



# **Steel Transformation Plan Act 2011**

**No. 133, 2011**

**An Act to provide for the transformation of the  
Australian steel manufacturing industry, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Steel Transformation Plan Act 2011

No. 133, 2011

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**An Act to provide for the transformation of the  
Australian steel manufacturing industry, and for  
related purposes**

*[Assented to 18 November 2011]*

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Steel Transformation Plan Act 2011*.

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**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	18 November 2011
2. Sections 3 to 30	The later of: (a) the day this Act receives the Royal Assent; and (b) the day after the <i>Clean Energy Act 2011</i> , and all of the Acts mentioned in item 2 of the table in section 2 of that Act, have received the Royal Assent.  However, the provision(s) do not commence at all unless all the Acts mentioned in paragraph (b) of this item receive the Royal Assent.	5 December 2011 (paragraph (b) applies)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**3 Object**

- (1) The object of this Act is to encourage investment, innovation and competitiveness in the Australian steel manufacturing industry in
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order to assist the industry to transform into an efficient and economically sustainable industry in a low carbon economy.

- (2) The object is to be achieved in a way that:
- (a) improves environmental outcomes for the Australian steel manufacturing industry; and
  - (b) promotes the development of workforce skills in the Australian steel manufacturing industry.

#### **4 Definitions**

In this Act:

***Australian steel manufacturing industry*** means industry carried on in Australia for the manufacture of crude carbon steel using either of the following methods:

- (a) integrated iron and steel manufacturing that involves the physical and chemical transformation of iron ore into crude carbon steel;
- (b) a method that involves the physical and chemical transformation of cold ferrous feed into crude carbon steel.

***authorised officer*** means a person appointed by the Secretary under section 18.

***competitiveness assistance advance*** has the meaning given by section 5.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

***eligible activities*** has the meaning given by section 10.

***eligible corporation***: a corporation is an ***eligible corporation*** at a particular time if:

- (a) at that time, the corporation is a constitutional corporation that manufactures steel in Australia using either of the following methods:

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- (i) integrated iron and steel manufacturing that involves the physical and chemical transformation of iron ore into crude carbon steel;
  - (ii) a method that involves the physical and chemical transformation of cold ferrous feed into crude carbon steel; and
- (b) the corporation produced at least 500,000 tonnes of crude carbon steel in Australia using either of those methods:
- (i) in the financial year that ended most recently before that time; and
  - (ii) in the 2009-2010 financial year.

***permitted monitoring*** has the meaning given by section 15.

***plan years*** has the meaning given by section 12.

***premises*** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

***Secretary*** means the Secretary of the Department.

***Steel Transformation Plan*** has the meaning given by section 9.

***STP participants*** has the meaning given by section 9.

***STP payments*** has the meaning given by section 9.

## **Part 2—Competitiveness assistance advances**

### **5 Applying for competitiveness assistance advances**

- (1) An eligible corporation may apply to the Minister (in accordance with subsection (2)) for a payment of financial assistance (a *competitiveness assistance advance*) to assist the corporation to undertake activities that will significantly enhance the competitiveness and economic sustainability of the Australian steel manufacturing industry in a low carbon economy.

Note: Under section 8, competitiveness assistance advances must not be paid after 30 June 2012.

- (2) The application must:
  - (a) be in the form approved by the Secretary; and
  - (b) include, or be accompanied by, the information and documents required by the form; and
  - (c) be lodged as specified in the form.
- (3) For the purpose of assessing the corporation's application, the Minister may request the corporation to give to the Minister specified additional information or a specified additional document that the Minister considers is needed in order to be satisfied as mentioned in paragraph 6(1)(b).
- (4) The Minister does not have to consider, or further consider, the application until the additional information or document has been provided.

### **6 Approving competitiveness assistance advances**

- (1) The Minister may approve the payment of a competitiveness assistance advance to a corporation if:
  - (a) the corporation applies in accordance with subsection 5(2); and
  - (b) the Minister is satisfied that:

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- (i) at the time of applying the corporation was an eligible corporation; and
  - (ii) the advance is necessary to assist the corporation to undertake activities that will significantly enhance the competitiveness and economic sustainability of the Australian steel manufacturing industry in a low carbon economy.
- (2) If the Minister approves the payment of a competitiveness assistance advance to a corporation, the advance is payable by the Commonwealth to the corporation as determined under paragraph (3)(a).
- (3) If the Minister approves the payment of a competitiveness assistance advance to a corporation, the Minister must:
  - (a) determine (consistently with sections 7 and 8):
    - (i) the amount of the advance; and
    - (ii) the time or times at which the advance is to be paid; and
    - (iii) any conditions to which the advance is subject; and
  - (b) as soon as practicable after approving the payment of the advance, publish the following details on the Department's website:
    - (i) the name of the corporation;
    - (ii) the amount of the advance.
- (4) Without limiting subparagraph (3)(a)(iii), the conditions that may be determined under that subparagraph include conditions about the following:
  - (a) the recovery (including by way of offset) by the Commonwealth of amounts of competitiveness assistance advance;
  - (b) requiring the corporation to allow authorised officers access to specified premises for the purposes of Division 1 of Part 4.
- (5) The following are not legislative instruments:
  - (a) an approval under subsection (1);
  - (b) a determination under subsection (3).

**7 Amount of assistance available**

- (1) The total amount of competitiveness assistance advances must not exceed \$164 million.
- (2) The total amount of competitiveness assistance advances paid to a particular corporation must not exceed \$100 million.
- (3) For the purposes of subsections (1) and (2), amounts recovered (including by way of offset) by the Commonwealth are to be treated as if they had never been paid.

Note: Amounts of competitiveness assistance advances paid under this Part will reduce the amount of assistance available under Part 3: see subsection 13(2).

**8 Payments not to be made after 30 June 2012**

Competitiveness assistance advances must not be paid after 30 June 2012.

## Part 3—The Steel Transformation Plan

### 9 Making the Steel Transformation Plan

- (1) To further the object of this Act, the Minister must, by legislative instrument, make a plan (the *Steel Transformation Plan*) providing for the payment of amounts (*STP payments*) to eligible corporations (*STP participants*) that are registered under the Steel Transformation Plan.
- (2) The Steel Transformation Plan is to be a self-assessment plan.

### 10 Matters that may be included in the Steel Transformation Plan

- (1) The Steel Transformation Plan may make provision for the following matters:
  - (a) the registration of eligible corporations as STP participants, including:
    - (i) the process for becoming registered; and
    - (ii) any conditions to which the registration of STP participants is subject; and
    - (iii) the deregistration of STP participants;
  - (b) the making of STP payments (consistently with sections 12, 13 and 14) to STP participants, including:
    - (i) the activities (*eligible activities*) in respect of which STP payments may be made; and
    - (ii) any conditions to be complied with by STP participants in order to be eligible to receive STP payments; and
    - (iii) the calculation of the amount of STP payments; and
    - (iv) the process for claiming and making STP payments;
  - (c) the recovery (including by way of offset) by the Commonwealth of amounts of STP payments;
  - (d) the payment of interest on overpaid amounts of STP payments;

- (e) the inalienability of STP payments, except with the approval of the Secretary;
  - (f) the review of decisions made under the Plan;
  - (g) other matters that are:
    - (i) required or permitted by this Act to be included in the Plan; or
    - (ii) necessary or convenient to be included in the Plan.
- (2) Without limiting subparagraph (1)(a)(ii), the conditions referred to in that subparagraph may include a condition requiring an STP participant to allow authorised officers access to specified premises for the purposes of Division 1 of Part 4.
- (3) The Steel Transformation Plan may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Secretary.
- (4) If the Steel Transformation Plan confers power on the Secretary to make a decision of an administrative character, the Plan may also make provision for the Secretary to delegate that power to an SES officer in the Department.

## **11 Variation of Steel Transformation Plan**

The Steel Transformation Plan may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

## **12 Circumstances in which STP payments payable**

- (1) STP payments must only be made to an STP participant in respect of eligible activities conducted by the participant during a plan year.
- (2) The *plan years* are:
- (a) the 2012-2013 financial year; and
  - (b) the 2013-2014 financial year; and
  - (c) the 2014-2015 financial year; and
  - (d) the 2015-2016 financial year.

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**13 Amount of assistance available**

- (1) Subject to subsection (2), the total amount of STP payments must not exceed \$300 million.
- (2) The amount mentioned in subsection (1) is to be reduced by the total amount of competitiveness assistance advances paid under Part 2.
- (3) Subject to subsection (4), the total amount of STP payments paid in respect of a plan year must not exceed \$75 million.
- (4) However, if the total amount of STP payments paid in respect of a particular plan year is less than \$75 million, the balance may be paid in respect of any later plan year.
- (5) For the purposes of subsections (1) to (4), amounts recovered (including by way of offset) by the Commonwealth are to be treated as if they had never been paid.

**14 Payments not to be made after 31 December 2016**

STP payments must not be paid after 31 December 2016.

## **Part 4—Monitoring**

### **Division 1—Access to premises**

#### **15 Allowing access to premises**

- (1) The condition specified in subsection (2) applies to:
  - (a) a payment of competitiveness assistance advance to a corporation, if the payment is subject to a condition that the corporation allow authorised officers access to specified premises for the purposes of this Division (see subsection 6(4)); or
  - (b) the registration of a corporation as an STP participant, if the registration is subject to a condition that the corporation allow authorised officers access to specified premises for the purposes of this Division (see subsection 10(2)).
- (2) The condition is that the corporation must:
  - (a) allow authorised officers access to the premises, at any reasonable time on a business day, for the purpose of permitted monitoring; and
  - (b) allow authorised officers during that access to inspect and search the premises, and any thing on the premises, for the purpose of permitted monitoring; and
  - (c) allow authorised officers to operate electronic equipment at the premises to see whether documents in electronic form relevant to permitted monitoring are accessible by doing so; and
  - (d) allow authorised officers to make copies of any documents in hard copy form found on the premises that are relevant to permitted monitoring; and
  - (e) provide authorised officers with all reasonable facilities and assistance for the effective exercise of their powers.
- (3) **Permitted monitoring** means:
  - (a) determining whether the corporation has complied, or is complying, with requirements imposed on the corporation by

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**Division 1** Access to premises

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this Act or the Steel Transformation Plan (including requirements in any conditions imposed by or under this Act or the Plan); or

- (b) determining whether any of the following information given by or on behalf of the corporation is correct:
  - (i) information given for the purpose of obtaining a competitiveness assistance advance or an STP payment;
  - (ii) information given in compliance or purported compliance with this Act or the Plan (including any conditions imposed by or under this Act or the Plan).

**16 Operation of electronic equipment by authorised officers**

- (1) This section applies if:
  - (a) an authorised officer has obtained access to premises for the purpose of permitted monitoring; and
  - (b) the authorised officer finds that documents in electronic form, relevant to permitted monitoring, are accessible by operating electronic equipment at the premises.
- (2) Subject to subsection (4), the authorised officer may:
  - (a) operate the equipment, or other facilities at the premises, to put the documents in hard copy form; or
  - (b) operate the equipment, or other facilities at the premises, to transfer the documents to a disk, tape or other storage device:
    - (i) that is brought to the premises for the exercise of the power; or
    - (ii) that is at the premises, if its use has been agreed to in writing by the corporation.
- (3) The authorised officer may then remove the documents in hard copy form, or remove the disk, tape or other storage device.
- (4) The authorised officer may operate the equipment only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

## **17 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated by an authorised officer:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because insufficient care was exercised by the authorised officer.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia or another court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the corporation, or its employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

## **18 Appointment of authorised officers**

- (1) The Secretary may, in writing, appoint an APS employee in the Department as an authorised officer for the purposes of this Division.
- (2) The Secretary must not appoint an APS employee as an authorised officer unless the Secretary is satisfied that the employee has suitable training or experience to properly exercise the powers of an authorised officer.
- (3) An authorised officer holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

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- (4) An authorised officer must, in exercising powers as such, comply with any directions of the Secretary.
- (5) If a direction under subsection (4) is given in writing, the direction is not a legislative instrument.

**19 Identity cards**

- (1) The Secretary must issue an identity card to an authorised officer.
- (2) The identity card must:
  - (a) be in the form approved by the Secretary; and
  - (b) contain a recent photograph of the authorised officer.
- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not return the identity card to the Secretary within 14 days after ceasing to be an authorised officer.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.
- (7) An authorised officer is not entitled to exercise any powers referred to in this Division in relation to premises if:
  - (a) the corporation concerned (or a person who apparently represents the corporation) has requested the officer to produce the officer's identity card for inspection; and
  - (b) the officer fails to comply with the request.

## **Division 2—Information gathering powers**

### **20 Secretary may obtain information and documents**

- (1) This section applies to a person if the Secretary has reason to believe that the person has information or a document that is relevant to:
  - (a) determining whether a corporation has complied, or is complying, with requirements imposed on the corporation by this Act or the Steel Transformation Plan (including requirements in any conditions imposed by or under this Act or the Plan); or
  - (b) determining whether any of the following information given by or on behalf of a corporation is correct:
    - (i) information given for the purpose of obtaining a competitiveness assistance advance or an STP payment;
    - (ii) information given in compliance or purported compliance with this Act or the Plan (including any conditions imposed by or under this Act or the Plan).
- (2) The Secretary may, by written notice given to the person, require the person:
  - (a) to give to the Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

**Part 4** Monitoring

**Division 2** Information gathering powers

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- (4) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (5) A notice under subsection (2) must set out the effect of the following provisions:
  - (a) subsection (3);
  - (b) sections 137.1 and 137.2 of the *Criminal Code* (which deal with false or misleading information or documents).

**21 Copying documents—compensation**

A person is entitled to be paid, by the Commonwealth, reasonable compensation for complying with a requirement under paragraph 20(2)(c).

**22 Secretary may inspect and copy original documents**

The Secretary may:

- (a) inspect a document produced under paragraph 20(2)(b); and
- (b) make and retain copies of the whole or a part of such a document.

**23 Secretary may retain original documents**

- (1) The Secretary may take, and retain for as long as is necessary, possession of a document produced under paragraph 20(2)(b).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

## **24 Secretary may inspect and retain copies of documents**

The Secretary may inspect, and retain possession of, a copy of a document produced under paragraph 20(2)(c).

## **25 Self-incrimination**

(1) A person is not excused from giving information, or producing a document or a copy of a document, under this Division on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:

- (a) the information given, or the document or copy produced; or
- (b) giving the information or producing the document or copy; or
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings, other than:

- (d) proceedings for an offence against subsection 20(3); or
- (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act or the Steel Transformation Plan; or
- (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act or the Steel Transformation Plan.

## Part 5—Miscellaneous

### 26 Annual report

The Department's annual report for a financial year specified in an item of column 1 of the following table must include:

- (a) details of the total amounts of STP payments paid to STP participants for the period specified in column 2 of that item; and
- (b) information about the progress of the Australian steel manufacturing industry towards improved environmental outcomes and workforce skills development during the immediately preceding financial year.

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<b>Details of STP payments to be included in annual reports</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>The annual report for this financial year ...</b>	<b>must include details of STP payments for this period ...</b>
1	2013-2014	1 January 2013 to 31 December 2013.
2	2014-2015	1 January 2014 to 31 December 2014.
3	2015-2016	1 January 2015 to 31 December 2015.
4	2016-2017	1 January 2016 to 31 December 2016.

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### 27 Delegation

- (1) The Secretary may, by written instrument, delegate to an SES employee in the Department all or any of the Secretary's powers under this Act, other than section 18.
- (2) In exercising powers under a delegation under subsection (1), the delegate must comply with any directions of the Secretary.

**28 Appropriation**

Competitiveness assistance advances and STP payments are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**29 Recovery of amounts by Commonwealth**

If:

(a) a condition determined by the Minister under subparagraph 6(3)(a)(iii); or

(b) a condition under the Steel Transformation Plan;

provides that an amount is recoverable by the Commonwealth from a corporation, or is payable to the Commonwealth by a corporation, the amount may be recovered from the corporation by the Commonwealth as a debt in a court of competent jurisdiction.

**30 Regulations**

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 13 September 2011  
Senate on 31 October 2011]*

(186/11)