



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

No. 204, 2012

An Act to amend legislation relating to clean energy, and for other purposes

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

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

No. 204, 2012

An Act to amend legislation relating to clean energy, and for other purposes

[Assented to 13 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012
No. 204, 2012 1

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 December 2012
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	14 December 2012
3. Schedule 1, Part 2	1 July 2013.	1 July 2013
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	14 December 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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—General amendments

Australian National Registry of Emissions Units Act 2011

1 Section 4

Insert:

Australian-issued international unit means a unit issued under section 48A.

2 Section 4

Insert:

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

3 Section 4

Insert:

Commonwealth foreign registry account has the meaning given by section 86A.

4 Section 4

Insert:

European allowance unit means an allowance (within the meaning of the European Union Greenhouse Gas Emission Allowance Trading Directive) issued by, or under the authority of:

- (a) a foreign country that is a Member State of the European Union; or
- (b) a foreign country that:
 - (i) is not a Member State of the European Union; and
 - (ii) participates in the scheme for greenhouse gas emission allowance trading established by the Directive;

but does not include an allowance issued in respect of aviation activities listed in Annex 1 of the Directive.

5 Section 4

Insert:

European Union Greenhouse Gas Emission Allowance Trading Directive means Directive 2003/87/EC of the European Parliament and of the Council, as amended.

6 Section 4

Insert:

foreign government body means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country; or
- (d) a foreign local government body or foreign regional government body.

7 Section 4

Insert:

international arrangement means an arrangement between Australia and:

- (a) a foreign government body; or
- (b) an international organisation.

8 Section 4

Insert:

international organisation means:

- (a) an organisation:
 - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
 - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation established by, or a group of organisations constituted by:

- (i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or
- (ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or
- (c) an organisation that is:
 - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); or
 - (ii) a commission, council or other body established by an organisation so described or by such an organ; or
 - (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

9 Section 4 (at the end of the definition of *issue*)

Add:

; or (c) in relation to an Australian-issued international unit—means issue under section 48A.

10 Section 4 (paragraph (b) of the definition of *prescribed international unit*)

Omit “country.”, substitute “country; or”.

11 Section 4 (after paragraph (b) of the definition of *prescribed international unit*)

Insert:

- (c) a European allowance unit; or
- (d) an Australian-issued international unit.

12 Section 4

Insert:

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

13 Section 4

Insert:

relinquish, in relation to an Australian-issued international unit, means relinquish under section 66D.

14 Subsection 21(1)

Omit “international agreement, to the extent to which it”, substitute “international agreement or international arrangement, to the extent to which the agreement or arrangement”.

15 Before section 48

Insert:

Division 1—Introduction

16 Section 48

Before:

- This Part sets out rules about dealings with prescribed international units.

Insert:

- The Regulator may issue Australian-issued international units.

17 Before section 49

Insert:

Division 2—Australian-issued international units

48A Issue of Australian-issued international units

The Regulator may, on behalf of the Commonwealth, issue units, to be known as *Australian-issued international units*.

Note: See also section 48D.

48B Serial number

- (1) An Australian-issued international unit is to be identified by a unique number, to be known as the *serial number* of the unit.

- (2) For the purposes of this section, *number* includes a combination of:
- (a) one or more digits; and
 - (b) one or more letters.

48C How Australian-issued international units are to be issued

- (1) The Regulator is to issue an Australian-issued international unit to a person by making an entry for the unit in a Registry account kept by the person.
- (2) An entry for an Australian-issued international unit in a Registry account is to consist of the serial number of the unit.
- (3) The Regulator must not issue an Australian-issued international unit to a person unless the person has a Registry account.

48D When Australian-issued international units may be issued

- (1) The Regulator must not issue an Australian-issued international unit unless the conditions set out in the regulations are satisfied.
- (2) Regulations made for the purpose of subsection (1) must give effect to the principle that an Australian-issued international unit must not be issued unless a corresponding foreign emissions unit has been withdrawn from circulation within a foreign registry.
- (3) For the purposes of this section, a *corresponding foreign emissions unit* means a unit (however described) that is issued outside Australia.

48E Regulations about Australian-issued international units

- (1) The regulations may make further provision in relation to Australian-issued international units.
- (2) Regulations made for the purposes of subsection (1) may make provision requiring a person to notify a matter to the Regulator.
- (3) Subsection (2) does not limit subsection (1).

Requirement

- (4) If a person is subject to a requirement under regulations made for the purposes of subsection (1) or (2), the person must comply with that requirement.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (4); or
 - (d) conspire with others to effect a contravention of subsection (4).

Civil penalty provisions

- (6) Subsections (4) and (5) are ***civil penalty provisions***.

Note: Part 7 provides for pecuniary penalties for breaches of civil penalty provisions.

Division 3—General provisions

18 Section 57

Before “The regulations”, insert “(1)”.

19 At the end of section 57

Add:

- (2) The regulations may modify this Division so far as this Division applies to a specified class of Australian-issued international units.

20 After section 59

Insert:

59A Information about prescribed international units

As soon as practicable after the end of each quarter, the Regulator must, for each class of prescribed international units specified in the regulations, publish on the Regulator's website:

- (a) the total number of prescribed international units of that class for which there are entries in Registry accounts as at the end of a quarter; and
- (b) such other information (if any) relating to the units, or to the registered holders of the units, as is specified in the regulations.

21 At the end of section 61

Add:

European allowance units

- (5) Within 30 days after the commencement of regulations that:
 - (a) are made for the purposes of the definition of *foreign registry* in section 4; and
 - (b) specify the European Union registry that is operated for the purposes of the European Union Greenhouse Gas Emission Allowance Trading Directive;

the Regulator must:

- (c) publish on the Regulator's website a statement setting out a concise description of the characteristics of European allowance units; and
- (d) keep that statement up-to-date.

Australian-issued international units

- (6) Within 30 days after the commencement of regulations made for the purposes of section 48D, the Regulator must:
 - (a) publish on the Regulator's website a statement setting out a concise description of the characteristics of Australian-issued international units; and
 - (b) keep that statement up-to-date.

22 At the end of Part 5

Add:

63B Relinquishment requirement to be entered in the Information Database

Scope

- (1) This section applies if there is an entry for a person in the Information Database in relation to a financial year.

Relinquishment requirement

- (2) If, under this Act, the person is required, during the financial year, to relinquish a particular number of Australian-issued international units, the Regulator must enter in the Information Database details of the relinquishment requirement.

63C Unpaid administrative penalty to be entered in the Information Database

Scope

- (1) This section applies if:
 - (a) there is an entry for a person in the Information Database in relation to a financial year; and
 - (b) under this Act, the person is required to relinquish a particular number of Australian-issued international units; and
 - (c) during the financial year, an amount (the *penalty amount*) payable by the person under section 66F in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment.

Penalty amount

- (2) The Regulator must enter in the Information Database details of the unpaid penalty amount.

63D Number of relinquished units to be entered in the Information Database

Scope

- (1) This section applies if:
- (a) there is an entry for a person in the Information Database in relation to a financial year; and
 - (b) under this Act, the person is required to relinquish a particular number of Australian-issued international units; and
 - (c) during the financial year, the person:
 - (i) relinquishes one or more Australian-issued international units in order to comply with the requirement; or
 - (ii) transfers one or more substitute units under section 66E instead of relinquishing the Australian-issued international units.

Units relinquished etc.

- (2) As soon as practicable after receiving the notice of relinquishment or the section 66E notice, as the case may be, the Regulator must enter in the Information Database whichever of the following is applicable:
- (a) the total number of Australian-issued international units relinquished;
 - (b) the total number of substitute units transferred under section 66E.

Substitute unit

- (3) In this section:

substitute unit has the same meaning as in section 66E.

63E Information about relinquishment requirement applicable to a person who is not in the Information Database

Scope

- (1) This section applies if:
-

- (a) under this Act, a person is required, during a financial year, to relinquish a particular number of Australian-issued international units; and
- (b) there is no entry for the person in the Information Database in relation to the financial year.

Relinquishment requirement

- (2) The Regulator must publish on its website:
 - (a) the name of the person; and
 - (b) details of the relinquishment requirement.

63F Information about unpaid administrative penalties applicable to a person who is not in the Information Database

Scope

- (1) This section applies if:
 - (a) under this Act, a person is required to relinquish a particular number of Australian-issued international units; and
 - (b) during an eligible financial year, an amount (the *penalty amount*) payable by the person under section 66F in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment; and
 - (c) there is no entry for the person in the Information Database in relation to the financial year.

Penalty amount

- (2) The Regulator must publish on its website:
 - (a) the name of the person; and
 - (b) details of the unpaid penalty amount.

63G Information about number of units relinquished by a person who is not in the Information Database

Scope

- (1) This section applies if:
-

- (a) under this Act, a person is required to relinquish a particular number of Australian-issued international units; and
- (b) during a financial year, the person:
 - (i) relinquishes one or more Australian-issued international units in order to comply with the requirement; or
 - (ii) transfers one or more substitute units under section 66E instead of relinquishing the Australian-issued international units; and
- (c) there is no entry for the person in the Information Database in relation to the financial year.

Units relinquished etc.

- (2) As soon as practicable after receiving the relinquishment notice or the section 66E notice, as the case may be, the Regulator must publish on its website:
 - (a) the name of the person; and
 - (b) whichever of the following is applicable:
 - (i) the total number of Australian-issued international units relinquished;
 - (ii) the total number of substitute units transferred under section 66E.

Substitute unit

- (3) In this section:

substitute unit has the same meaning as in section 66E.

23 After Part 6

Insert:

Part 6A—Cancellation of Australian-issued international units

66A Cancellation of Australian-issued international units

Scope

- (1) This section applies to an Australian-issued international unit if:
 - (a) there is an entry for the unit in a person's Registry account;
and
 - (b) the conditions set out in the regulations are satisfied.

Cancellation of unit

- (2) The Regulator must cancel the unit.
- (3) The Regulator must remove the entry for the unit from the person's Registry account.
- (4) The Registry must set out a record of each cancellation under subsection (2).

Part 6B—Relinquishment of Australian-issued international units

Division 1—Introduction

66B Simplified outline

The following is a simplified outline of this Part:

- If a person is convicted of an offence relating to fraudulent conduct, and the issue of Australian-issued international units is attributable to the commission of the offence, a court may order the person to relinquish a specified number of Australian-issued international units.

- If a person is the registered holder of one or more Australian-issued international units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act.

Division 2—Court-ordered relinquishment

66C Units issued as a result of fraudulent conduct—court may order relinquishment

Scope

- (1) This section applies if:
 - (a) one or more Australian-issued international units were issued:
 - (i) to a person; or
 - (ii) at the direction or request of a person; on a particular occasion; and
 - (b) the person has been convicted of:
 - (i) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code*; or
 - (ii) an offence against a law of, or of a part of, a foreign country that corresponds to an offence covered by subparagraph (i); and
 - (c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

Note: For *appropriate court*, see subsection (8).

Relinquishment

- (2) The court may, on application made by the Director of Public Prosecutions or the Regulator, order the person:
 - (a) to relinquish a specified number of Australian-issued international units not exceeding the number of

- Australian-issued international units issued as mentioned in paragraph (1)(a); and
(b) to do so by a specified time.

Compliance

- (3) The person must comply with an order under subsection (2).

Note: An administrative penalty is payable under section 66F for non-compliance with a relinquishment requirement.

- (4) The person does not comply with an order under subsection (2) unless the notice of relinquishment specifies the order.
- (5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:
- (a) the person is not the registered holder of any Australian-issued international units; or
 - (b) the person is not the registered holder of the number of Australian-issued international units required to be relinquished.

Conviction

- (6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

Copy of order

- (7) A copy of an order under subsection (2) is to be given to the Regulator.

Appropriate court

- (8) For the purposes of this section, each of the following courts is an **appropriate court**:
- (a) if the offence is covered by subparagraph (1)(b)(i)—the court that convicted the person of the offence;
 - (b) in any case—the Federal Court;
 - (c) in any case—the Supreme Court of a State or Territory.

Spent convictions

- (9) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Division 3—How Australian-issued international units are relinquished

66D How Australian-issued international units are relinquished

- (1) If a person is the registered holder of one or more Australian-issued international units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- (2) A notice under subsection (1) must:
- (a) specify the Australian-issued international unit or units that are being relinquished; and
 - (b) if the Australian-issued international unit or units are being relinquished in order to comply with a particular order under subsection 66C(2)—specify the order; and
 - (c) set out such other information (if any) as is specified in the regulations.
- (3) If an Australian-issued international unit is relinquished by a person:
- (a) the unit is cancelled; and
 - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit; and
 - (c) the Regulator must take such other steps (if any) as are required by the regulations.
- (4) The Registry must set out a record of each notice under subsection (1).

66E Transfer of certain units instead of relinquishment of Australian-issued international units

Scope

- (1) This section applies if, under this Act, a person is required to relinquish a particular number of Australian-issued international units.

Transfer of certain units instead of relinquishment

- (2) The person may:
- (a) transfer to the Commonwealth an equal number of substitute units; and
 - (b) by electronic notice transmitted to the Regulator, inform the Regulator that the transfer is instead of the relinquishment of the Australian-issued international units.

Note: For *substitute unit*, see subsection (6).

- (3) A notice under subsection (2) must:
- (a) specify the substitute units that are being transferred; and
 - (b) specify the requirement concerned.
- (4) A transfer under subsection (2) must be in accordance with the regulations.

Consequences of transfer

- (5) If the person transfers the substitute units specified in the notice under subsection (2), this Act (other than sections 63D and 63G and subsection 66D(3)) has effect as if the person had relinquished the Australian-issued international units in order to comply with the requirement concerned.
- (6) If the person transfers the substitute units specified in the notice under subsection (2):
- (a) the units are cancelled; and
 - (b) the Regulator must remove the entries for the units from the person's Registry account or accounts in which there are entries for the units; and
 - (c) the Regulator must take such other steps (if any) as are required by the regulations.

Substitute unit

- (7) For the purposes of this section, each of the following is a ***substitute unit***:
- (a) a carbon unit;
 - (b) an eligible Australian carbon credit unit (within the meaning of the *Clean Energy Act 2011*).

Division 4—Compliance with relinquishment requirements

66F Compliance with relinquishment requirements

Scope

- (1) This section applies if, under this Act:
- (a) a person is required to relinquish a particular number of Australian-issued international units; and
 - (b) the person is required to do so by a particular time (the ***compliance deadline***).

No units relinquished

- (2) If, by the compliance deadline, the person has not relinquished any Australian-issued international units in order to comply with the requirement, the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\begin{array}{r} \text{Number of units} \\ \text{required to be relinquished} \end{array} \times \begin{array}{r} \text{Prescribed amount} \\ \text{for the financial year} \\ \text{in which the compliance} \\ \text{deadline occurs} \end{array}$$

where:

prescribed amount for the financial year in which the compliance deadline occurs means:

- (a) if the requirement arose before the end of 31 July 2013—\$46; or
- (b) if the requirement arose during the period beginning at the start of 1 August 2013 and ending at the end of 31 July 2014—\$48.30; or

- (c) if the requirement arose during the period beginning at the start of 1 August 2014 and ending at the end of 31 July 2015—\$50.80; or
 - (d) in any other case:
 - (i) if an amount is specified in the corresponding regulations for the financial year in which the compliance deadline occurs—that amount; or
 - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.
- (3) In subsection (2), ***corresponding regulations*** means regulations made for the purposes of subparagraph (d)(i) of the definition of ***prescribed amount for the financial year in which the compliance deadline occurs*** in subsection 212(2) of the *Clean Energy Act 2011*.

Relinquishment of insufficient units

- (4) If, by the compliance deadline:
- (a) the person has relinquished one or more Australian-issued international units in order to comply with the requirement; and
 - (b) the number of relinquished units is less than the number of units required to be relinquished;

the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\left(\begin{array}{c} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{c} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \begin{array}{c} \text{Prescribed amount for} \\ \text{the financial year in} \\ \text{which the compliance} \\ \text{deadline occurs} \end{array}$$

where:

prescribed amount for the financial year in which the compliance deadline occurs means:

- (a) if the requirement arose before the end of 31 July 2013—\$46; or
- (b) if the requirement arose during the period beginning at the start of 1 August 2013 and ending at the end of 31 July 2014—\$48.30; or

- (c) if the requirement arose during the period beginning at the start of 1 August 2014 and ending at the end of 31 July 2015—\$50.80; or
- (d) in any other case:
 - (i) if an amount is specified in the corresponding regulations for the financial year in which the compliance deadline occurs—that amount; or
 - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.
- (5) In subsection (4), ***corresponding regulations*** means regulations made for the purposes of subparagraph (d)(i) of the definition of ***prescribed amount for the financial year in which the compliance deadline occurs*** in subsection 212(3) of the *Clean Energy Act 2011*.

When penalty becomes due and payable

- (6) An amount payable under this section is due and payable at the end of 30 days after the compliance deadline.

Compliance

- (7) For the purposes of this section, a person relinquishes Australian-issued international units in order to comply with a particular requirement under this Act if, and only if, the notice of relinquishment specifies the requirement.
- (8) To avoid doubt, a person may be liable to pay a penalty under this section even if:
 - (a) the person is not the registered holder of any Australian-issued international units; or
 - (b) the person is not the registered holder of the number of Australian-issued international units required to be relinquished.

66G Late payment penalty

Penalty

- (1) If an amount payable by a person under section 66F remains unpaid after the time when it became due for payment, the person

is liable to pay, by way of penalty, an amount calculated at the rate of:

- (a) 20% per annum; or
- (b) if a lower rate per annum is specified in regulations made for the purposes of paragraph 213(1)(b) of the *Clean Energy Act 2011*—that lower rate per annum;

on the amount unpaid, computed from that time.

Power to remit

- (2) The Regulator may remit the whole or a part of an amount payable under subsection (1) if:
 - (a) the Regulator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
 - (b) the Regulator is satisfied:
 - (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
 - (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or
 - (c) the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.
- (3) The Regulator may exercise the power conferred by subsection (2):
 - (a) on written application being made to the Regulator by a person; or
 - (b) on the Regulator's own initiative.

Refusal

- (4) If:
 - (a) the Regulator decides to refuse to remit the whole or a part of an amount payable under subsection (1); and
 - (b) the Regulator made the decision in response to an application;the Regulator must give written notice of the decision to the applicant.

66H Recovery of penalties

An amount payable under section 66F or 66G:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

66J Set-off

If:

- (a) an amount (the *first amount*) is payable under section 66F or 66G by a person; and
 - (b) the following conditions are satisfied in relation to another amount (the *second amount*):
 - (i) the amount is payable by the Commonwealth to the person;
 - (ii) the amount is of a kind specified in the regulations;
- the Regulator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

66K Refund of overpayments

If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:

- (a) an amount payable under section 66F;
- (b) an amount payable under section 66G.

Note: For appropriation, see section 28 of the *Financial Management and Accountability Act 1997*.

Division 5—Offences relating to administrative penalties

66L Scheme to avoid existing liability to pay administrative penalty

Intention

- (1) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 66F; and

- (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
- (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
 - (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 66F; and
 - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the **first person**) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 66F; and
 - (b) at or after the time when the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;
to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

66M Scheme to avoid future liability to pay administrative penalty

Intention

- (1) A person commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 66F; and
 - (b) before the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 66F; and
 - (b) before the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:

- (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;
- having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the **first person**) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 66F; and
 - (b) before the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;to pay the penalty.

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Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

66N Meaning of *scheme* and *trust*

For the purposes of this Division, *scheme* and *trust* have the same respective meanings as in Part 19 of the *Clean Energy Act 2011*.

24 Paragraph 79(1)(c)

Omit “27(4);.”, substitute “27(4);”.

25 At the end of subsection 79(1)

Add:

- (d) subsection 48E(4).

26 Section 82 (at the end of the table)

Add:

- 15 A decision under section 66A to cancel an Australian-issued international unit.
- 16 A decision to refuse to remit the whole or a part of an amount under subsection 66G(2).

27 Before section 87

Insert:

86A Commonwealth foreign registry accounts

- (1) The Commonwealth may:
 - (a) open and operate an account within a foreign registry; and
 - (b) do anything incidental to, or ancillary to, the opening or operation of such an account.
- (2) An account opened under subsection (1) is to be known as a *Commonwealth foreign registry account*.

28 *Clean Energy Amendment (International Emissions Trading and Other Measures) Act*
2012 No. 204, 2012

Regulator's power to act on behalf of the Commonwealth

- (3) The Regulator may act on behalf of the Commonwealth in relation to the powers conferred by subsection (1).
- (4) The Minister may, by legislative instrument, give directions to the Regulator in relation to the Regulator's powers under subsection (3).
- (5) The Regulator must not open a Commonwealth foreign registry account on behalf of the Commonwealth unless directed to do so under subsection (4).

Clean Energy Act 2011

28 Section 5 (definition of *accept*)

Repeal the definition, substitute:

accept:

- (a) ***accept*** the quotation of an OTN has the meaning given by section 59 or 60; and
- (b) ***accept*** an own-use notification has the meaning given by section 64D or 64E.

29 Section 5 (paragraph (g) of the definition of *associated provisions*)

Repeal the paragraph.

30 Section 5 (definition of *auction*)

Repeal the definition, substitute:

auction, when used in relation to a carbon unit, means a process that involves inviting persons to indicate or declare what they would be willing to pay by way of charge for the issue of the unit.

31 Section 5

Insert:

Australian-issued international unit has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

32 Section 5

Insert:

average carbon unit auction price has the meaning given by section 196.

33 Section 5 (definition of *Commonwealth relinquished units account*)

Repeal the definition.

34 Section 5

Insert:

designated limit has the meaning given by section 123A.

35 Section 5

Insert:

designated limit percentage, in relation to a designated limit, has the meaning given by section 123A.

36 Section 5

Insert:

European allowance unit has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

37 Section 5

Insert:

follow-up notification has the meaning given by section 64H.

38 Section 5

Insert:

Kyoto unit has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

39 Section 5

Insert:

30 *Clean Energy Amendment (International Emissions Trading and Other Measures) Act*
2012 No. 204, 2012

own-use notification has the meaning given by section 64C.

40 Section 5

Insert:

per-tonne carbon price equivalent has the meaning given by section 196A.

41 Section 5 (at the end of the definition of *supply*, before the note)

Add:

Note 1: See also section 5A (special meaning of supply).

42 Section 5 (note at the end of the definition of *supply*)

After “Note”, insert “2”.

43 After section 5

Insert:

5A Special meaning of supply—natural gas

- (1) The regulations may provide that *supply*, when used in relation to natural gas in:
 - (a) section 35A; and
 - (b) the definition of *natural gas supplier* in section 5 so far as that definition relates to section 35A; and
 - (c) the remaining provisions of this Act so far as they relate to section 35A; and
 - (d) the provisions of the *National Greenhouse and Energy Reporting Act 2007* so far as they relate to section 35A of this Act;includes an act or a circumstance that, under the regulations, is taken to be a supply of natural gas.
- (2) The regulations may provide that *supply*, when used in relation to natural gas in:
 - (a) section 35A; and
 - (b) the definition of *natural gas supplier* in section 5 so far as that definition relates to section 35A; and

- (c) the remaining provisions of this Act so far as they relate to section 35A; and
 - (d) the provisions of the *National Greenhouse and Energy Reporting Act 2007* so far as they relate to section 35A of this Act;
- does not include an act or a circumstance that, under the regulations, is taken not to be a supply of natural gas.
- (3) For the purposes of this section, the following provisions are taken to relate to section 35A:
 - (a) subsections 20(14) and (15);
 - (b) subsections 21(8E) and (8F);
 - (c) subsections 22(12) and (13);
 - (d) subsections 23(9E) and (9F);
 - (e) subsections 24(8E) and (8F);
 - (f) subsections 25(7E) and (7F);
 - (g) Divisions 4A and 4B of Part 3.
 - (4) Regulations made for the purposes of subsection (1) or (2), in so far as they are relevant to the calculation of a preliminary emissions number, apply in relation to the calculation of a preliminary emissions number of a person for:
 - (a) an eligible financial year specified in those regulations; or
 - (b) a later eligible financial year.
 - (5) An eligible financial year specified under paragraph (4)(a) must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

44 Section 6

Before “For the”, insert “(1)”.

45 At the end of section 6

Add:

- (2) The regulations may provide that, for the purposes of:
 - (a) section 35A; and
 - (b) the remaining provisions of this Act so far as they relate to section 35A; and

- (c) the provisions of the *National Greenhouse and Energy Reporting Act 2007* so far as they relate to section 35A of this Act;
- the *supply* of natural gas occurs at the time ascertained in accordance with the regulations instead of at the time ascertained in accordance with subsection (1).
- (3) For the purposes of this section, the following provisions are taken to relate to section 35A:
- (a) subsections 20(14) and (15);
 - (b) subsections 21(8E) and (8F);
 - (c) subsections 22(12) and (13);
 - (d) subsections 23(9E) and (9F);
 - (e) subsections 24(8E) and (8F);
 - (f) subsections 25(7E) and (7F);
 - (g) Divisions 4A and 4B of Part 3.
- (4) Regulations made for the purposes of subsection (2), in so far as they are relevant to the calculation of a preliminary emissions number, apply in relation to the calculation of a preliminary emissions number of a person for: (a) an eligible financial year specified in those regulations; or (b) a later eligible financial year.
- (5) An eligible financial year specified under paragraph (4)(a) must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

46 At the end of section 20

Add:

Own-use notifications—no double counting

- (14) If:
- (a) the facility was under the operational control of the person throughout the eligible financial year; and
 - (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the person mentioned in paragraph (a)); and

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- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;the amount mentioned in paragraph (b):
 - (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (4)(b).
- (15) If:
- (a) the facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the *control days*); and
 - (b) during the control days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the person mentioned in paragraph (a)); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;the amount mentioned in paragraph (b):
 - (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (5)(b).

47 After subsection 21(8D)

Insert:

Own-use notifications—no double counting

(8E) If:

- (a) a designated joint venture had the facility throughout the eligible financial year; and
- (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be a participant in the designated joint venture); and
- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
- (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
- (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;

the amount mentioned in paragraph (b):

- (f) does not count for the purposes of subsection (1); and
- (g) counts for the purposes of paragraph (4)(b).

(8F) If:

- (a) the designated joint venture had the facility for a number of, but not all, days in the eligible financial year (the *control days*); and
- (b) during the control days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be a participant in the designated joint venture); and
- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
- (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
- (e) either:

- (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (5)(b).

48 At the end of section 22

Add:

Own-use notifications—no double counting

(12) If:

- (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
 - (b) during the eligible financial year, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the holder); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (4)(b).

(13) If:

- (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the *certificate days*); and

- (b) during the certificate days, an amount of covered emissions from the operation of the facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the holder); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (5)(b).

49 After subsection 23(9D)

Insert:

Own-use notifications—no double counting

- (9E) If:
- (a) the landfill facility was under the operational control of the person throughout the eligible financial year; and
 - (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the person mentioned in paragraph (a)); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:

- (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (4)(b).

(9F) If:

- (a) the landfill facility was under the operational control of the person for a number of, but not all, days in the eligible financial year (the *control days*); and
 - (b) during the control days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the person mentioned in paragraph (a)); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (5)(b).

50 After subsection 24(8D)

Insert:

Own-use notifications—no double counting

(8E) If:

- (a) the designated joint venture had the landfill facility throughout the eligible financial year; and

- (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be a participant in the designated joint venture); and
 - (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (4)(b).

(8F) If:

- (a) the designated joint venture had the landfill facility for a number of, but not all, days in the eligible financial year (the *control days*); and
- (b) during the control days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be a participant in the designated joint venture); and
- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
- (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
- (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;

the amount mentioned in paragraph (b):

- (f) does not count for the purposes of subsection (1); and
- (g) counts for the purposes of paragraph (5)(b).

51 After subsection 25(7D)

Insert:

Own-use notifications—no double counting

(7E) If:

- (a) the person was the holder of the liability transfer certificate throughout the eligible financial year; and
- (b) during the eligible financial year, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the holder); and
- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
- (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
- (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;

the amount mentioned in paragraph (b):

- (f) does not count for the purposes of subsection (1); and
- (g) counts for the purposes of paragraph (4)(b).

(7F) If:

- (a) the person was the holder of the liability transfer certificate for a number of, but not all, days in the eligible financial year (the *certificate days*); and
- (b) during the certificate days, an amount of covered emissions from the operation of the landfill facility was attributable to the combustion of natural gas that was supplied by a natural gas supplier to a person (the *recipient*) (who may be the holder); and

- (c) the natural gas supplier has, under section 35A, a provisional emissions number for an eligible financial year; and
 - (d) the provisional emissions number is wholly or partly attributable to the supply of the natural gas to the recipient; and
 - (e) either:
 - (i) the recipient gave the natural gas supplier an own-use notification in relation to the supply of the natural gas; or
 - (ii) the conditions specified in the regulations are satisfied;
- the amount mentioned in paragraph (b):
- (f) does not count for the purposes of subsection (1); and
 - (g) counts for the purposes of paragraph (5)(b).

52 After section 35

Insert:

35A Liable entity—regulations relating to supply of natural gas

Preliminary emissions number

- (1) The regulations may provide that, if:
 - (a) during:
 - (i) a specified eligible financial year; or
 - (ii) a later eligible financial year;a natural gas supplier supplies an amount of natural gas to another person (the *recipient*); and
 - (b) no preliminary emissions number under section 33 or 35 is wholly or partly attributable to:
 - (i) that supply of the natural gas; or
 - (ii) any previous supply of the natural gas; and
 - (c) it may reasonably be expected that no provisional emissions number under section 20, 21, 22, 23, 24 or 25 will be wholly or partly attributable to covered emissions from the use of the natural gas; and
 - (d) the conditions specified in the regulations are satisfied; and
 - (e) the potential greenhouse gas emissions embodied in the amount mentioned in paragraph (a) have a carbon dioxide equivalence of a particular number of tonnes;

that number is a **preliminary emissions number** of the natural gas supplier for the eligible financial year.

Provisional emissions number and liable entity

- (2) If the natural gas supplier has, under regulations made for the purposes of subsection (1), one or more preliminary emissions numbers for the eligible financial year, then, for the purposes of this Act:
- (a) the sum of the preliminary emissions numbers is a **provisional emissions number** of the natural gas supplier for the eligible financial year; and
 - (b) the natural gas supplier is a **liable entity** for the eligible financial year.

Reduction of provisional emissions number

- (3) If:
- (a) the natural gas supplier has, under subsection (2), a provisional emissions number for an eligible financial year; and
 - (b) the natural gas supplier has one or more netted-out numbers for the eligible financial year (see subsections (4) and (5));
- the provisional emissions number is to be reduced (but not below zero) by the total of those netted-out numbers.

Netted-out numbers

- (4) If:
- (a) a natural gas supplier has, under subsection (1), a preliminary emissions number for an eligible financial year; and
 - (b) the preliminary emissions number is attributable to the supply by the natural gas supplier of an amount of natural gas to another person (the **recipient**); and
 - (c) within 28 days after the end of the eligible financial year, the recipient has given a follow-up notification to the natural gas supplier in relation to one or more parts of the amount mentioned in paragraph (b); and
 - (d) the potential greenhouse gas emissions embodied in the remainder of the amount mentioned in paragraph (b) have a carbon dioxide equivalence of a particular number of tonnes;

the number mentioned in paragraph (d) is a **netted-out number** of the natural gas supplier for the eligible financial year.

- (5) The regulations may provide that, for the purposes of this section, a number ascertained in accordance with the regulations is a **netted-out number** of a natural gas supplier for an eligible financial year ascertained in accordance with the regulations.

Specified eligible financial year

- (6) The eligible financial year specified under paragraph (1)(a) must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

Own-use notification

- (7) A condition specified in regulations made for the purposes of paragraph (1)(d) may be a condition that the recipient has given an own-use notification to the natural gas supplier in relation to the supply of the natural gas.
- (8) Subsection (7) does not limit paragraph (1)(d).

No double counting

- (9) For the purposes of paragraph (1)(c), disregard the following provisions:
- (a) subsections 20(14) and (15);
 - (b) subsections 21(8E) and (8F);
 - (c) subsections 22(12) and (13);
 - (d) subsections 23(9E) and (9F);
 - (e) subsections 24(8E) and (8F);
 - (f) subsections 25(7E) and (7F).

Preliminary emissions number

- (10) For the purposes of this Act, a preliminary emissions number under regulations made for the purposes of subsection (1) is taken to be a preliminary emissions number under this section.

35B Liable entity—regulations relating to application of natural gas to own use

- (1) The regulations may provide that, if:
- (a) during:
 - (i) a specified eligible financial year; or
 - (ii) a later eligible financial year;a person applies an amount of natural gas to the person's own use; and
 - (b) greenhouse gas is released into the atmosphere as a direct result of the application of the amount of natural gas to the person's own use; and
 - (c) no preliminary emissions number under section 33 or 35 is wholly or partly attributable to any supply of the natural gas; and
 - (d) no provisional emissions number under section 35A is wholly or partly attributable to any supply of the natural gas; and
 - (e) no provisional emissions number under section 20, 21, 22, 23, 24 or 25 is wholly or partly attributable to covered emissions from the use of the natural gas; and
 - (f) the conditions specified in the regulations are satisfied; and
 - (g) the potential greenhouse gas emissions embodied in the amount mentioned in paragraph (a) have a carbon dioxide equivalence of a particular number of tonnes;
- then, for the purposes of this Act:
- (h) that number is a *provisional emissions number* of the person for the eligible financial year; and
 - (i) the person is a *liable entity* for the eligible financial year.

Specified eligible financial year

- (2) The eligible financial year specified under paragraph (1)(a) must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

Provisional emissions number

- (3) For the purposes of this Act, a provisional emissions number under regulations made for the purposes of subsection (1) is taken to be a provisional emissions number under this section.

Liable entity

- (4) For the purposes of this Act, a person who is a liable entity under regulations made for the purposes of subsection (1) is taken to be a liable entity under this section.

53 After Division 4 of Part 3

Insert:

Division 4A—Own-use notifications

64A Voluntary own-use notification

If the conditions specified in the regulations are satisfied, a person (the *recipient*) may give an own-use notification to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier to the recipient.

64B Mandatory own-use notification

- (1) If the conditions specified in the regulations are satisfied, a person (the *recipient*) must give an own-use notification to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier to the recipient.

Civil penalty provision

- (2) Subsection (1) is a *civil penalty provision*.

Note: Part 17 provides for pecuniary penalties for breaches of civil penalty provisions.

64C Method of giving own-use notification

- (1) A person (the *recipient*) gives an *own-use notification* to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier to the recipient if:

- (a) the recipient makes a statement to the natural gas supplier in connection with:
 - (i) the supply; or
 - (ii) a class of supplies that includes the supply; and
 - (b) the statement is in writing; and
 - (c) the statement sets out:
 - (i) the words “clean energy scheme—own-use notification”; and
 - (ii) the name of the recipient; and
 - (iii) if the recipient has an ABN—the ABN; and
 - (iv) such other information (if any) as is specified in the regulations.
- (2) A statement under subsection (1) may be included in a contract, order or similar document, whether or not in electronic form.

64D Acceptance of own-use notification in relation to a single supply

Scope

- (1) This section applies if a person (the *recipient*) gives an own-use notification to a natural gas supplier in relation to a single supply.

Acceptance of own-use notification

- (2) If the conditions set out in the regulations are satisfied, the natural gas supplier may, by written notice given to the recipient, accept the own-use notification.
- (3) If the conditions set out in the regulations are satisfied, the natural gas supplier must, by written notice given to the recipient, accept the own-use notification.
- (4) A notice given by the natural gas supplier under subsection (2) or (3) must set out:
 - (a) the words “clean energy scheme—acceptance of own-use notification”; and
 - (b) the name of the recipient; and
 - (c) if the recipient has an ABN—the ABN; and
 - (d) a description of the supply; and
 - (e) the name of the natural gas supplier; and

- (f) if the natural gas supplier has an ABN—the ABN; and
 - (g) such other information (if any) as is specified in the regulations.
- (5) A notice under subsection (2) or (3) may be included in a contract, order or similar document, whether or not in electronic form.
 - (6) If the natural gas supplier does not accept the own-use notification, this Act (other than this section) has effect as if the recipient had not given the own-use notification to the natural gas supplier in relation to the supply.

Civil penalty provision

- (7) Subsection (3) is a *civil penalty provision*.

Note: Part 17 provides for pecuniary penalties for breaches of civil penalty provisions.

64E Acceptance of own-use notification in relation to a class of supplies

Scope

- (1) This section applies if a person (the *recipient*) gives an own-use notification to a natural gas supplier in relation to a particular class of supplies.

Acceptance of own-use notification

- (2) If the conditions set out in the regulations are satisfied, the natural gas supplier may, by written notice given to the recipient, accept the own-use notification.
- (3) If the conditions set out in the regulations are satisfied, the natural gas supplier must, by written notice given to the recipient, accept the own-use notification.
- (4) A notice given by the natural gas supplier under subsection (2) or (3) must set out:
 - (a) the words “clean energy scheme—acceptance of own-use notification”; and
 - (b) the name of the recipient; and
 - (c) if the recipient has an ABN—the ABN; and

- (d) a description of the class of supplies; and
 - (e) the name of the natural gas supplier; and
 - (f) if the natural gas supplier has an ABN—the ABN; and
 - (g) such other information (if any) as is specified in the regulations.
- (5) A notice under subsection (2) or (3) may be included in a contract, order or similar document, whether or not in electronic form.
- (6) If the natural gas supplier does not accept the own-use notification, this Act (other than this section) has effect as if the recipient had not given the own-use notification to the natural gas supplier in relation to each supply included in the class of supplies.

Civil penalty provision

- (7) Subsection (3) is a ***civil penalty provision***.

Note: Part 17 provides for pecuniary penalties for breaches of civil penalty provisions.

64F Misuse of own-use notification

- (1) A person (the ***recipient***) must not give an own-use notification to a natural gas supplier in relation to a supply of natural gas by the natural gas supplier to the recipient unless:
- (a) the recipient is permitted to do so by section 64A; or
 - (b) the recipient is required to do so by section 64B.
- (2) If the recipient breaches subsection (1), this Act (other than this section) has effect as if the recipient had not given an own-use notification to the natural gas supplier in relation to the supply of natural gas concerned.

Civil penalty provision

- (3) Subsection (1) is a ***civil penalty provision***.

Note: Part 17 provides for pecuniary penalties for breaches of civil penalty provisions.

Division 4B—Follow-up notifications

64G Follow-up notification

- (1) If the conditions specified in the regulations are satisfied, a person (the *recipient*) may give a follow-up notification to a natural gas supplier in relation to one or more parts of an amount of natural gas supplied by the natural gas supplier to the recipient.
- (2) The recipient is not entitled to give more than one follow-up notification to the natural gas supplier in connection with the amount of natural gas supplied by the natural gas supplier to the recipient.

64H Method of giving follow-up notification

- (1) A person (the *recipient*) gives a *follow-up notification* to a natural gas supplier in relation to one or more parts (the *relevant parts*) of an amount of natural gas supplied by the natural gas supplier to the recipient if:
 - (a) the recipient makes a statement to the natural gas supplier in connection with the relevant parts; and
 - (b) the statement is in writing; and
 - (c) the statement specifies the relevant parts; and
 - (d) the statement sets out:
 - (i) the words “clean energy scheme—follow-up notification”; and
 - (ii) the name of the recipient; and
 - (iii) if the recipient has an ABN—the ABN; and
 - (iv) such other information (if any) as is specified in the regulations.
- (2) A statement under subsection (1) may be included in a document, whether or not in electronic form.

64J Misuse of follow-up notification

- (1) A person (the *recipient*) must not give a follow-up notification to a natural gas supplier in relation to one or more parts (the *relevant parts*) of an amount of natural gas supplied by the natural gas

supplier to the recipient unless the recipient is permitted to do so by section 64G.

- (2) If the recipient breaches subsection (1), this Act (other than this section) has effect as if the recipient had not given a follow-up notification to the natural gas supplier in relation the relevant parts.

Civil penalty provision

- (3) Subsection (1) is a *civil penalty provision*.

Note: Part 17 provides for pecuniary penalties for breaches of civil penalty provisions.

54 Subparagraph 92A(4)(b)(i)

After “a GST joint venture”, insert “, or the joint venture operator of a GST joint venture,”.

55 At the end of subparagraph 92A(4)(b)(ii)

Add “or the joint venture operator of the GST joint venture”.

56 Paragraph 92A(4)(b)

After “GST joint venture” (last occurring), insert “, or the joint venture operator of the GST joint venture,”.

57 After subsection 92A(8)

Insert:

- (8A) For the purposes of this section, *joint venture operator* has the same meaning as in the *Fuel Tax Act 2006*.

58 Subsection 101(1)

Omit “15 million”, substitute “20 million”.

59 After subsection 101(1)

Insert:

- (1A) Subsection (1) does not apply to carbon units with the vintage year beginning on 1 July 2015 that are issued as a result of auctions that are conducted by the Regulator during the financial year beginning on 1 July 2013.

(1B) The Regulator must ensure that not more than 40 million carbon units with the vintage year beginning on 1 July 2015 are issued as a result of auctions that were conducted by the Regulator during the financial year beginning on 1 July 2013 if there are no regulations in effect that declare the carbon pollution cap, and the carbon pollution cap number, for the vintage year.

60 Subsection 101(2)

Omit “15 million”, substitute “20 million”.

61 At the end of section 101

Add:

(3) The Regulator must ensure that no carbon units with a particular vintage year are issued as a result of auctions that were conducted by the Regulator during a financial year if the financial year begins more than 36 months before the start of the vintage year.

62 Paragraph 102(1)(a)

After “year”, insert “(the *relevant vintage year*)”.

63 Paragraphs 102(1)(b) and (c)

Omit “that vintage year”, substitute “the relevant vintage year”.

64 Subsection 102(1)

Omit “carbon pollution cap number for that vintage year.”, substitute:
sum of:

- (d) the carbon pollution cap number for the relevant vintage year; and
- (e) the total number of carbon units with the relevant vintage year that were relinquished before the start of the relevant vintage year; and
- (f) the total number of carbon units with the relevant vintage year, or with an earlier vintage year, that were relinquished during the relevant vintage year.

65 Subsection 102(3)

Repeal the subsection.

66 Subsection 111(5)

Omit all the words from and including “so long as” to and including “that reserve charge amount”, substitute “so long as, in a case where there is a reserve charge amount in relation to the auction (see subsection (6A)), 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”.

67 After subsection 111(6)

Insert:

(6A) The Minister may, by legislative instrument, determine that, for the purposes of subsection (5), the *reserve charge amount* in relation to a specified auction is the amount ascertained in accordance with the determination.

68 Section 112

Repeal the section.

69 Paragraph 113(2)(m)

Repeal the paragraph.

70 Paragraph 113(2)(r)

Omit “in the case of an auction under section 111—”.

71 Paragraph 113(2)(r)

Omit “charges;”, substitute “charges.”.

72 Paragraph 113(2)(s)

Repeal the paragraph.

73 Section 121

Omit:

- | |
|--|
| <ul style="list-style-type: none">• An eligible international emissions unit cannot be surrendered in relation to the first 3 flexible charge years unless the person pays the charge imposed on that surrender. |
|--|

74 Section 121 (note 1)

Omit “Note 1”, substitute “Note”.

75 Section 121 (note 2)

Repeal the note.

76 After subsection 123(1)

Insert:

- (1A) In making a recommendation to the Governor-General about regulations to be made for the purposes of subsection (1), the Minister must have regard to any relevant report given to the Minister by the Climate Change Authority under Part 22.

77 Paragraph 123(2)(d)

Repeal the paragraph.

78 After paragraph 123(2)(e)

Insert:

- (ea) the extent to which the regulations would facilitate linking of the scheme embodied in this Act and the associated provisions with other emissions trading schemes; and

79 After section 123

Insert:

123A Designated limit

General rule—units other than listed units

- (1) The regulations may declare that:
- (a) eligible international emissions units (other than listed units) included in a specified class of eligible international emissions units are subject to a **designated limit** for:
 - (i) a specified eligible financial year; and
 - (ii) each later eligible financial year; and
 - (b) a specified percentage is the **designated limit percentage** applicable to that designated limit.

Note: For **listed unit**, see subsection (8).

- (2) Each designated limit must be identified in the regulations by a unique name.
- (3) The specified eligible financial year must not be earlier than the eligible financial year beginning on 1 July 2015.
- (4) The specified eligible financial year must be later than the second eligible financial year after the eligible financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.
- (5) However, if the Minister is satisfied that it is appropriate to do so in order to give effect to:
 - (a) an international agreement; or
 - (b) an international arrangement (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); or
 - (c) an amendment of such an agreement or arrangement; or
 - (d) the termination of such an agreement or arrangement;the specified eligible financial year may be the eligible financial year next following the eligible financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

Special rule—listed units

- (6) The following provisions have effect:
 - (a) eligible international emissions units that are listed units are subject to a ***designated limit*** for:
 - (i) the eligible financial year beginning on 1 July 2015; and
 - (ii) each later eligible financial year; and
 - (b) the ***designated limit percentage*** applicable to that designated limit for the eligible financial year concerned is:
 - (i) 12.5%; or
 - (ii) if the eligible financial year begins on or after 1 July 2020, and the regulations specify another percentage for that year—that other percentage; and
 - (c) that designated limit is to be known as the ***listed unit designated limit***.

- (7) A percentage must not be specified for an eligible financial year in regulations made for the purposes of subparagraph (6)(b)(ii) unless the eligible financial year is later than the eligible financial year in which the regulations are registered under the *Legislative Instruments Act 2003*.

Listed unit

- (8) For the purposes of this section, ***listed unit*** means:
- (a) a Kyoto unit; or
 - (b) an eligible international emissions unit included in a class of eligible international emissions units specified in the regulations.
- (9) Regulations made for the purposes of paragraph (8)(b) must not specify either of the following classes of units:
- (a) European allowance units;
 - (b) Australian-issued international units that were issued in relation to European allowance units.

Regulations

- (10) In making a recommendation to the Governor-General about regulations to be made for the purposes of this section, the Minister must have regard to any relevant report given to the Minister by the Climate Change Authority under Part 22.
- (11) In making a recommendation to the Governor-General about regulations to be made for the purposes of this section, the Minister may have regard to:
- (a) Australia's international objectives; and
 - (b) Australia's international obligations (including obligations under international climate change agreements); and
 - (c) the environmental integrity of this Act and the associated provisions; and
 - (d) the extent to which eligible international emissions units may be surrendered, accepted or used for the purposes of:
 - (i) the *Climate Change Response Act 2002* of New Zealand; or
 - (ii) the European Union emissions trading scheme; and

- (e) the extent to which the regulations would facilitate linking of the scheme embodied in this Act and the associated provisions with other emissions trading schemes; and
- (f) such other matters (if any) as the Minister considers relevant.

80 Section 124

Repeal the section.

80A Paragraph 126(2)(a)

Omit “a particular provision of Division 2 of Part 3 in so far as that provision”, substitute “Division 2 of Part 3 in so far as that Division”.

80B Paragraph 126(2)(b)

Omit “that provision in so far as that provision”, substitute “that Division in so far as that Division”.

80C Subsection 126(4)

Omit “provisional emissions number of the person for the relevant eligible financial year under a particular provision of Division 2 of Part 3 in so far as that provision”, substitute “total of the provisional emissions numbers of the person for the relevant eligible financial year under Division 2 of Part 3 in so far as that Division”.

80D Subparagraphs 127(1)(d)(ii) and (iii)

Omit “a particular provision of Division 2 of Part 3 in so far as that provision”, substitute “Division 2 of Part 3 in so far as that Division”.

81 Subsection 133(7)

Repeal the subsection, substitute:

Eligible international emissions units—surrender limits

- (7) If:
- (a) the relevant eligible financial year is:
 - (i) the eligible financial year beginning on 1 July 2015; or
 - (ii) a later eligible financial year; and
 - (b) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to

the relevant eligible financial year, eligible international emissions units; and

- (c) there is an unacceptable designated limit situation of the person for the relevant eligible financial year;

this section has effect as if:

- (d) the person had not, before the end of 1 February next following the relevant eligible financial year, surrendered, in relation to the relevant eligible financial year, the eligible international emissions units covered by the unacceptable designated limit situation; and

- (e) the person had, before the end of 1 February next following the next eligible financial year, surrendered, in relation to the next eligible financial year, the eligible international emissions units covered by the unacceptable designated limit situation.

Note 1: For *unacceptable designated limit situation*, see subsection (7F).

Note 2: For a special rule about the order in which units are taken to have been surrendered, see subsection (7G).

(7A) If:

- (a) the relevant eligible financial year is:
- (i) the eligible financial year beginning on 1 July 2015; or
 - (ii) any of the next 4 eligible financial years; and
- (b) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, eligible international emissions units; and
- (c) there is an unacceptable general limit situation of the person for the relevant eligible financial year;

this section has effect as if:

- (d) the person had not, before the end of 1 February next following the relevant eligible financial year, surrendered, in relation to the relevant eligible financial year, the eligible international emissions units covered by the unacceptable general limit situation; and

- (e) the person had, before the end of 1 February next following the next eligible financial year, surrendered, in relation to the next eligible financial year, the eligible international emissions units covered by the unacceptable general limit situation.

Schedule 1 Amendments
Part 1 General amendments

Note 1: For *unacceptable general limit situation*, see subsection (7E).

Note 2: For a special rule about the order in which units are taken to have been surrendered, see subsection (7G).

(7B) If there are 2 or more unacceptable designated limit situations of the person for the relevant eligible financial year, subsection (7) is to be applied separately in relation to each of those designated limit situations:

- (a) in the order ascertained in accordance with a legislative instrument made by the Minister; or
- (b) if no instrument is in force under paragraph (a)—in the order that corresponds to the lowest-to-highest ranking of the respective designated limit percentages applicable to the relevant designated limits (that is, with the lowest designated limit percentage being ranked 1 and the second lowest designated limit percentage being ranked 2 and so on).

(7C) For the purposes of paragraph (7B)(b), if the same designated limit percentage is applicable to 2 or more designated limits:

- (a) those designated limit percentages are to be ranked in the order that corresponds to the alphabetical order of the names of the respective designated limits (for example, with a percentage applicable to a designated limit that has a name beginning with the letter A being ranked 1 and a percentage applicable to a designated limit that has a name beginning with the letter B being ranked 2 and so on); and
- (b) that ranking is taken to be a lowest-to-highest ranking of those designated limit percentages.

(7D) Subsection (7A) is to be applied after:

- (a) if there is only one unacceptable designated limit situation of the person for the relevant eligible financial year—subsection (7) has been applied; or
- (b) if there are 2 or more unacceptable designated limit situations of the person for the relevant eligible financial year—the last application of subsection (7).

(7E) For the purposes of this section, if:

- (a) the relevant eligible financial year is:
 - (i) the eligible financial year beginning on 1 July 2015; or
 - (ii) any of the next 4 eligible financial years; and

- (b) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, eligible international emissions units; and
- (c) the number of eligible international emissions units exceeds 50% of the emissions number of the person for the relevant eligible financial year;

then:

- (d) there is an ***unacceptable general limit situation*** of the person for the relevant financial year; and
- (e) the eligible international emissions units covered by the situation are to be ascertained as follows:
 - (i) rank the units covered by paragraph (b) in the reverse consecutive order to the order in which the units were surrendered (that is, with the first most recently surrendered unit being ranked 1 and the second most recently surrendered unit being ranked 2 and so on);
 - (ii) identify the units ranked with a number that is less than, or equal to, the excess mentioned in paragraph (c);
 - (iii) the units identified under subparagraph (ii) of this paragraph are the units covered by the situation.

(7F) For the purposes of this section, if:

- (a) the relevant eligible financial year is:
 - (i) the eligible financial year beginning on 1 July 2015; or
 - (ii) a later eligible financial year; and
- (b) before the end of 1 February next following the relevant eligible financial year, the person surrendered, in relation to the relevant eligible financial year, eligible international emissions units; and
- (c) some or all of the eligible international emissions units are subject to a particular designated limit for the relevant eligible financial year; and
- (d) the number of units covered by paragraph (c) exceeds the applicable designated percentage of the emissions number of the person for the relevant eligible financial year;

then:

- (e) there is an ***unacceptable designated limit situation*** of the person for the relevant financial year; and

- (f) the eligible international emissions units covered by the situation are to be ascertained as follows:
- (i) rank the units covered by paragraph (c) in the reverse consecutive order to the order in which the units were surrendered (that is, with the first most recently surrendered unit being ranked 1 and the second most recently surrendered unit being ranked 2 and so on);
 - (ii) identify the units ranked with a number that is less than, or equal to, the excess mentioned in paragraph (d);
 - (iii) the units identified under subparagraph (ii) of this paragraph are the units covered by the situation.
- (7G) For the purposes of this section, if 2 or more eligible international emissions units are surrendered at the same time, the units are taken to have been surrendered:
- (a) in the order ascertained in accordance with a legislative instrument made by the Minister; or
 - (b) if no instrument is in force under paragraph (a)—in the order that corresponds to the numeric order of the serial numbers of the units.

82 Before subsection 196(1)

Insert:

11 months ending on 31 May 2015

- (1AA) Within 7 business days after the end of 31 May 2015, the Regulator must publish on its website the amount worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\frac{\text{Total auction proceeds}}{\text{Number of units issued as the result of auctions}}$$

where:

number of units issued as the result of auctions means the total number of carbon units that were issued as the result of auctions conducted by the Regulator during the 11-month period ending at the end of May 2015.

total auction proceeds means the total amount paid or payable by way of charges for the issue of carbon units that were issued as the result of auctions conducted by the Regulator during the 11-month period ending at the end of May 2015.

- (1AB) For the purposes of this Act, the amount worked out under subsection (1AA) is taken to be the *average carbon unit auction price* for the 6-month period ending at the end of May 2015.

83 Paragraph 196(1)(a)

Omit “2015”, substitute “2016”.

84 After subsection 196(1)

Insert:

- (1A) For the purposes of this Act, the amount worked out under subsection (1) is taken to be the *average carbon unit auction price* for the 6-month period ending at the end of that May.

85 After subsection 196(2)

Insert:

- (2A) For the purposes of this Act, the amount worked out under subsection (2) is taken to be the *average carbon unit auction price* for the 6-month period ending at the end of that November.

86 After section 196

Insert:

196A Per-tonne carbon price equivalent

- (1) Within 7 business days after the end of each designated 6-month period, the Regulator must publish on its website the per-tonne carbon price equivalent for the designated 6-month period.

Note: For *designated 6-month period*, see subsection (18).

Per-tonne carbon price equivalent—basic rule

- (2) The *per-tonne carbon price equivalent* for a designated 6-month period is to be worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\text{Total of adjusted reference prices} + \left[\left(1 - \frac{\text{Total of designated limit percentages}}{\text{Total of designated limit percentages}} \right) \times \text{Average carbon unit auction price} \right]$$

where:

average carbon unit auction price means the average carbon unit auction price for the designated 6-month period.

total of adjusted reference prices means the total of the adjusted reference prices for the designated 6-month period.

total of designated limit percentages means the total of the designated limit percentages for the classes of eligible international emissions units that are subject to designated limits for the financial year in which the designated 6-month period ends.

- (3) Subsection (2) has effect subject to subsection (4).

Per-tonne carbon price equivalent—special rule

- (4) If:
- (a) no instrument is in force under subsection (6) at the end of a particular designated 6-month period; or
 - (b) the per-tonne carbon price equivalent worked out under subsection (2) for a particular designated 6-month period is greater than the average carbon unit auction price for the designated 6-month period;

the **per-tonne carbon price equivalent** for the designated 6-month period is equal to the average carbon unit auction price for the designated 6-month period.

Reference prices

- (5) If:
- (a) a particular class of eligible international emissions units is subject to a designated limit for a particular financial year; and
 - (b) a designated 6-month period ends in the financial year;
- then, within 7 days after the end of the designated 6-month period, the Regulator must, by writing, declare that a specified amount is the **reference price** for the class of units for the designated 6-month period.

- (6) The Minister may, by legislative instrument, determine the method that is to be used by the Regulator in making a declaration under subsection (5).
- (7) In making a determination under subsection (6), the Minister must have regard to:
 - (a) prices paid (whether in or outside Australia) for eligible international emissions units included in each of the relevant classes of eligible international emissions units; and
 - (b) such other matters (if any) as the Minister considers relevant.
- (8) In making a declaration under subsection (5), the Regulator must comply with a determination in force under subsection (6).
- (9) The Regulator must publish a copy of a declaration under subsection (5) on the Regulator's website.
- (10) A declaration made under subsection (5) is not a legislative instrument.

Adjusted reference price

- (11) For the purposes of this section, if there is a reference price for a class of eligible international emissions units for a designated 6-month period, the **adjusted reference price** for the class of eligible international emissions units for the designated 6-month period is worked out using the formula:

Reference price × Designated limit percentage

where:

designated limit percentage means the designated limit percentage for the class of eligible international emissions units for the financial year in which the designated 6-month period ends.

reference price means the reference price for the class of eligible international emissions units for the designated 6-month period.

Modifications of formula etc.

- (12) If:
 - (a) there is a reference price for a class of eligible international emissions units for a designated 6-month period; and

- (b) the reference price is higher than the average carbon unit auction price for the designated 6-month period;
- then:
- (c) the adjusted reference price for the class of eligible international emissions units for the designated 6-month period is to be disregarded for the purposes of the *total of adjusted reference prices* component of the formula in subsection (2); and
 - (d) the designated limit percentage for the class of eligible international emissions units for the financial year in which the designated 6-month period ends is to be disregarded for the purposes of the *total of designated limit percentages* component of the formula in subsection (2).
- (13) If:
- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
 - (b) there is a class of eligible international emissions units (the *secondary class*) that:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year;
- the designated limit percentage for the secondary class of eligible international emissions units for the financial year is to be disregarded for the purposes of the *total of designated limit percentages* component of the formula in subsection (2).
- (14) If:
- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
 - (b) a designated 6-month period ends in the financial year; and
 - (c) there is a class of eligible international emissions units (the *secondary class*) that:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year; and
 - (d) the reference price for the secondary class of units for the designated 6-month period is greater than or equal to the

reference price for the principal class of units for the designated 6-month period;

the adjusted reference price for the secondary class of units for the designated 6-month period is to be disregarded for the purposes of the *total of adjusted reference prices* component of the formula in subsection (2).

- (15) For the purposes of this section, if:
- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
 - (b) a designated 6-month period ends in the financial year; and
 - (c) there are one or more classes of eligible international emissions units (the *secondary classes*) each of which:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year; and
 - (iii) has a reference price for the designated 6-month period that is less than the reference price for the principal class of units for the designated 6-month period;

the *adjusted reference price* for the principal class of units for the designated 6-month period is taken to be the amount worked out using the following formula (instead of the amount worked out under subsection (11)):

$$\text{Reference price for principal class} \times \left(\begin{array}{r} \text{Designated} \\ \text{limit percentage} \\ \text{for principal class} \end{array} - \begin{array}{r} \text{Total of designated} \\ \text{limit percentages} \\ \text{for secondary} \\ \text{classes} \end{array} \right)$$

where:

designated limit percentage for principal class means the designated limit percentage for the principal class of units for the financial year.

reference price for principal class means the reference price for the principal class of units for the designated 6-month period.

total of designated limit percentages for secondary classes means the total of the designated limit percentages for the secondary classes of units for the financial year.

Interpretation

- (16) For the purposes of this section, if:
- (a) a particular class of eligible international emissions units is subject to a designated limit for a particular financial year; and
 - (b) a designated limit percentage is applicable to that designated limit;
- then:
- (c) the designated limit percentage is taken to be the designated limit percentage for the class of eligible international emissions units for the financial year; and
 - (d) the class of eligible international emissions units is taken to be subject to the designated limit percentage.
- (17) For the purposes of this section, listed units form a single class of eligible international emissions units.
- (18) In this section:

adjusted reference price:

- (a) has the meaning given by subsection (11); and
- (b) has a meaning affected by subsection (15).

class of eligible international emissions units means:

- (a) the class mentioned in subsection (17); or
- (b) a class specified in regulations made for the purposes of subsection 123A(1).

designated 6-month period means:

- (a) the 6-month period ending at the end of May 2015; or
- (b) each later 6-month period ending at the end of May; or
- (c) the 6-month period ending at the end of November 2015; or
- (d) each later 6-month period ending at the end of November.

listed unit has the same meaning as in section 123A.

reference price has the meaning given by subsection (5).

87 Subsections 210(3) and (4)

Repeal the subsections, substitute:

- (3) If a carbon unit is relinquished by a person:
- (a) the unit is cancelled; and
 - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

88 After paragraph 262(1)(m)

Insert:

- (ma) subsection 64B(1);
- (mb) subsection 64D(3);
- (mc) subsection 64E(3);
- (md) subsection 64F(1);
- (me) subsection 64J(1);

89 Paragraphs 288(1)(f) and (g)

Repeal the paragraphs.

90 Paragraphs 293(4)(f) and (g)

Repeal the paragraphs.

91 Paragraph 307(9)(e)

Omit "2011;," substitute "2011."

92 Paragraph 307(9)(f)

Repeal the paragraph.

Fuel Tax Act 2006

93 Paragraphs 43-8(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) is the per-tonne carbon price equivalent worked out under section 196A of the *Clean Energy Act 2011* for the 6-month period ending at the end of:
 - (i) the last May before the start of the half-year, if the half-year starts on 1 July (in 2015 or a later year); or
 - (ii) the last November before the start of the half-year, if the half-year starts on 1 January (in 2016 or a later year);and

(b) is the first per-tonne carbon price equivalent that is worked out under that section for that 6-month period and published under that section.

National Greenhouse and Energy Reporting Act 2007

94 Subsection 12(3)

Omit “the chief executive officer”, substitute “an executive officer”.

95 Subparagraph 22K(5)(d)(iii)

Omit “the chief executive officer”, substitute “an executive officer”.

Part 2—Amendments relating to fuel

Clean Energy Act 2011

96 Section 5 (paragraph (b) of the definition of *provisional emissions number*)

After “by”, insert “subsections 10(6) and (8) and”.

National Greenhouse and Energy Reporting Act 2007

97 Section 7

Insert:

liquefied natural gas has the meaning given by the regulations.

98 Section 7

Insert:

liquefied petroleum gas has the meaning given by the regulations.

99 Section 7

Insert:

natural gas supplier has the same meaning as in the *Clean Energy Act 2011*.

100 Section 7

Insert:

Opt-in Scheme has the same meaning as in the *Clean Energy Act 2011*.

101 Section 7

Insert:

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

102 Section 7

Insert:

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

103 Section 7

Insert:

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

104 Section 10 (heading)

Repeal the heading, substitute:

10 Emissions, energy production, energy consumption, fuel supplied etc.

105 At the end of section 10

Add:

Measuring and adjusting fuel supplied etc.

- (5) The Minister may determine, by legislative instrument, methods, or criteria for methods, by which the following:
- (a) the amounts of natural gas supplied by a natural gas supplier;
 - (b) the amounts of a particular kind of taxable fuel acquired, manufactured or imported by a person;
 - (c) the amounts of liquefied petroleum gas imported, manufactured, produced or supplied by a person;
 - (d) the amounts of liquefied natural gas imported, manufactured, produced or supplied by a person;
- are to be measured for the purposes of this Act and the *Clean Energy Act 2011*, and may specify:
- (e) different methods or criteria for different circumstances; and
 - (f) conditions relating to the use of methods determined by the Minister or of methods which meet criteria determined by the Minister; and
 - (g) rating systems for those methods (including different rating systems for different circumstances); and

- (h) the particular rating given to each of those methods.
- (6) The Minister may determine, by legislative instrument, that, if:
- (a) under a specified provision of:
 - (i) Division 3 or 3A of Part 3 of the *Clean Energy Act 2011*; or
 - (ii) the Opt-in Scheme;there is a provisional emissions number of a person for an eligible financial year; and
 - (b) under the same provision of:
 - (i) Division 3 or 3A of Part 3 of the *Clean Energy Act 2011*; or
 - (ii) the Opt-in Scheme;as the case may be, there is a provisional emissions number of the person for the previous eligible financial year; and
 - (c) the provisional emissions number mentioned in paragraph (b):
 - (i) was calculated using a determination under subsection (5) of this section; and
 - (ii) exceeds the number that would have been the provisional emissions number mentioned in paragraph (b) if that number had not been calculated using the determination; and
 - (d) the conditions specified in the determination are satisfied;
- the provisional emissions number mentioned in paragraph (a) is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to be reduced by a number ascertained in accordance with the determination.
- (7) The number ascertained in accordance with a determination under subsection (6) must not exceed the excess mentioned in paragraph (6)(c).
- (8) The Minister may determine, by legislative instrument, that, if:
- (a) under a specified provision of:
 - (i) Division 3 or 3A of Part 3 of the *Clean Energy Act 2011*; or
 - (ii) the Opt-in Scheme;there is a provisional emissions number of a person for an eligible financial year; and

Schedule 1 Amendments

Part 2 Amendments relating to fuel

- (b) under the same provision of:
 - (i) Division 3 or 3A of Part 3 of the *Clean Energy Act 2011*; or
 - (ii) the Opt-in Scheme;as the case may be, there is a provisional emissions number of the person for the previous eligible financial year; and
 - (c) the provisional emissions number mentioned in paragraph (b):
 - (i) was calculated using a determination under subsection (5) of this section; and
 - (ii) falls short of the number that would have been the provisional emissions number mentioned in paragraph (b) if that number had not been calculated using the determination; and
 - (d) the conditions specified in the determination are satisfied; the provisional emissions number mentioned in paragraph (a) is taken, for the purposes of this Act and the *Clean Energy Act 2011*, to be increased by a number ascertained in accordance with the determination.
- (9) The number ascertained in accordance with a determination under subsection (8) must not exceed the shortfall mentioned in paragraph (8)(c).

106 Application of amendments

- (1) The amendments of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, in so far as they are relevant to reports under that Act, apply in relation to reports for:
 - (a) the financial year beginning on 1 July 2013; or
 - (b) a later financial year.
- (2) The amendments of the *National Greenhouse and Energy Reporting Act 2007* made by this Part, in so far as they are relevant to the calculation of:
 - (a) an interim emissions number; or
 - (b) a preliminary emissions number; or
 - (c) a provisional emissions number;

apply in relation to the calculation of an interim emissions number, a preliminary emissions number or a provisional emissions number, as the case may be, of a person for:

- (d) the financial year beginning on 1 July 2013; or
- (e) a later financial year.

(3) In this item:

interim emissions number has the same meaning as in the *Clean Energy Act 2011*.

preliminary emissions number has the same meaning as in the *Clean Energy Act 2011*.

provisional emissions number has the same meaning as in the *Clean Energy Act 2011*.

Part 3—Repeal of Act

Clean Energy (International Unit Surrender Charge) Act 2011

107 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 19 September 2012
Senate on 29 October 2012]*

~~74~~ (167/12) *Clean Energy Amendment (International Emissions Trading and Other Measures) Act
2012 No. 204, 2012*