



# **Clean Energy (Charges—Excise) Act 2011**

**Act No. 154 of 2011 as amended**

This compilation was prepared on 18 December 2012  
taking into account amendments up to Act No. 199 of 2012

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to impose charges associated with the *Clean Energy Act 2011*, so far as those charges are duties of excise

## Part 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Clean Energy (Charges—Excise) Act 2011*.

### 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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Sections 3 to 11	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	2 April 2012

Note: This table relates only to the provisions of this Act as originally enacted.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 Definitions

In this Act:

Section 4

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*auction* has the same meaning as in the *Clean Energy Act 2011*.

*benchmark average auction charge* has the same meaning as in the *Clean Energy Act 2011*.

*carbon unit* has the same meaning as in the *Clean Energy Act 2011*.

*fixed charge year* has the same meaning as in the *Clean Energy Act 2011*.

*flexible charge year* has the same meaning as in the *Clean Energy Act 2011*.

*issue*, in relation to a carbon unit, has the same meaning as in the *Clean Energy Act 2011*.

*Joint Petroleum Development Area* has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

*person* has the same meaning as in the *Clean Energy Act 2011*.

*Regulator* means the Clean Energy Regulator.

*unit shortfall* has the same meaning as in the *Clean Energy Act 2011*.

*vintage year* has the same meaning as in the *Clean Energy Act 2011*.

#### **4 Crown to be bound**

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, it does not bind the Crown in right of the Commonwealth.

#### **5 Extension to external Territories**

This Act extends to every external Territory.

#### **6 Extension to exclusive economic zone and continental shelf**

This Act extends to Australia's exclusive economic zone and continental shelf.

**7 Extension to Joint Petroleum Development Area**

This Act extends to the Joint Petroleum Development Area.

## Part 2—Charge for the issue of a carbon unit

### 8 Imposition of charge

#### *Auction*

- (1) If:
  - (a) a carbon unit is issued to a person; and
  - (b) the unit is issued as the result of an auction;  
charge is imposed on the issue of the unit.
- (2) Charge imposed by subsection (1) is payable by the person.
- (3) The amount of charge imposed by subsection (1) on the issue of a carbon unit is the amount equal to the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit, so long as, in a case where there is a reserve charge amount in relation to the auction (see subsection (4A)), the amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit is not less than that reserve charge amount.
- (4) Subsection (3) does not apply to an amount the person indicated or declared, in the course of the auction, that the person would be willing to pay by way of charge for the issue of the unit, unless the amount was accepted by the Regulator in the course of the auction.
- (4A) The Minister may, by legislative instrument, determine that, for the purposes of subsection (3), the **reserve charge amount** in relation to a specified auction is the amount ascertained in accordance with the determination.
- (5) Subsection (1) imposes charge only so far as that charge is a duty of excise within the meaning of section 55 of the Constitution.

#### *Fixed charge*

- (6) If:
  - (a) a carbon unit is issued to a person; and



- (b) the unit is issued in accordance with section 100 of the *Clean Energy Act 2011* (issue of units for a fixed charge); charge is imposed on the issue of the unit.
- (7) Charge imposed by subsection (6) is payable by the person.
- (8) The amount of charge imposed by subsection (6) on the issue of a unit is the amount equal to the per unit charge set out in the application under subsection 100(1) of the *Clean Energy Act 2011* for the issue of the unit.
- (9) Subsection (6) imposes charge only so far as that charge is a duty of excise within the meaning of section 55 of the Constitution.

## Part 3—Charge on a unit shortfall

### 9 Imposition of charge

- (1) If a person has a unit shortfall for a financial year, charge is imposed on the unit shortfall.
- (2) Charge imposed by subsection (1) is payable by the person.

*Amount of charge*

- (3) The amount of charge imposed by subsection (1) on a unit shortfall is the amount worked out using the formula:

$$\text{Number of units in the unit shortfall} \times \text{Prescribed amount for the financial year}$$

where:

***prescribed amount for the financial year*** means:

- (a) if the financial year is a fixed charge year—an amount equal to 130% of the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or
  - (b) if the financial year is a flexible charge year:
    - (i) if an amount is specified in the regulations for the financial year—that amount; or
    - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.
- (4) An amount specified in regulations made for the purposes of subparagraph (b)(i) of the definition of ***prescribed amount for the financial year*** in subsection (3) in relation to a financial year:
    - (a) must not be less than 130% of the benchmark average auction charge for the previous financial year; and
    - (b) must not exceed 200% of the benchmark average auction charge for the previous financial year.

*General*

- (5) This section imposes charge only so far as that charge is a duty of excise within the meaning of section 55 of the Constitution.

## **Part 4—Miscellaneous**

### **10 Act does not impose a tax on property of a State**

- (1) This Act has no effect to the extent (if any) to which it imposes a tax on property of any kind belonging to a State.
- (2) In this section, *property of any kind belonging to a State* has the same meaning as in section 114 of the Constitution.

### **11 Regulations**

The Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed.

**Table of Acts****Notes to the *Clean Energy (Charges—Excise) Act 2011*****Note 1**

The *Clean Energy (Charges—Excise) Act 2011* as shown in this compilation comprises Act No. 154, 2011 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Clean Energy (Charges—Excise) Act 2011</i>	154, 2011	4 Dec 2011	Ss. 3–11: 2 Apr 2012 (see s. 2(1)) Remainder: Royal Assent	
<i>Clean Energy (Charges—Excise) Amendment Act 2012</i>	199, 2012	12 Dec 2012	Schedule 1: 14 Dec 2012 (see s. 2(1)) Remainder: Royal Assent	—



**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
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**Part 1**

S. 3 ..... am. No. 199, 2012

**Part 2**

S. 8 ..... am. No. 199, 2012