The Clean Energy (Charges—Customs) Amendment Bill 2012 will amend the *Clean Energy Charges—Customs) Act 2011* consistent with the provisions of the Clean Energy (Charges—Excise) Amendment Bill 2012.

2.15 The first schedule in the bill 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 bill will take effect the day the Act receives the Royal Assent.

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

2.16 The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 will change the treatment of the liquid fuels, by applying the new 'per-tonne carbon price equivalent' in place of the average carbon unit auction price.

2.17 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.

***Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012***

2.18 The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Synthetic Greenhouse Gas (Import Levy) Act 1995* to repeal the definition of 'benchmark average auction charge' and introduce a 'per-tonne carbon price equivalent'. It provides that the per-tonne carbon equivalent is applied to the import of synthetic greenhouse gas.

2.19 The first schedule 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 bill take effect the day that Act receives the Royal Assent.

***Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012***

2.20 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* to repeal the definition of 'benchmark average auction charge' and introduce a 'per-tonne carbon price equivalent'. It provides that the per-tonne carbon equivalent is applied to the manufacture of synthetic greenhouse gas.

2.21 The first schedule 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 bill take effect the day that Act receives the Royal Assent.

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

2.22 The Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012 amends the *Clean Energy (Unit Issue Charge—Auctions) Act 2011* to remove the requirement for a minimum auction reserve price.

2.23 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.

## **Effects of the amendments**

### ***Linkage of Australian CPM to international markets, including EU ETS***

2.24 The Clean Energy Amendment Bills allow for the linking of the Australian carbon pricing mechanism with overseas emissions trading schemes, including the EU ETS.

2.25 The CE Act currently allows eligible international emissions units to be surrendered to meet liabilities under the CPM after 1 July 2015. Some units issued under the Kyoto Protocol have already been defined as eligible international emissions units in the CE Act. Under the linking arrangement with the EU ETS, European allowance units will be able to be used for compliance under the CPM from 1 July 2015.

2.26 As the Explanatory Memorandum explains, amendments to the ANREU Act ensure that links to other countries' schemes can occur, even in the event it is not possible to implement a direct registry link. Indirect linking may be given effect by the Government issuing AIUs to holders of an ANREU account, where these units are backed by foreign emissions units. The Government has also been given powers to open and operate an overseas registry account and to alter the way in which AIUs are managed in the ANREU as circumstances require.<sup>1</sup>

### ***Removal of the floor price and the surrender charge on international units***

2.27 Under the linked arrangement, the floor price will no longer operate in the first three years of the flexible price period. As the Explanatory Memorandum explains, this will facilitate the convergence of the EU and Australian carbon prices.<sup>2</sup>

2.28 This will be achieved by removing the requirement for a minimum auction reserve price for the years 2015-16, 2016-17 and 2017-18; and by removing the requirement for a surrender charge on eligible international emissions units by repealing the *Clean Energy (International Unit Surrender Charge) Act 2011*.

2.29 The Minister may still determine an auction 'reserve charge amount' to enhance price discovery at auctions. The Explanatory Memorandum explains that:

...a reserve charge amount can serve to counteract bid shading (that is, bidding an amount which is less than the amount that the participant believes that the unit is worth) or collusion by auction participants by minimising the potential gains from such behaviour. When there is a secondary market for carbon units, the reserve charge will ensure that the clearing price of the auction does not significantly diverge from the secondary market price.<sup>3</sup>

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1 Replacement Explanatory Memorandum, p. 9.

2 Replacement Explanatory Memorandum, p. 9.

3 Replacement Explanatory Memorandum, p. 21.

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***Kyoto units and 'designated limits'***

2.30 As the Explanatory Memorandum explains:

...the Government may, through regulations, introduce additional or alternative quantitative limits on the use of eligible international emissions units. This will provide the Government the flexibility to respond to changing international circumstances as needed.<sup>4</sup>

2.31 In order to support a stable market and investment environment, the Government has also made a commitment to provide at least three years' notice ahead of the introduction of a new designated limit or change to an existing limit.<sup>5</sup>

***The treatment of natural gas***

2.32 The Explanatory Memorandum indicates that under the current provisions of the CE Act concerning emissions embodied in natural gas, there is the potential for certain commercial arrangements to lead to situations where liability may not be captured. It further states that the amendments proposed will provide greater flexibility around how the supply and use of natural gas is treated under the CE Act, and 'help to maintain competitive neutrality by supporting the complete coverage of natural gas under the carbon pricing mechanism.'<sup>6</sup>

2.33 Under the existing CE Act, liability applies to a liable entity for a facility where natural gas is used. Alternatively, the liability can apply for a natural gas supplier when they supply natural gas to a person and the natural gas is withdrawn from a natural gas pipeline for use. The CE Act also enables the Obligation Transfer Number to apportion liability between suppliers and end users.

2.34 The amendments provide that where the existing direct emitter or natural gas supply provisions of the CE Act do not apply, regulations may set out specific circumstances in which liability would arise for a supplier or end user of natural gas. 'Own-use notifications' and 'follow-up notifications' are mechanisms intended to enable suppliers to identify when the gas they supply is applied to a person's use. This will allow suppliers to determine where liability applies. Regulations may modify the definition of supply for the purpose of the new provisions and determine when supply occurs to facilitate their application.

2.35 The Explanatory Memorandum explains that these provisions:

...are intended to apply to specific commercial arrangements in the natural gas sector. In general, they are not intended to cover natural gas used at large gas consuming facilities as liability would ultimately arise from the direct emitter provisions. Furthermore, the amendments are not intended to apply to small end users, such as households, as they obtain gas through

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4 Replacement Explanatory Memorandum, p. 8.

5 Replacement Explanatory Memorandum, p. 8.

6 Replacement Explanatory Memorandum, p. 10.

generic supply arrangements which give rise to liability for a supplier under section 33 of the CE Act.<sup>7</sup>

2.36 The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

***Setting the equivalent carbon price on liquid fuels and synthetic greenhouse gases***

2.37 The bills also update the approach to calculating the equivalent carbon price on liquid fuels and synthetic greenhouse gases from 1 July 2015. The updated approach will ensure that the equivalent carbon price closely tracks the carbon price faced by liable Australian entities.

***Treatment of relinquished units***

2.38 The Government has decided that there will no longer be auctions of relinquished carbon units. Instead, if a carbon unit is relinquished, it will be cancelled, and a new carbon unit will be auctioned.<sup>8</sup>

***Amendments to the auction scheme***

2.39 The bills include technical amendments to enhance the auction of carbon permits.

2.40 Under the Clean Energy package, a carbon auction limit was established to limit the amount of units from a compliance year that can be auctioned in an earlier year. This limit is aimed at preventing over-allocation before the pollution cap is known for a given compliance year.

2.41 The amendments increase the limit on advance-auctioned carbon units to 40 million units for carbon units whose vintage is 2015-16 that are auctioned in 2013-14, and 20 million units for other advance auctions where there is no carbon pollution cap number for that year. The Explanatory Memorandum indicates that the final details of the auction arrangements are determined by the legislative instrument under section 113 of the CE Act which is expected to be made in early 2013 after further consultation with industry.

***Measurement determinations under the NGER Act***

2.42 Technical amendments to the CE Act and the NGER Act provide the Minister with the power to determine methods to measure amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions.

***Treatment of GST joint venture operators in the Opt-in Scheme***

2.43 Minor amendments to the CE Act clarify the treatment of GST joint venture operators in the Opt-in Scheme.'

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7 Replacement Explanatory Memorandum, p. 53.

8 Replacement Explanatory Memorandum, p. 9.

## **Scrutiny of Bills Committee**

2.44 The Senate Scrutiny of Bills Committee, in its Alert Digest number 12 of 2012, noted that Schedule 1, item 79, proposed subsection 123A(1) of the CE Act would grant the Government the power to make legislative instruments to introduce one or more designated limits on eligible international emissions units. The committee noted that there is a guarantee from the Government to provide at least three years notice before new limits are to be introduced, or changes to existing designated limits are due to take effect. The Committee questioned whether this reference could be inappropriate delegation, as there is no statutory guarantee that the notice periods will be respected.

2.45 The Senate Scrutiny of Bills Committee also raised concerns about the operation of proposed subsection 57(2) of the ANREU Act, which provides for what is referred to as a Henry VIII clause (that is, a clause that enables the Executive branch of government to modify the operation of primary legislation passed by the Parliament). The provision in question will enable regulations to be made which 'modify' the provisions of new Division 3 of Part 4 of the ANREA Act in relation a specified class of AIUs.<sup>9</sup>

2.46 The committee draws these concerns to the attention of the Government.

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9 Senate Scrutiny of Bills Committee, Alert Digest no. 12 of 2012, p. 2.

