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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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CARBON POLLUTION REDUCTION SCHEME (CHARGES – CUSTOMS)  
BILL 2010

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EXPLANATORY MEMORANDUM

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







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# **General outline of the Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2010**

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## **Charges for the issue of Australian emissions units**

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

***Date of effect:*** Apart from the formal provisions, which commence on Royal Assent, the provisions of this bill commence at the same time as section 3 of the proposed *Carbon Pollution Reduction Scheme Act 2010* commences.

***Proposal announced:*** The measures are based on the policy positions included in the White Paper entitled *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future*, released by the Government on 15 December 2008. The Prime Minister announced some changes to the Scheme, including managing the impacts of the global recession, on 4 May 2009. Further measures negotiated with the Opposition were announced on 24 November 2009.

***Financial impact:*** The financial impact of the Carbon Pollution Reduction Scheme is addressed in the explanatory memorandum for the main bill.

***Regulation impact:*** The regulation impact statement is attached to the explanatory memorandum for the main bill.



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# **Chapter 1**

## ***Charges for the issue of Australian emissions units***

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### **Outline of chapter**

1.1 The Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2010 imposes charges for Australian emissions units issued as the result of an auction or for a fixed charge *if* those charges are ‘taxation’ within the meaning of section 55 of the Constitution and a duty of customs.

### **Context of amendments**

1.2 The Carbon Pollution Reduction Scheme Bill 2010 is the Government’s primary policy tool to drive the reduction of greenhouse gas emissions. The objectives of the Scheme are to:

- give effect to Australia’s international climate change obligations
- support the development of an effective global response to climate change
- take action directed towards meeting Australia’s national emission reduction targets and to do so in a flexible and cost effective way.

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

1.4 The Authority may issue units as a result of an auction it has conducted or for a fixed charge.

1.5 Clause 91 of the Carbon Pollution Reduction Scheme Bill 2010 provides that if a charge payable for the issue of an Australian emissions unit is taxation within the meaning of section 55 of the Constitution, then the charge is not imposed by that Act, but instead is imposed by the *Carbon Pollution Reduction Scheme (Charges – General) Act 2010*, *Carbon Pollution Reduction Scheme (Charges – Excise) Act 2010* or the *Carbon Pollution Reduction Scheme (Charges – Customs) Act 2010* (whichever is applicable).

1.6 The Commonwealth does not consider that the charges for the auction of Australian emissions units or for the issue of units at a fixed

charge are taxes for constitutional purposes. However, the Government has taken an approach of abundant caution, with the charges bills providing safeguards in case a court reaches a different view on this question.

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

1.8 Section 55 of the Constitution provides:

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

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

## Summary of new law

1.9 The Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2010 provides for the imposition of charges for Australian emissions units issued as the result of an auction or for a fixed charge *if* the charges are ‘taxation’ within the meaning of section 55 of the Constitution and are a duty of customs.

## Detailed explanation of new law

1.10 Each of the three charges bills is framed in similar terms.

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

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

1.13 It is assumed that a reference to a State in section 114 of the Constitution includes a reference to the Australian Capital Territory and the Northern Territory. *[Clause 8]*

1.14 Consistently with the Carbon Pollution Reduction Scheme Bill 2010, this bill:



- extends to every external Territory *[Clause 5]*
- extends to Australia's exclusive economic zone, the continental shelf and the Joint Petroleum Development Area. *[Clauses 6 and 6A]*

1.15 The bill binds the Crown in right of each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island. However, it does not bind the Crown in right of the Commonwealth. *[Clause 4]*

1.16 The short title of the proposed Act is the *Carbon Pollution Reduction Scheme (Charges – Customs) Act 2010*. *[Clause 1]*

1.17 Its substantive provisions commence at the same time as section 3 of the proposed *Carbon Pollution Reduction Scheme Act 2010*. *[Clause 2]*

1.18 Significant terms, including 'auction' and 'issue' are defined by reference to the Carbon Pollution Reduction Scheme Bill 2010. *[Clause 3]*