

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the Environment

Subject - *Clean Energy Act 2011*

*Clean Energy Auction Revocation Determination 2014*

Section 113 of the *Clean Energy Act 2011* (the Clean Energy Act) provides that the Minister for the Environment may make a legislative instrument prescribing the policies, procedures and rules that apply in relation to the auctioning of carbon units by the Clean Energy Regulator (the Regulator).

The Clean Energy Act does not require such a legislative instrument. However, on 7 May 2013, the then Minister for Climate Change, Industry and Innovation made the *Clean Energy (Auction of Carbon Units) Determination 2013* (the Auction Determination), a legislative instrument under section 113 of the Clean Energy Act.

The *Clean Energy Auction Revocation Determination 2014* (the Revocation Determination) revokes the Auction Determination.

The Clean Energy Act does not specify conditions that need to be satisfied before the power to make a determination under section 113 may be exercised.

The Revocation Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Revocation Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Background**

#### *Auctions of carbon units*

The Clean Energy Act allows entities to surrender eligible emissions units to meet their carbon tax liability. The main class of eligible emissions units are carbon units, which are sold by the Government or issued for free under industry assistance programs.

The Auction Determination sets out the requirements for auctions of carbon units, including the rules and procedures for holding auctions, when auctions must be held, and the volume of carbon units to be offered at each auction.

In the absence of a legislative instrument setting out the rules and procedures for auctions of carbon units the Regulator may still hold auctions and may determine how those auctions are to be conducted.

### *The repeal of the carbon tax*

The Government intends to repeal the carbon tax effective from 30 June 2014 so the last vintage year of carbon units that can be used to meet a carbon tax liability will be 2013-14. As carbon units have no value outside the carbon tax and auctioned carbon units cannot be used to meet an entity's liability until 2015-16, there will be no need for any auctions of carbon units after the carbon tax is repealed.

### **Consultation**

Stakeholders were invited to comment on the process of repealing the carbon tax and the *Clean Energy Act 2011* with the release of the draft *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013* and related bills. The consultation period on the legislative package to repeal the carbon tax ran from 15 October 2013 to 4 November 2013.

During the consultation period, the Department of the Environment conducted meetings and teleconferences with stakeholders, including businesses, business representative organisations, state and territory government bodies, local government organisations and environmental and other non-government organisations. It also conducted legal experts' workshops in Sydney and Melbourne. In total, over 900 submissions were received.

### **Detailed description of the determination**

Details of the Revocation Determination are set out in Attachment A.

### **Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Authority: Section 113 of the  
*Clean Energy Act 2011*

**Details of the *Clean Energy Auction Revocation Determination 2014***

**Section 1 – Name of determination**

Section 1 provides that the name of the determination is the *Clean Energy Auction Revocation Determination 2014* (the Revocation Determination).

**Section 2 – Commencement**

Section 2 provides that the Revocation Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Revocation**

Section 3 revokes the *Clean Energy (Auction of Carbon Units) Determination 2013* F2013L00759.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Clean Energy Auction Revocation Determination 2014*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Clean Energy Auction Revocation Determination 2014* (the Revocation Determination) revokes the *Clean Energy (Auction of Carbon Units) Determination 2013* (the Auction Determination), which sets out the rules and procedures that must be followed by the Clean Energy Regulator (the Regulator) when auctioning carbon units.

In the absence of the Auction Determination, the Regulator is still required to hold auctions under the *Clean Energy Act 2011*. The Regulator retains discretion as to how and when these auctions will be held.

The Revocation Determination does not introduce any new requirements for legal entities.

**Human rights implications**

The Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Greg Hunt MP  
Minister for the Environment**