

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Clean Energy (Charges—Customs) Bill
2011**

No. , 2011

(Climate Change and Energy Efficiency)

**A Bill for an Act to impose charges associated with
the *Clean Energy Act 2011*, so far as those charges
are duties of customs**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Definitions	2
4 Crown to be bound	3
5 Extension to external Territories	3
6 Extension to exclusive economic zone and continental shelf	3
7 Extension to Joint Petroleum Development Area	3
Part 2—Charge for the issue of a carbon unit	4
8 Imposition of charge	4
Part 3—Charge on a unit shortfall	7
9 Imposition of charge	7
Part 4—Miscellaneous	9
10 Act does not impose a tax on property of a State	9
11 Regulations	9

1 **A Bill for an Act to impose charges associated with**
2 **the *Clean Energy Act 2011*, so far as those charges**
3 **are duties of customs**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

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

Section 2

1 **2 Commencement**

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

6

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

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

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

13 **3 Definitions**

14 In this Act:

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

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

18 ***carbon unit*** has the same meaning as in the *Clean Energy Act*
19 *2011*.

20 ***eligible international emissions unit*** has the same meaning as in
21 the *Australian National Registry of Emissions Units Act 2011*.

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

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

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

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

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

10 *Regulator* means the Clean Energy Regulator.

11 *unit shortfall* has the same meaning as in the *Clean Energy Act*
12 *2011*.

13 *vintage year* has the same meaning as in the *Clean Energy Act*
14 *2011*.

15 **4 Crown to be bound**

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

20 **5 Extension to external Territories**

21 This Act extends to every external Territory.

22 **6 Extension to exclusive economic zone and continental shelf**

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

25 **7 Extension to Joint Petroleum Development Area**

26 This Act extends to the Joint Petroleum Development Area.
27

1

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

3

4 **8 Imposition of charge**

5 *Auction*

6 (1) If:

- 7 (a) a carbon unit is issued to a person; and
8 (b) the unit is issued as the result of an auction;
9 charge is imposed on the issue of the unit.

10 (2) Charge imposed by subsection (1) is payable by the person.

11 (3) The amount of charge imposed by subsection (1) on the issue of a
12 carbon unit is the amount equal to the amount the person indicated
13 or declared, in the course of the auction, that the person would be
14 willing to pay by way of charge for the issue of the unit, so long as:

15 (a) in a case where:

16 (i) the unit has the vintage year beginning on 1 July 2015;
17 and

18 (ii) regulations are in force for the purposes of section 8 of
19 the *Clean Energy (International Unit Surrender*
20 *Charge) Act 2011* in relation to the surrender of an
21 eligible international emissions unit in relation to the
22 vintage year;

23 the amount the person indicated or declared, in the course of
24 the auction, that the person would be willing to pay by way
25 of charge for the issue of the unit is not less than:

26 (iii) \$15; or

27 (iv) if a greater amount is prescribed for the purposes of this
28 subparagraph—that greater amount; and

29 (b) in a case where:

30 (i) the unit has the vintage year beginning on 1 July 2016;
31 and

32 (ii) regulations are in force for the purposes of section 8 of
33 the *Clean Energy (International Unit Surrender*

- 1 *Charge) Act 2011* in relation to the surrender of an
2 eligible international emissions unit in relation to the
3 vintage year;
4 the amount the person indicated or declared, in the course of
5 the auction, that the person would be willing to pay by way
6 of charge for the issue of the unit is not less than:
7 (iii) \$16; or
8 (iv) if a greater amount is prescribed for the purposes of this
9 subparagraph—that greater amount; and
10 (c) in a case where:
11 (i) the unit has the vintage year beginning on 1 July 2017;
12 and
13 (ii) regulations are in force for the purposes of section 8 of
14 the *Clean Energy (International Unit Surrender*
15 *Charge) Act 2011* in relation to the surrender of an
16 eligible international emissions unit in relation to the
17 vintage year;
18 the amount the person indicated or declared, in the course of
19 the auction, that the person would be willing to pay by way
20 of charge for the issue of the unit is not less than:
21 (iii) \$17.05; or
22 (iv) if a greater amount is prescribed for the purposes of this
23 subparagraph—that greater amount; and
24 (d) in a case where:
25 (i) none of the above paragraphs apply; and
26 (ii) under the regulations, an amount is taken to be the
27 reserve charge amount in relation to the auction;
28 the amount the person indicated or declared, in the course of
29 the auction, that the person would be willing to pay by way
30 of charge for the issue of the unit is not less than that reserve
31 charge amount.
32 (4) Subsection (3) does not apply to an amount the person indicated or
33 declared, in the course of the auction, that the person would be
34 willing to pay by way of charge for the issue of the unit, unless the
35 amount was accepted by the Regulator in the course of the auction.

Section 8

1 (5) Subsection (1) imposes charge only so far as that charge is a duty
2 of customs within the meaning of section 55 of the Constitution.

3 *Fixed charge*

4 (6) If:

5 (a) a carbon unit is issued to a person; and

6 (b) the unit is issued in accordance with section 100 of the *Clean*
7 *Energy Act 2011* (issue of units for a fixed charge);

8 charge is imposed on the issue of the unit.

9 (7) Charge imposed by subsection (6) is payable by the person.

10 (8) The amount of charge imposed by subsection (6) on the issue of a
11 unit is the amount equal to the per unit charge set out in the
12 application under subsection 100(1) of the *Clean Energy Act 2011*
13 for the issue of the unit.

14 (9) Subsection (6) imposes charge only so far as that charge is a duty
15 of customs within the meaning of section 55 of the Constitution.
16

Part 3—Charge on a unit shortfall

9 Imposition of charge

(1) If a person has a unit shortfall for a financial year, charge is imposed on the unit shortfall.

(2) Charge imposed by subsection (1) is payable by the person.

Amount of charge

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

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

where:

prescribed amount for the financial year means:

- (a) if the financial year is a fixed charge year—an amount equal to 130% of the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or
- (b) if the financial year is a flexible charge year:
 - (i) if an amount is specified in the regulations for the financial year—that amount; or
 - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.

(4) An amount specified in regulations made for the purposes of subparagraph (b)(i) of the definition of ***prescribed amount for the financial year*** in subsection (3) in relation to a financial year:

- (a) must not be less than 130% of the benchmark average auction charge for the previous financial year; and
- (b) must not exceed 200% of the benchmark average auction charge for the previous financial year.

Part 3 Charge on a unit shortfall

Section 9

1

General

2

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

3

4

1

2 **Part 4—Miscellaneous**

3

4 **10 Act does not impose a tax on property of a State**

5 (1) This Act has no effect to the extent (if any) to which it imposes a
6 tax on property of any kind belonging to a State.

7 (2) In this section, *property of any kind belonging to a State* has the
8 same meaning as in section 114 of the Constitution.

9 **11 Regulations**

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