

2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY LEGISLATION (CARBON TAX REPEAL) BILL 2014
TRUE-UP SHORTFALL LEVY (GENERAL) (CARBON TAX REPEAL) BILL 2014
TRUE-UP SHORTFALL LEVY (EXCISE) (CARBON TAX REPEAL) BILL 2014
CUSTOMS TARIFF AMENDMENT (CARBON TAX REPEAL) BILL 2014
EXCISE TARIFF AMENDMENT (CARBON TAX REPEAL) BILL 2014
OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS (IMPORT LEVY)
AMENDMENT (CARBON TAX REPEAL) BILL 2014
OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS
(MANUFACTURE LEVY) AMENDMENT (CARBON TAX REPEAL) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for the Environment,
the Hon Greg Hunt MP and the Treasurer, the Hon J.B. Hockey MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
2013 Carbon Tax Repeal Bills	Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013 Customs Tariff Amendment (Carbon Tax Repeal) Bill 2013 Excise Tariff Amendment (Carbon Tax Repeal) Bill 2013 Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2013 Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2013
ACCC	Australian Competition & Consumer Commission
ACCU	Australian carbon credit unit
ACL	Australian Consumer Law
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
Anti-Money Laundering Act	<i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i>
ARENA	Australian Renewable Energy Agency
ARENA Act	<i>Australian Renewable Energy Agency Act 2011</i>
ASIC	Australian Securities & Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATO	Australian Taxation Office
Carbon Tax Repeal Bills	Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 True-up Shortfall Levy (General) (Carbon Tax

<i>Abbreviation</i>	<i>Definition</i>
	<p>Repeal) Bill 2014</p> <p>True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014</p> <p>Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014</p> <p>Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014</p> <p>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014</p> <p>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014</p>
CC Act	<i>Competition and Consumer Act 2010</i>
CCA	Climate Change Authority
CCA Act	<i>Climate Change Authority Act 2011</i>
CE Act	<i>Clean Energy Act 2011</i>
CE Regulations	<i>Clean Energy Regulations 2011</i>
CE Charges Acts	<p><i>Clean Energy (Unit Shortfall Charge —General) Act 2011;</i></p> <p><i>Clean Energy (Unit Issue Charges —Fixed Charge) Act 2011;</i></p> <p><i>Clean Energy (Unit Issue Charges —Auctions) Act 2011;</i></p> <p><i>Clean Energy (Charges—Excise) Act 2011; and</i></p> <p><i>Clean Energy (Charges —Customs) Act 2011.</i></p>
Clean Energy Legislation	<p><i>Clean Energy Act 2011;</i></p> <p><i>Clean Energy Regulator Act 2011;</i></p> <p><i>Climate Change Authority Act 2011;</i></p> <p><i>Clean Energy (Consequential Amendments) Act 2011;</i></p> <p><i>Clean Energy (Unit Shortfall Charge – General) Act 2011;</i></p> <p><i>Clean Energy (Unit Issue Charges – Fixed Charge) Act 2011;</i></p> <p><i>Clean Energy (Unit Issue Charges – Auctions) Act 2011;</i></p> <p><i>Clean Energy (Charges—Excise) Act 2011;</i></p> <p><i>Clean Energy (Charges—Customs) Act 2011; t</i></p> <p><i>Ozone Protection and Synthetic Greenhouse Gas</i></p>

<i>Abbreviation</i>	<i>Definition</i>
	<i>(Manufacture Levy) Amendment Act 2011;</i> <i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011;</i> <i>Clean Energy (Customs Tariff Amendment) Act 2011;</i> <i>Clean Energy (Excise Tariff Legislation Amendment) Act 2011;</i> <i>Clean Energy (Fuel Tax Legislation Amendment) Act 2011;</i> <i>Clean Energy (Household Assistance Amendments) Act 2011;</i> <i>Clean Energy (Income Tax Rates Amendments) Act 2011;</i> <i>Clean Energy (Tax Laws Amendments) Act 2011;</i> <i>Clean Energy Legislation Amendment Act 2012;</i> and <i>Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012.</i>
Corporations Act	<i>Corporations Act 2001</i>
Customs	Australian Customs & Border Protection Service
Customs Amendment Bill	Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014
Excise Amendment Bill	Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014
Fuel Tax Act	<i>Fuel Tax Act 2006</i>
FTCs	Fuel tax credits
GST	Goods & services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
JCP	Jobs & Competitiveness Program
Main Repeal Bill	Clean Energy Legislation (Carbon Tax Repeal) Bill 2014
NGERS	National Greenhouse & Energy Reporting Scheme
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
Opt-in scheme	The Opt-in scheme allows a person to apply to have the potential emissions embodied in the liquid fuel that they use directly covered by the carbon tax, rather than paying an equivalent carbon price through the fuel tax credits system, or through excise or excise equivalent customs duty.

<i>Abbreviation</i>	<i>Definition</i>
Ozone Manufacture Amendment Bill	Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014
Ozone Import Amendment Bill	Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014
Ozone Management Act	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>
Ozone (Import Levy) Act	<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>
Ozone (Manufacture Levy) Act	<i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>
PRRTA Act	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
Registry	Australian National Registry of Emissions Units
Regulator	Clean Energy Regulator
Regulator Act	<i>Clean Energy Regulator Act 2011</i>
SGG	Synthetic greenhouse gas
STP	Steel Transformation Plan
STP Act	<i>Steel Transformation Plan Act 2011</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
Tax Commissioner	Commissioner of Taxation
True-up Shortfall Levy Bills	True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014; and True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014.

General outline and statements

Background

Repealing the carbon tax

The Australian Government has a clear commitment to repeal the carbon tax to:

- boost Australia's economic growth, increase jobs and enhance Australia's international competitiveness;
- remove the cost of living pressures on households resulting from the carbon tax;
- remove the cost pressures faced by business as a result of the carbon tax; and
- remove unnecessary, burdensome and costly regulation.

The Government is implementing its commitment to remove the carbon tax through seven Bills (together the 'Carbon Tax Repeal Bills') that will repeal the legislation imposing the carbon tax. The repeal legislation does this by:

- abolishing the carbon pricing mechanism;
- removing the equivalent carbon price imposed through the fuel tax credit system, through excise and excise equivalent customs duties, and through synthetic greenhouse gas (SGG) levies;
- making arrangements for the management of the last financial year in which the carbon tax will apply (2013-14) and the collection of any outstanding carbon tax liabilities; and
- providing new powers to the Australian Competition & Consumer Commission (ACCC) to ensure the passing through of price reductions relating to the carbon tax repeal.

Repealing the carbon tax will reduce wholesale electricity and gas prices, reduce the cost of taxable fuels for off-road use, and reduce the cost of SGGs, such as those used for refrigeration and air conditioning. These cost reductions will flow through to businesses in the form of lower input costs and to households through lower energy bills and cheaper retail prices.

The Carbon Tax Repeal Bills replace the 2013 Carbon Tax Repeal Bills have been rejected twice by the Senate.

Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 and related Bills

The Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 (the Main Repeal Bill) repeals the legislation that establishes the carbon pricing mechanism, namely:

- *Clean Energy Act 2011*;
- *Clean Energy (Charges—Customs) Act 2011*;
- *Clean Energy (Charges—Excise) Act 2011*;
- *Clean Energy (Unit Issue Charge—Auctions) Act 2011*;
- *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*;
- and
- *Clean Energy (Unit Shortfall Charge—General) Act 2011*.

In addition, four technical bills provide for removal of the equivalent carbon price through excise and excise equivalent custom duties and the SGG levies.

The abolition of other carbon tax-related initiatives are to be done by other Bills that are not part of the Carbon Tax Repeal Bills, namely:

- the abolition of the Climate Change Authority (CCA) through the Climate Change Authority (Abolition) Bill 2013 [No.2];
- the abolition of the Clean Energy Finance Corporation through the Clean Energy Finance Corporation (Abolition) Bill 2014; and
- the cancellation of carbon tax related income tax cuts that were legislated to commence on 1 July 2015 through the Labor 2013-14 Budget Savings (Measures No.1) Bill 2014.

The Carbon Tax Repeal Bills, included in this Explanatory Memorandum, provide, in summary, that:

- 2013-14 will be the last financial year that the carbon tax will apply, even if the Parliament does not pass the Carbon Tax Repeal Bills until after 1 July 2014;
- liable businesses and other entities must meet all carbon tax liabilities incurred up to 30 June 2014 under the carbon pricing mechanism, the fuel tax credit system, excise or excise equivalent customs duties, or SGG levies;
- liable businesses and other entities must pay their final carbon tax compliance obligations at the next payment time under the current legislated arrangements;

- industry assistance provided under the Jobs & Competitiveness Program (JCP) and the Energy Security Fund will continue in 2013-14 for the purpose of meeting carbon tax liabilities, and will then cease;
- the ACCC will have new powers to monitor prices and take action against businesses that attempt to exploit other businesses and consumers by charging unreasonably high prices or making false or misleading claims about the effect of the carbon tax repeal on prices;
- the *Steel Transformation Plan Act 2011*, which provided carbon tax related assistance to steel industry businesses, will be repealed and the assistance will cease;
- the funding for the Australian Renewable Energy Agency (ARENA) will be adjusted;
- the conservation tillage tax offset, which was introduced at the same time as the carbon tax, will be removed; and
- businesses and other entities with a carbon tax liability are obliged to comply with current carbon tax compliance and reporting arrangements for as long as those arrangements remain law.

The Clean Energy Regulator (the Regulator), the Australian Taxation Office (ATO), the Australian Customs & Border Protection Service (Customs) and the Department of the Environment (the Department) will have the necessary powers to collect any outstanding carbon tax liabilities for 2012-13 and 2013-14 for as long as is necessary.

Businesses and other entities are obliged to comply with legislated obligations for as long as those obligations remain law.

The structure of the broader carbon tax repeal package is explained in **Table I**.

Table I: Broader Carbon Tax Repeal Package

Bill	Description
Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 (the 'Main Repeal Bill')	The Main Repeal Bill: <ul style="list-style-type: none"> • repeals the CE Act and the CE Charges Acts; • makes consequential amendments to other legislation referring to the CE Act and the carbon pricing mechanism; • provides for the collection of all carbon tax liabilities for 2012-13 and 2013-14; • introduces new powers for the ACCC to take action to ensure price reductions relating to the carbon tax repeal are passed on to consumers; and

Bill	Description
	<ul style="list-style-type: none"> • makes arrangements for the finalisation and cessation of industry assistance through the JCP, the Energy Security Fund and the Steel Transformation Plan (STP).
True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014 True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014	Technical Bills that provide for recovery of the value of over-allocated free carbon units through a constitutionally compliant levy.
Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014 Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014	Amends provisions to remove the equivalent carbon price imposed through excise equivalent customs duty on aviation fuel; and Amends provisions to remove the equivalent carbon price imposed through excise duty on aviation fuel.
Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014 Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014	Repeals provisions imposing an equivalent carbon price through levies imposed on the import and manufacture of SGGs.
Climate Change Authority (Abolition) Bill 2013 [No.2]	Abolishes the CCA and the Land Sector Carbon & Biodiversity Board.
Labor 2013-14 Budget Savings (Measures No 1) Bill 2014	Repeals the personal income tax cuts that were legislated to commence on 1 July 2015, and repeal the associated amendments to the low-income tax offset.
Clean Energy Finance Corporation (Abolition) Bill 2014	Abolishes the Clean Energy Finance Corporation (CEFC).

Date of effect:

Clean Energy Legislation (Carbon Tax Repeal) Bill 2014

Sections 1, 2 and 3 and anything in the Main Repeal Bill not elsewhere covered in section 2 commence on the day the Main Repeal Bill receives the Royal Assent.

Schedule 1, Parts 1 and 2, which repeal the CE Act and the CE Charges Acts and make consequential amendments resulting from their repeal, commence on 1 July 2014.

Schedule 1, Part 3, Divisions 1 to 4, which provide transitional provisions necessary to wind up the carbon tax and provisions to allow the final compliance process to occur and enable the payment and future enforcement of carbon tax liabilities relating to 2012-13 and 2013-14, commence on 1 July 2014.

Schedule 1, Part 3, Division 5, which stops carbon unit auctions from being conducted, cancels any auctioned units (with refunds) and ends the requirement for regulations relating to carbon pollution caps and price ceilings if the legislation is enacted before 1 July 2014, commences on the day the Main Repeal Bill receives the Royal Assent.

Schedule 1 Part 4, which includes provisions to finalise industry assistance, commences on:

- 1 July 2014, if the Main Repeal Bill receives the Royal Assent before 30 June 2014; or
- the day after the Main Repeal Bill receives the Royal Assent.

Schedule 2, which includes provisions to prohibit carbon tax-related price exploitation and false or misleading representations, and to give the ACCC additional price monitoring powers, commences on the later of:

- the day after the Main Repeal Bill receives the Royal Assent; and
- 1 January 2014.

Schedule 3, which repeals the conservation tillage tax offset, commences the day after the Main Repeal Bill receives the Royal Assent.

Schedule 4, which repeals the *Steel Transformation Plan Act 2011*, commences on 1 July 2014.

Schedule 5, which amends the funding for the ARENA, commences the day the Main Repeal Bill receives the Royal Assent.

True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014

Sections 1 and 2 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

All other sections commence at the same time that Part 4 of Schedule 1 to the Main Repeal Bill commences.

True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014

Sections 1 and 2 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

All other sections commence at the same time that Part 4 of Schedule 1 to the Main Repeal Bill commences

Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014

Sections 1, 2 and 3 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

Schedule 1 commences at the same time that Part 1 of Schedule 1 to the Main Repeal Bill commences.

Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014

Sections 1, 2 and 3 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

Schedule 1 commences at the same time that Part 1 of Schedule 1 to the Main Repeal Bill commences.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014

Sections 1, 2 and 3 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

Schedule 1 commences at the same time that Part 1 of Schedule 1 to the Main Repeal Bill commences.

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014

Sections 1, 2 and 3 and anything in the Bill not elsewhere covered in section 2 commence on the day the Bill receives the Royal Assent.

Schedule 1 commences at the same time that Part 1 of Schedule 1 to the Main Repeal Bill commences.

Proposal announced:

The Prime Minister, the Hon Tony Abbott MP, and the Minister for the Environment, the Hon Greg Hunt MP, announced the Government's plan to repeal the carbon tax on Tuesday, 15 October 2013, reflecting the Coalition longstanding and public commitment to this policy.

Financial impact:

The financial impact associated with the repealing the carbon tax is reflected in the Tables 1 and 2 below.

Table 1: Fiscal balance impact of carbon tax repeal and carbon-related programs (\$ million)

<i>Fiscal balance (\$m)</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>	<i>Total</i>
Total cost of the removal of the carbon tax	0.0	-2,220.0	-4,650.0	-6,840.0	-13,710.0
Total business compensation measures	0.0	984.0	1,829.0	2,499.7	5,312.7
Total energy market compensation measures	-1.4	507.4	-13.4	-17.8	474.7
Total land initiatives and unnecessary bureaucracies	21.5	62.9	34.5	32.1	151.1
Total other measures	0.6	304.9	335.5	199.1	839.9
Total savings from removal of measures	20.8	1,859.1	2,185.7	2,713.0	6,778.5
Net Budget impact - Carbon Tax Package	20.8	-360.9	-2,464.3	-4,127.0	-6,931.5

Table 2: Underlying cash balance impact of carbon tax repeal and carbon-related programs (\$ million)

<i>Underlying cash balance (\$m)</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>	<i>Total</i>
Net Budget impact – Carbon Tax Package	-556.4	-551.9	-2,327.2	-4,123.0	-7,558.5

The estimates of the fiscal and underlying cash balance impacts of carbon tax repeal and carbon-related programs have been revised since the carbon tax repeal package was first introduced in 2013.

Regulation Impact Statement

Carbon tax repeal - Regulation impact on business and households

Impact:

The Regulation Impact Statement (RIS) for repeal of the carbon tax was prepared by the Department of the Environment and is summarised below. The entire RIS is provided in Chapter 8.

Main points:

Impacts on Business

The primary impact of repealing the carbon tax on businesses is to reduce the cost of inputs. While the carbon tax is directly applied to a relatively small number of activities and liable entities, the size and importance of these activities means that as these costs are passed on through the economy the carbon tax results in an increase in input costs for the majority of businesses. The main driver of these cost increases is the impact of the carbon tax on energy prices – primarily electricity and gas.

Within the services sector, the production of electricity (particularly coal-fired electricity) was most heavily affected and should benefit most from the repeal of the carbon tax. In the mining sector, coal mining would be the major beneficiary. In the manufacturing sector, producers with emissions- or energy-intensive activities that were unable to access carbon tax-related assistance would be the main beneficiaries of repeal. There would be minimal impact on dwelling ownership.

The removal of the carbon tax is expected to reduce annual ongoing compliance costs for liable entities by \$85.3 million per annum. The avoided costs fall into two categories: administrative costs (including remaining abreast of changes in carbon pricing legislation, meeting recording and reporting obligations, negotiating contracts for carbon price pass-through, and discharging emissions liabilities) and substantive costs (emissions verification costs for large emitters).

Impact on Households

Household costs will be lower than they otherwise would be under a \$25.40 carbon price. Recent modelling by the Australian Treasury suggests that the removal of the carbon tax in 2014-15 will reduce the Consumer Price Index by around 0.7 percentage points than it otherwise would be in 2014-15. This is based on the currently legislated fixed carbon price of \$25.40 for 2014-15 and the scope intended by the former government, including fuel use by heavy on-road transport.

Treasury modelling suggests that the removal of the carbon tax in 2014-15 will leave average costs of living across all households (based on existing expenditure patterns) around \$10.50 per week (or around \$550 over the year) lower than they would otherwise be in 2014-15.

Statement of Compatibility with Human Rights

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

Clean Energy Legislation (Carbon Tax Repeal) Bill 2014
True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014
True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014
Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014
Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014
Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014
Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014

These Bills are 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 Carbon Tax Repeal Bills

The Carbon Tax Repeal Bills repeal the carbon tax. The carbon tax is imposed in a variety of ways:

- an obligation on large emitters of greenhouse gases, natural gas suppliers and liquefied petroleum gas (LPG) and liquefied natural gas (LNG) importers, manufacturers and suppliers (liable entities) to pay a unit shortfall charge if they do not buy and surrender eligible emissions units (mostly carbon units issued by the Commonwealth) in accordance with the CE Act and the CE Charges Acts;
- a reduction in the fuel tax credits paid for marine, rail and off-road taxable fuel use by business (*Fuel Tax Act 2006*);
- an increase in excise duty and excise equivalent customs duty on aviation fuel (*Excise Tariff Act 1921*, *Customs Tariff Act 1995*); and
- a levy on import and manufacture of synthetic greenhouse gases and equipment (*Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*, *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*, *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*).

The Carbon Tax Repeal Bills repeal, with effect from 1 July 2014, all of the provisions in the various Acts that impose carbon tax liabilities and make consequential and transitional amendments. This includes provisions to continue processes and publications under the CE Act until liabilities that arise before 1 July 2014 are satisfied and to cancel any

carbon units held by a person once they are no longer needed for this purpose.

The True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014 and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014 impose a levy on persons who were over-allocated free carbon units as industry assistance in the 2013-14 financial year and would have had their 2014-15 allocation reduced if the carbon tax had remained in force.

The Carbon Tax Repeal Bills also repeal the provisions of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) and the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) that deal with reporting emissions and registering emissions units for the purposes of the CE Act and, in essence, return those Acts to their pre-carbon tax form.

The Carbon Tax Repeal Bills also repeal provisions of other Acts that deal with the tax treatment of carbon units and their regulation as financial products.

The Carbon Tax Repeal Bills also amend the *Competition and Consumer Act 2010* (CC Act) to prohibit carbon tax-related price exploitation and false or misleading representations following the carbon tax repeal. It also provides the ACCC with additional price monitoring powers.

Human rights implications

Right to privacy

The Main Repeal Bill may marginally engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy. It provides that persons have the right to the protection of the law against such interference. An interference with privacy will not be arbitrary if it is not inconsistent with the provisions, aims and objectives of the ICCPR and reasonable in the circumstances. Reasonableness, in this context, incorporates notions of proportionality to the objectives sought to be achieved.

The Carbon Tax Repeal Bills remove almost all requirements that persons provide information to the Commonwealth for the purpose of administering the provisions of the Acts which impose the carbon tax, and that the Regulator publish information related to the carbon tax on its website.

However, the Main Repeal Bill continues, until 30 June 2015, the requirement that the Regulator publish information about liable entities on its website (Schedule 1, item 323, table item 58). It also continues, until 30 June 2015, the requirement that the Regulator publish the OTN (obligation transfer number) Register and the list of surrendered and

cancelled OTNs (Schedule 1, item 323, table items 12 and 13), both of which relate to transfer of liability in the natural gas supply chain.

The publication requirements are continued transitionally to allow liable entities and others (for example, recipients of natural gas supplies) to have access to information relevant to reporting and finalisation of liabilities for 2013-14, to allow disclosure to the public of the extent of unit shortfall charges for the year (as in previous years) and to provide public information relevant to the exercise of the price exploitation and price monitoring powers of the ACCC (which will also expire on 30 June 2015).

To the extent that an individual's right to privacy is affected by the Main Repeal Bill, the impact is not arbitrary. It is reasonable, necessary and proportionate to the achievement of the legitimate objectives of repealing the carbon tax and making appropriate transitional provisions for that purpose.

Property rights

The Main Repeal Bill extinguishes rights to hold carbon units (Schedule 1, item 327). Carbon units are personal property (CE Act, section 103). However, item 327 does not engage the relevant human rights obligations.

The cancellation provisions do not involve discrimination on any ground or denial of access to the courts. Indeed, if the cancellation of a person's carbon units results in the acquisition of their property on other than just terms contrary to section 51(xxxi) of the Constitution and the Commonwealth refuses to pay compensation to the person, the person has a right to bring proceedings to recover compensation (Schedule 1, item 345D).

In any case, it is not envisaged that the cancellation provision in item 327 of Schedule 1 to the Main Repeal Bill will need to operate. Other provisions will cancel carbon units either in the normal course of finalising 2013-14 liabilities or with a refund for the price paid for the units.

First, item 323 of Schedule 1 to the Main Repeal Bill allows existing processes to operate so that carbon units will be cancelled in the circumstances in which they would have been cancelled even if the carbon tax had not been repealed:

- Liable entities will acquire fixed charge carbon units to satisfy their 2013-14 liability in the usual way and the units will be cancelled immediately on purchase in the usual way to satisfy 2013-14 liability (CE Act, section 100(7)).
- Free 2013-14 carbon units will have been issued and dealt with in the usual way and, in the unlikely event that they are not used to

satisfy someone's 2013-14 liability, they will be cancelled under the existing provisions in the usual way (CE Act, section 115).

Secondly, in the event that auctions are held in 2014 and someone buys units at an auction, a person who holds such a unit on the fifth day after Royal Assent is given to the Main Repeal Bill will be paid the amount paid for the unit at auction (Schedule 1, item 343A).

Civil Penalties

Schedule 2 to the Main Repeal Bill contains provisions which prevent a corporation from engaging in price exploitation in relation to the carbon tax repeal (Schedule 2, item 3, section 60C, CC Act) and from making false or misleading representations concerning the effect of the carbon tax repeal (Schedule 2, item 3, section 60K, CC Act). The existing pecuniary penalty regime (section 76 of the CC Act) is modified so that it applies to contraventions of these prohibitions (Schedule 2, items 5, 6 and 7).

While the prohibitions are directed at corporations, rather than individuals, individuals could become liable for a pecuniary penalty either through the operation of section 6 of the CC Act (Schedule 2, item 2), which extends the operation of the CC Act to individuals in the circumstances described in that section, or on the basis that the individual has aided or abetted a corporation's contravention of these prohibitions (section 76(1)(c); section 76(1)(d) and (e) might also be relevant). It is not anticipated that the direct extension of the prohibitions to individuals through the operation of section 6 of the CC Act will be significant.

Pecuniary penalties are civil, rather than criminal penalties, and the civil standard of proof applies. Having regard to the nature and severity of the penalty, however, it is accepted that the penalties should be regarded as criminal penalties for the purposes of human rights law, including Article 14 of the ICCPR.

Article 14(2) of the ICCPR provides that a person is entitled to be presumed innocent until proved guilty according to law. Ordinarily, this would require that the case against the person be demonstrated to the criminal standard of proof. The criminal standard of proof is not applied in relation to pecuniary penalty proceedings. Nevertheless, this is compatible with Article 14(2) because the pecuniary penalty provisions have a long and well-litigated history, and it has not been shown that the failure to apply the criminal standard of proof has resulted in injustice. Indeed, the courts have on numerous occasions indicated that the gravity of the allegations being tested in the court will be taken into account, and that the graver the allegation, the greater the strictness of proof that will be required. In particular, more than just 'inexact proofs, indefinite testimony or indirection references' will be required (see, for example, *Australian Competition and Consumer Commission v TF Woolam & Sons Pty Ltd* (2011) 196 FCR 212 at [8]).

In any event, the pecuniary penalty provisions are directed primarily at corporations, rather than individuals. If it is unnecessary to apply the criminal standard of proof in relation to corporations, it would be inappropriate to apply a different standard of proof to individuals, who would ordinarily only be liable to the extent that they had aided or abetted the contravening conduct of a corporation. Further, unlike corporations, individuals have access to the defences set out in section 85 of the CC Act (Schedule 2, item 15), which allows a court to relieve the individual of liability if it is satisfied that the individual has acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused.

It is also relevant that the pecuniary penalty provisions are but one of a number of enforcement provisions provided in the CC Act, which include infringement notices (Schedule 2, item 3, Division 5, Part 5, CC Act), injunctions (Schedule 2, items 9 and 10, section 80, CC Act), orders limiting prices or requiring refunds of money (Schedule 2, item 11, section 80A, CC Act), non-punitive orders (Schedule 2, items 16, 17 and 18, section 86C, CC Act), compensation orders (Schedule 2, items 19, 20, 21, 22 and 23, section 87 CC Act) and declarations (Schedule 2, item 26, section 163A CC Act). The amendments made by the Main Repeal Bill tap into the existing pecuniary penalty regime, and do not create a new regime.

Article 14(3)(g) of the ICCPR provides that a person has the right ‘not to be compelled to testify against himself or to confess guilt’ in criminal proceedings. Nothing in the Main Repeal Bill is inconsistent with this requirement. Indeed the information-gathering powers applicable to the prohibitions provide that an individual is excused from giving information or producing a document on the ground that the information or document might tend to incriminate the individual or expose the individual to penalty (Schedule 2, item 3, 60H(5), CC Act).

Article 14(7) of the ICCPR provides that no one is to be liable to be tried or punished again for an offence of which she or he has already been finally convicted or acquitted. Nothing in the Main Repeal Bill is inconsistent with this requirement. In particular, criminal proceedings cannot be brought for substantially the same conduct that gave rise to the civil proceedings.

Right to work and the right to an adequate standard of living

The Main Repeal Bill includes consequential amendments to remove carbon units from the definition of a financial product under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the *Corporations Act 2001* (Corporations Act) (Schedule 1, items 92, 93, 105 and 106). The effect of this is that Australian financial services (AFS) licensees will no longer be able to operate a business and derive revenue with respect to carbon units from the designated carbon unit day.

The Australian Securities and Investments Commission (ASIC) will have the ability to vary a licence to remove a carbon unit authorisation or cancel a licence where the only authorisation the licensee holds is with respect to carbon units.

The amendments allow ASIC to vary a licence without providing the licensee the opportunity to be heard by ASIC and to cancel a licence without providing reasons for the cancellation (these requirements would ordinarily be necessary before ASIC could take action) (Schedule 1, items 94 and 95). These requirements were removed as the question of variation or cancellation is a purely factual one, rather than a discretionary decision and should have no adverse effect on the licence holder. However, affected licensees will continue to have the ability to apply to have ASIC's actions reviewed via the Administrative Appeals Tribunal or the court system.

The amendments to the ASIC Act and the Corporations Act may marginally engage in the right to earn a living through work and the right to an adequate standard of living as AFS licensees will no longer be able to trade in carbon units (Articles 6 and 11 of the International Covenant on Economic, Social and Cultural Rights). However, the specific amendments are merely consequential to the removal of the carbon tax and are necessary for consistency in the law and to maintain an up-to-date AFS licensing register.

Licensees will only be affected to the extent they hold a carbon unit authorisation – any other authorisations they hold in relation to other financial products will not be impacted.

Conclusion

The Carbon Tax Repeal Bills are compatible with human rights because the only potential limitations on human rights that the Carbon Tax Repeal Bills impose relate to the right to privacy and criminal process rights and they are reasonable, necessary and proportionate in achieving the Bills' legitimate policy objectives of repealing the carbon tax and making appropriate transitional provisions for that purpose.

Greg Hunt

Minister for the Environment

Chapter 1

Repeal of the carbon tax

Outline of chapter

1.1 Chapter 1 describes how the carbon tax will be repealed. It also describes the associated transitional arrangements for the winding-up of carbon tax liabilities for 2012-13 and 2013-14. The removal of the equivalent carbon prices applied through the fuel tax credits system, through excise and excise equivalent customs duties, and through SGG levies is dealt with in Chapters 5 and 6.

1.2 The Main Repeal Bill includes provisions to:

- repeal the CE Act and the five CE Charges Acts;
- provide continuing powers and transitional provisions so that liabilities incurred in relation to 2012-13 and 2013-14 may be collected and obligations enforced by the Regulator;
- ensure that no carbon tax liabilities will be incurred from 1 July 2014; and
- require the Regulator to cancel any remaining carbon units after the final surrender deadline for 2013-14.

1.3 Chapter 1 also describes the process for ending carbon tax-related industry assistance:

- The Main Repeal Bill maintains the assistance to eligible electricity generators under the Energy Security Fund and to emissions-intensive trade-exposed entities under the JCP for 2013-14 but terminates assistance from the 2014-15 year.
- The Main Repeal Bill makes provisions which, with the True-up Shortfall Levy (Carbon Tax Repeal) (General) Bill 2014 and the True-up Shortfall Levy (Carbon Tax Repeal) (Excise) Bill 2014, corrects under- and over-allocations of 2013-14 free carbon units issued under the JCP. It does this by allowing for issue of extra free carbon units to make up for under-allocations, and relinquishment of units or payment of a levy to redress over-allocations.

Context of amendments

Repeal of the carbon tax

1.4 The Main Repeal Bill repeals the carbon tax by repealing the CE Act and the CE Charges Acts from 1 July 2014. The carbon tax is created by the CE Act, which establishes which entities are directly liable to pay the carbon tax or pay a carbon tax on the natural gas and gaseous fuels that they supply (these entities are known as ‘liable entities’). In addition the CE Act:

- establishes the fixed and flexible price periods of the carbon tax, including setting out how an entity may acquire and surrender carbon units in each period;
- creates carbon units, which may be used by liable entities to meet their carbon tax liability;
- provides for the allocation of free carbon units as assistance to certain affected industries; and
- establishes monitoring, investigation, enforcement and penalty provisions, and sets out which decisions are reviewable.

1.5 The Main Repeal Bill makes it clear that the Minister is not required to make regulations that relate to financial years after 2013-14.

1.6 The Main Repeal Bill also establishes arrangements for:

- managing the over-surrender of ACCUs in 2013-14;
- the cessation of carbon units, providing certainty that carbon units do not exist after the final surrender deadline for 2013-14; and
- the Regulator to cancel any carbon units sold at an auction and refund the purchase price to the holder of each unit, in the event that auctions are held before the Main Repeal Bill receives the Royal Assent.

Providing a framework for 2012-13 and 2013-14 carbon tax liabilities

1.7 Liable entities must meet all 2012-13 and 2013-14 carbon tax liabilities. To facilitate this, the Main Repeal Bill includes specific provisions to preserve elements of the CE Act with some modifications.

1.8 The modifications of the CE Act provisions ensure that no carbon tax liabilities will be incurred from 1 July 2014, that all arrangements relating to the flexible price period are removed, and that reporting and other obligations that do not relate to 2013-14 or 2013-14 liabilities are ceased.

Finalising industry assistance arrangements

1.9 The Main Repeal Bill provides that carbon tax liabilities stop accruing at the end of 2013-14. Consequently, the Main Repeal Bill also provides that industry assistance, which compensates for the impact of the carbon tax, is terminated for 2014-15 and beyond.

1.10 There is one transitional matter relating to industry assistance that needs to be dealt with by the Carbon Tax Repeal Bills. The JCP is designed on the basis that there are annual releases of free carbon units. Recipients of assistance receive free carbon units based on the previous financial year's production and are required to submit verified production data in the subsequent year. The Regulator compares reported production data and actual production data for a 'true-up' process and determines whether it is necessary to correct an allocation of free units. Each year's true-up units are taken into account in determining the subsequent year's allocation of free units.

1.11 With the JCP to be discontinued after 2013-14, a process must be established to ensure the Regulator receives 2013-14 production data to do a 'true-up' of the final JCP allocation of free carbon units and that under- and over-allocations of free carbon units are corrected.

1.12 The Main Repeal Bill, together with the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014 and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, establish a broad framework for a true-up reporting process and for correcting under- and over- allocation of 2013-14 free carbon units. The details of this process are to be set out in rules made by the Minister. The rules would be in place by 1 July 2014.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The repeal of the carbon tax	
The carbon tax will be repealed. No carbon tax liabilities will be incurred from 1 July 2014.	The CE Act provides that the carbon tax will be in place from 1 July 2012, with a flexible price period to begin from 1 July 2015.

Detailed explanation of new law

General provisions

1.13 When enacted, the name of the Act will be the *Clean Energy (Carbon Tax Repeal) Act 2014*. [clause 1]

1.14 All amendments made by the Main Repeal Bill, whether to primary or subordinate legislation, have effect according to the terms set out in the Bill. Any amendments made to regulations made by the Bill, may be further amended or repealed by the Governor-General in Council. *[clause 3]*

1.15 Sections 1, 2 and 3 of the Main Repeal Bill commence on the day that the Governor-General gives the Royal Assent. *[clause 2, table item 1]*

Status of legislative instruments

1.16 Any legislative instrument (including regulations, ministerial determinations, rules or other instruments) made under the CE Act cease to have effect on the same date on which the provisions conferring the power on the Minister or the Regulator to make that instrument are repealed. The *Clean Energy Regulations 2011* (CE Regulations), the *Clean Energy (Auctions of Carbon Units) Determination 2013* and the *Clean Energy (Reference Price Method) Determination 2013* all cease to have effect when the provisions of the CE Act under which they are made are repealed. To the extent that these instruments are made under provisions of the CE Act preserved for the purpose of managing compliance with 2012-13 and 2013-14 obligations, then they continue to operate for that purpose for as long as those provisions are operative.

Repeal of the carbon tax

1.17 The Main Repeal Bill repeals the CE Act and the five CE Charges Acts, effective from 1 July 2014. The repeal of the CE Act and the CE Charges Acts means that no new carbon tax liabilities will arise for 2014-15 or subsequent years. *[Schedule 1, items 1 to 6]*

Arrangements to manage 2012-13 and 2013-14 carbon tax liabilities and end carbon tax-related obligations

1.18 To ensure that liabilities incurred in 2012-13 and 2013-14 are met and can, if necessary, be enforced, the Main Repeal Bill preserves the provisions of the CE Act concerning the management of carbon tax liabilities for 2012-13 and 2013-14.

1.19 To do this, the Main Repeal Bill preserves all of the provisions of the CE Act with certain deletions and modifications. These changes limit the preserved provisions of the CE Act to apply only to 2012-13 and 2013-14 and remove provisions that are not required for managing 2012-13 and 2013-14 carbon tax liabilities. *[Schedule 1, item 323]*

1.20 These transitional provisions ensure that any actions undertaken by the Regulator before the CE Act is repealed remain valid. *[Schedule 1, item 320]*

Recovery of 2012-13 and 2013-14 liabilities

1.21 The purpose of recovering 2012-13 and 2013-14 liabilities is largely achieved by limiting the meaning of ‘eligible financial year’ and ‘fixed charge year’ in the CE Act to the 2012-13 and 2013-14 years. Together with other minor modifications, this has the effect that the provisions imposing carbon tax liability do not apply to other years but continue to apply to those years. *[Schedule 1, item 323, table items 3 and 4]*
[Schedule 1, item 323, table items 7, 28, 29 and 41]

1.22 In addition, to allow for compliance with 2012-13 and 2013-14 liabilities, the repeal of the CE Charges Acts does not apply to the issue of carbon units with a vintage year of 2012-13 or 2013-14, or to unit shortfall charges incurred for those years. *[Schedule 1, item 324(1) and (3)]*

1.23 The transitional provisions mean that, for 2013-14, a liable entity will incur a liability, acquire and surrender units and, if it does not surrender units, incur a unit shortfall charge in the same way as it would have done for 2012-13. They also preserve the Regulator’s powers to recover unit shortfall charges and any associated late payment penalties that arise in relation to 2012-13 and 2013-14 for as long as these powers are necessary. *[Schedule 1, item 323]*

Managing the over-surrender of ACCUs in 2013-14

1.24 The Main Repeal Bill makes one significant adjustment to the way that the surrender of 2013-14 units will operate. Section 128(7) of the CE Act currently provides that Australian carbon credit units (ACCUs) that are surrendered in excess of a liable entity’s limit (that is, 5 per cent of total liability for most liable entities) are carried forward and deemed to be surrendered in the next financial year. As the carbon tax will be repealed, the Main Repeal Bill includes provisions that make alternative arrangements for these units in 2013-14.

1.25 Rather than being carried forward, ACCUs that are over-surrendered in relation to an entity’s 2013-14 liability will be deemed not to have been surrendered and the Regulator will restore the ACCUs to the entity’s Registry account. *[Schedule 1, item 323, table item 44]*
[Schedule 1, item 328]

1.26 To enable this restoration of ACCUs by the Regulator, the Main Repeal Bill provides that the Regulator may determine which of the ACCUs surrendered by the entity were over-surrendered and will be restored. For the avoidance of doubt, the Main Repeal Bill confirms that a written notice issued by the Regulator specifying which ACCUs are restored units is not a legislative instrument. This is because the notice is administrative in nature, and does not fall within the meaning of section 5 of the *Legislative Instruments Act 2003*. *[Schedule 1, item 328(4)]*

Immediate cessation of auctions of carbon units

1.27 The Regulator is prohibited from holding auctions of carbon units after 30 June 2014 or from the day that the Main Repeal Bill receives the Royal Assent, if it is on or before 30 June 2014. In addition, any determination made by the Minister under section 113(1) of the CE Act (for these purposes the *Clean Energy (Auction of Carbon Units) Determination 2013*), which sets out the rules and procedures for auctions of carbon units, ceases to have effect from the relevant date. [*Schedule 1, item 343*]

1.28 There is no need for auctions of carbon units to be held after the Main Repeal Bill receives the Royal Assent as, under section 122 of the CE Act, carbon units issued at auction may only be surrendered from 2015-16.

1.29 The repeal of the CE Charges Acts does not apply to units issued as a result of an auction that was conducted before 1 July 2014 so that the auction charges are validly paid. [*Schedule 1, item 324(2)*]

1.30 If auctions are held before the Main Repeal Bill receives the Royal Assent, the Main Repeal Bill includes the requirement that the Regulator cancel any units that were issued at the auctions. Where there was an entry in the Registry for a carbon unit issued at auction at 3:00 pm on the fifth business day after the day that the Main Repeal Bill receives the Royal Assent, the Regulator must cancel the unit and pay the holder of the unit the amount that was paid for the unit at the auction. Note that the refund will be issued to the holder of the unit, who may not necessarily be the person that purchased the unit at auction. [*Schedule 1, item 343A*]

1.31 Under Division 420 of the *Income Tax Assessment Act 1997* (ITAA 1997), an income tax deduction is provided when an entity becomes the holder of a registered emissions unit. Therefore, to ensure these entities do not benefit from both the refund of the auction unit and an income tax deduction, the amount of the refund is included in the entity's assessable income under the general income tax recoupment rules to offset the deduction (see table item 1.27A of section 20-30(1) of the ITAA 1997).

Final cancellation of carbon units

1.32 Once the final surrender for 2013-14 has taken place (which is to occur on Monday, 2 February 2015), there will be no further need for a person to hold carbon units. If there is an entry for a carbon unit in an entity's Registry account at the start of the 'designated carbon unit day', the Regulator is required to cancel the unit and remove the entry from the Registry account. The Regulator is prohibited from issuing carbon units after the designated carbon unit day. [*Schedule 1, item 325*] [*Schedule 1, item 327*]

1.33 The Main Repeal Bill specifies that the ‘designated carbon unit day’ is either:

- Monday, 9 February 2015 (being 5 working days after Monday, 2 February 2015); or
- a later day specified in a legislative instrument made by the Regulator. *[Schedule 1, item 321] [Schedule 1, item 322]*

1.34 A later day may be specified as the designated carbon unit day in a legislative instrument by the Regulator, where the Regulator has also made a legislative instrument under section 142 of the CE Act specifying that the final surrender date for 2013-14 is a day later than 2 February 2015. Both of these legislative instruments are disallowable under section 42 of the *Legislative Instruments Act 2003*. Section 142 of the CE Act allows the Regulator to extend a surrender deadline where technical problems mean that two or more entities are prevented from surrendering units. The Regulator’s power to specify a later designated carbon unit day is necessary to reflect any delay in the final surrender date for 2013-14. *[Schedule 1, item 322]*

1.35 It may be that the Regulator does not need to cancel any carbon units on the designated carbon unit day because of the operation of sections 100(7) and 115 of the CE Act (concerning the cancellation of fixed charge and free carbon units respectively) and item 343A to the Main Repeal Bill (concerning the cancellation of auctioned units).

Ending ongoing obligations under the preserved CE Act provisions

1.36 To provide clarity and remove redundant requirements, the Main Repeal Bill removes the following reporting, notification or administrative obligations unrelated to 2012-13 or 2013-14:

- reporting and notification requirements under the Opt-in scheme, which are set out in the CE Regulations; *[Schedule 1, item 329]*
- the ability for entities to accept, quote or surrender obligation transfer numbers; *[Schedule 1, item 323, table item 11]*
- the requirement that holders of an obligation transfer number or gaseous fuel suppliers notify the Regulator of changes to their name or address; *[Schedule 1, item 323, table item 16]*
- the requirement that joint ventures notify the Regulator if they cease to be a mandatory designated joint venture or cease to pass the joint venture declaration test; and *[Schedule 1, item 323, table items 19 and 21]*
- the ability for entities to surrender a liability transfer certificate. *[Schedule 1, item 323, table item 26]*

The Regulator's powers and obligations

1.37 The Main Repeal Bill ends the Regulator's following powers and obligations from 1 July 2014:

- the issue and cancellation of obligation transfer numbers; *[Schedule 1, item 323, table items 10 to 11]*
- making a declaration that a joint venture passes the joint venture declaration test or revoking such a declaration; and *[Schedule 1, item 323, table items 20 and 22]*
- issuing or cancelling liability transfer certificates. *[Schedule 1, item 323, table items 24 to 26]*

1.38 To maintain relevant public information for the 2013-14 compliance process, the Main Repeal Bill retains the Regulator's following information publication obligations until 30 June 2015:

- the publication requirements in Part 9 of the CE Act, concerning the publication of information about the carbon pricing mechanism, particularly the Liable Entities Public Information Database; and *[Schedule 1, item 323, table item 58]*
- the requirement that the Regulator publish and update information on obligation transfer numbers, including the OTN Register and a list of obligation transfer numbers cancelled or surrendered. *[Schedule 1, item 323, table items 12 to 15]*

Removing references to the flexible price period

1.39 The Main Repeal Bill will remove the following provisions concerning the flexible price period in the preserved provisions of the CE Act:

- definitions relating to concepts relevant only in the flexible price period; *[Schedule 1, item 323, table items 2, 5 to 6]*
- Part 2, which provides for the making of regulations setting a carbon pollution cap for compliance years from 2015-16; *[Schedule 1, item 323, table item 8]*
- provisions that set out compliance and relinquishment arrangements and how eligible emissions units are surrendered in the flexible price period; *[Schedule 1, item 323, table items 42 to 43, 45 to 47, 64 to 65]*
- provisions relating to the publication of information in or about the flexible price period; *[Schedule 1, item 323, table items 59, 61 to 63]*
- provisions relating to the purchase of carbon units at a fixed price in the flexible price period; *[Schedule 1, item 323, table items 30 to 37]*

- provisions relating to auctions or issuance of carbon units in the flexible price period; and *[Schedule 1, item 323, table items 37 and 39]*
- the provision that calculates the ‘per-tonne carbon price equivalent’, which sets the equivalent carbon price applied to certain uses of liquid and gaseous fuels in the flexible price period. *[Schedule 1, item 323, table item 60]*

Transitional and other arrangements

Specific transitional provisions

1.40 The Main Repeal Bill includes the following specific transitional provisions to provide clarity, as a consequence of modifications to the CE Act or for the avoidance of doubt:

- confirming that no liabilities arise from facilities in the Joint Petroleum Development Area and Greater Sunrise unit area (which continues the effect of regulation 3.3 of the CE Regulations); *[Schedule 1, item 323, table item 9]*
- removing provisions that include simplified outlines that are no longer relevant; *[Schedule 1, item 323, table items 1, 27, 40 and 48A]*
- ensuring that any definitions that are relevant to the repeal transition are in place from the date of the Royal Assent, rather than from 1 July 2014; *[Schedule 1, item 345C]*
- removing now-redundant provisions from the list of reviewable decisions and civil penalty provisions (noting that the amendments do not apply to decisions or breaches before 1 July 2014); and *[Schedule 1, item 323, table items 67 to 68]* *[Schedule 1, item 323(3) and (4)]*
- removing references to emissions trading schemes from the role of the Regulator. *[Schedule 1, item 323, table items 70 to 72]*

1.41 The Main Repeal Bill also includes two provisions to clarify the operation of preserved provisions of the CE Act:

- for the avoidance of doubt, the final surrender deadline of 15 June or 1 February will always be a business day, even when that date falls on a non-business day (in which case the deadline is taken to be the next business day); and *[Schedule 1, item 345A]*
- a minor adjustment to an equation in section 131(3) of the CE Act addresses an unintended consequence of the original wording that could be argued to have resulted in an entity having an excessive surrender obligation. *[Schedule 1, item 345B]*

1.42 If the Main Repeal Bill receives the Royal Assent before 31 May 2014, then it provides that the requirements for the Minister to take all reasonable steps to table regulations setting the carbon pollution cap (section 15(1) of the CE Act) and the price ceiling (section 100(14) of the CE Act) are explicitly removed. These regulations would relate to the flexible price period, which commences from 2015-16 and are not required. *[Schedule 1, items 344 and 345]*

1.43 There is no continuing need for reviews to be undertaken by the Climate Change Authority (CCA) under the CE Act. Accordingly, provisions relating to these reviews are removed from the preserved provisions of the CE Act. *[Schedule 1, item 323, table item 69]* For further information about the abolition of the CCA, please refer to the Explanatory Memorandum for the Climate Change Authority (Abolition) Bill 2013 [No.2].

Transitional rule-making power

1.44 The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by Schedule 1 to the Main Repeal Bill. This standard rule-making power is included to ensure that the Minister may address any unanticipated transitional matters through rules with legislative force, thereby ensuring that the specific transitional arrangements are clear to all relevant parties. These rules would be disallowable by either House of the Parliament under section 42 of the *Legislative Instruments Act 2003*. *[Schedule 1, item 342]*

Acquisition of property

1.45 To the extent that the operation of Schedule 1 to the Main Repeal Bill would result in an acquisition of property from a person within the meaning of section 51(xxxi) of the Constitution, the Commonwealth is liable to pay a reasonable amount of compensation to the person. The person may institute proceedings against the Commonwealth if the person and the Commonwealth are unable to agree on the sum that should be paid. The Commonwealth does not anticipate that the operation of Schedule 1 will result in payment of compensation. *[Schedule 1, item 345D]*

Finalising industry assistance arrangements

Termination of industry assistance – Energy Security Fund

1.46 The Energy Security Fund is established by Part 8 of the CE Act. Under section 161 of the CE Act free carbon units are issued in, and in relation to, particular eligible financial years.

1.47 From 1 July 2014, the meaning of ‘eligible financial year’ in section 161 of the CE Act will be limited to the 2012-13 and 2013-14 years. For this reason, from 1 July 2014, the Regulator will not be able to

issue free carbon units under Part 8 of the CE Act. [*Schedule 1, item 323, table item 3*]

Termination of industry assistance – Jobs & Competitiveness Program

1.48 The JCP is established by regulations made under Part 7 of the CE Act. Under clause 103 of Schedule 1 to the CE Regulations, the Regulator issues free carbon units for specified activities which must be carried on during an eligible financial year.

1.49 ‘Eligible financial year’ in clause 103 has the same meaning as in the CE Act, in accordance with section 13 of the *Legislative Instruments Act 2003*. From 1 July 2014, the meaning of ‘eligible financial year’ in clause 103 will be limited to the 2012-13 and 2013-14 years. [*Schedule 1, item 323, table item 3*] For this reason, from 1 July 2014, JCP activities cannot give rise to an entitlement to free carbon units.

True-up arrangements for the final allocation of free carbon units under the Jobs & Competitiveness Program

1.50 The Main Repeal Bill provides for a process by which allocations of free 2013-14 carbon units are subject to a final ‘true-up’. This is designed to correct under- and over-allocations of 2013-14 free carbon units, by allowing for issue of extra free carbon units or imposition of a levy if carbon units are not relinquished.

1.51 For the purposes of the true-up process, the Main Repeal Bill creates a reporting requirement for persons (known as ‘designated persons’) who received 2013-14 free carbon units. A designated person must comply with this reporting requirement just as they are required to comply with a reporting requirement under the JCP. The specific details of the reporting requirement, including what must be reported and when, will be set out in Ministerial rules. By providing that the reporting requirement is set out in rules, the Minister may more readily account for the specific requirements of the affected persons and take account of matters raised in consultation with them. [*Schedule 1, item 351*]

Under-allocation of units

1.52 A person will have an under-allocation of free 2013-14 carbon units if the conditions set out in the Ministerial rules are met. The rules will also specify the method by which the under-allocation is calculated. The Regulator will rectify an under-allocation of free 2013-14 carbon units by issuing a number of additional 2013-14 free carbon units to a person. This can occur after 1 July 2014 for this purpose. [*Schedule 1, item 352 and 353*]

Over-allocation of units

1.53 A person will have an over-allocation of free 2013-14 carbon units if the conditions set out in the Ministerial rules are met. The rules will also specify the method by which the over-allocation is calculated.

A person who has received an over-allocation of free carbon units under the JCP could relinquish the over-allocated units under section 212 of the CE Act. If the person does not relinquish at least the number of over-allocated units, then the person will have a true-up shortfall equal to the number of units not relinquished. *[Schedule 1, items 354 and 355]*

1.54 A person who has a true-up shortfall must pay a levy. The amount of the levy will be worked out using the formula:

number of units in the true-up shortfall x \$24.15

1.55 The true-up levy is imposed in two separate Bills to put beyond doubt that the imposition of the levy complies with section 55 of the Constitution. *[True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clause 8] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clause 8]* When enacted, the names of the Acts will be the *True-up Shortfall Levy (General)(Carbon Tax Repeal) Act 2014* and the *True-up Shortfall Levy (Excise)(Carbon Tax Repeal) Act 2014*. *[True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clause 1] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clause 1]*

1.56 The true-up shortfall levy must be paid by the date set out in the Ministerial rules. A late payment penalty will apply if the true-up shortfall levy is not paid in full by the date prescribed in the rules. The rate of the late payment penalty is 20 per cent per year, unless a lower percentage is prescribed in the rules. The Regulator may recover the levy and late payment penalty on behalf of the Commonwealth. *[Schedule 1, items 356 to 358]*

1.57 To ensure that the Regulator has the appropriate powers and authority to ensure compliance with the true-up shortfall levy, Schedule 1, Part 4 to the Main Repeal Bill and the True-up Shortfall Levy Bills are included in the definition of ‘associated provisions’ under section 5 of the CE Act. This brings the arrangements for the true-up shortfall levy in line with the Regulator’s powers to ensure compliance with the JCP. *[Schedule 1, item 358A]*

Ministerial Rules

1.58 The true-up provisions contain a standard provision authorising the Minister to make the rules referred to in the rest of Schedule 1, Part 4 of the Main Repeal Bill (such as the under- and over-allocation rules) and other rules necessary or convenient for giving effect to the Part by way of a legislative instrument. The rules will involve complex, technical drafting which will need to be the subject of consultation with affected persons and which is therefore suitable for inclusion in subordinate legislation. The rules would be disallowable by either House of the Parliament under section 42 of the *Legislative Instruments Act 2003*. *[Schedule 1, item 359]*

General provisions

1.59 The formal provisions in sections 1 and 2 of the True-up Shortfall Levy Bills commence on the day that the Governor-General gives the Royal Assent. The operative provisions commence on 1 July 2014 or Royal Assent if earlier. *[True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clause 2] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clause 2]*

1.60 Definitions of expressions relating to the true-up process, which refer to concepts that are expressly defined in the subsequent provisions in Schedule 1, Part 4 (such as ‘over-allocation of free carbon units’) and the CE Act. The ‘levy’ is defined by reference to the True-up Shortfall Levy Bills. *[Schedule 1, item 346]*

1.61 The True-up Shortfall Levy Bills include definitions of expressions used in the Bills, namely ‘Joint Petroleum Development Area’, ‘person’ and ‘true-up shortfall’. *[True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clause 3] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clause 3]*

1.62 The true-up provisions apply to:

- the Australian States and Territories and Norfolk Island, but the true-up levy does not apply to the extent (if any) that it would involve taxing the property of a State; and *[Schedule 1, item 347] [True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clauses 4 and 9] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clauses 4 and 9]*
- Australia’s external territories, exclusive economic zone and continental shelf and in the Joint Petroleum Development Area, consistent with the application of the CE Act. *[Schedule 1, items 348 to 350] [True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clauses 5 to 7] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clauses 5 to 7]*

1.63 The Commonwealth cannot tax itself and the true-up provisions do not apply to the Commonwealth. *[Schedule 1, item 347] [True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014, clause 4] [True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014, clause 4]*

Income tax deduction of true-up shortfall levy

1.64 There is no separate provision for the income tax treatment of a payment of a true-up shortfall levy, as the ordinary income tax deduction provisions apply to this levy (see section 8-1 of the ITAA 1997). This results in taxpayers who dispose of their over-allocated units to a third party being treated broadly in the same way as if they had voluntarily relinquished their excess units to the Regulator.

1.65 For example, if taxpayers were to relinquish their free units to the Regulator for no consideration, financially they would be in a neutral position, having neither received consideration for the relinquishment nor

paid for the units. Furthermore, they would not have received a deduction for the market value of the free units received or have been assessed on any amount upon relinquishing the units to the Regulator.

1.66 However, if taxpayers were to sell their free units, they would be liable for a true-up levy. Where the price received for the units is similar to the true-up levy imposed, taxpayers would be in a similar position had they relinquished the units to the Regulator for no consideration. This reflects that any amounts received for the sale of the units would broadly equate to the levy paid. Furthermore, the amount included in assessable income would broadly be offset by a deduction for the levy.

1.67 If the levy remains unpaid after the time when it becomes due for payment, the entity is liable to pay a penalty of 20 per cent per annum or a lower percentage specified in the rules. Section 26-5 of the ITAA 1997 ensures the entity bears the full cost of this penalty and that the entity cannot claim an income tax deduction in respect of this penalty. This outcome is consistent with the income tax treatment that applies where an entity incurs a late payment penalty where they have not paid their unit shortfall charge by the required time.

Chapter 2

Consequential amendments concerning emissions and energy reporting, carbon units and the Clean Energy Regulator

Outline of chapter

2.1 Chapter 2 explains amendments to other legislation that remove redundant and irrelevant functions and references, consequential on the repeal of the carbon tax. This legislation existed when the carbon tax was introduced and was used to support the carbon tax and will continue in operation after the repeal of the carbon tax to support the Government's emissions reduction, energy, energy efficiency and other policies.

The amendments are:

- amendments to the NGER Act to remove the reporting requirements of entities liable under the CE Act and to make consequential amendments;
- amendments to the ANREU Act to remove carbon units from the Registry, remove architecture allowing for direct or indirect linkages with non-Kyoto emissions trading schemes, and remove references to the CE Act;
- amendments to the Regulator Act to remove the Regulator's functions under the CE Act and to make other amendments consequential on the repeal of that legislation;
- amendments to the ASIC Act and the Corporations Act to cease regulation of carbon units as financial products; and
- amendments to the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Anti-Money Laundering Act) to cease its application to carbon units.

Context of amendments

National Greenhouse and Energy Reporting Scheme

2.2 NGERS was implemented by the NGER Act and commenced operation in 2008. NGERS introduced a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. NGERS will continue to:

- assist Australia to meet its international reporting requirements;
- inform the Australian public; and
- inform the development of Government policy.

2.3 From 2012, the objects of the NGER Act included underpinning the carbon tax, which will be removed.

Australian National Registry of Emissions Units

2.4 The Australian National Registry of Emissions Units (the Registry) is a secure electronic system designed to accurately track the location and ownership of emission units. It was established on an administrative basis in 2008 to support Australia's international climate change obligations. In 2011, the Registry was backed by legislation through the introduction of the ANREU Act, which was amended from 2012 to support the carbon tax. Given that the Registry existed before introduction of the carbon tax it will need to continue to deliver its original functions, supported by the existing legislated framework. These functions include:

- assisting Australia meet its commitments under the Kyoto Protocol; and
- underpinning the operation of the Carbon Farming Initiative.

2.5 With the introduction of the carbon tax, and subsequent decision to link to the European Union Emissions Trading Scheme (EU ETS), a number of amendments were made to the ANREU Act to recognise specific emission units issued under these schemes. To ensure clarity and consistency, references to these units and mechanisms relating to these units will be removed.

Financial regulation and carbon units

2.6 Repeal of the carbon tax will result in the cancellation of all carbon units and it is no longer necessary that they be recognised as financial products. Accordingly, a carbon unit will cease to be a financial product under the ASIC Act and the Corporations Act.

2.7 Transitional arrangements are provided in relation to the application of the ASIC Act and Corporations Act on carbon units issued before the specified date and the form in which the ASIC may vary or cancel an Australian Financial Services (AFS) licence with a carbon unit authorisation.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Reporting under NGERs	
From 2014-15 reporting obligations only apply to constitutional corporations and do not extend to 'persons'.	In addition to reports provided under section 19 of the NGER Act by constitutional corporations, any person who is liable under the carbon pricing mechanism is required to provide reports to the Regulator under sections 22A and 22AA of the NGER Act.
Audits under NGERs	
From 2014-15 the auditing arrangements for constitutional corporations that existed prior to the introduction of the carbon tax apply. Mandatory pre-submission audits are not required.	Large liable entities must have their reports audited prior to submitting them to the Regulator. These audit requirements are in addition to the audit requirements that existed prior to the introduction of the carbon tax.
Removal of carbon units as a financial product	
Carbon units will no longer be classified as a financial product under the ASIC Act and the Corporations Act. Transitional arrangements are provided in relation to the application of the ASIC Act and Corporations Act to carbon units issued before the 'designated carbon unit day' and the way in which ASIC may vary or cancel an AFS licence with a carbon unit authorisation.	Carbon units are currently classified as a financial product under the ASIC Act and the Corporations Act. As a result, carbon units are subject to the Corporations Act and the ASIC Act and businesses providing services in respect of carbon units are regulated by ASIC. ASIC currently has the ability to vary or cancel an AFS licence under certain circumstances.

Detailed explanation of new law

National Greenhouse and Energy Reporting Scheme

Removal of requirements relating to liable entities

2.8 Liable entities will not be required to provide reports to the Regulator relating to emissions numbers under sections 22A and 22AA of the NGER Act after reporting requirements for 2013-14 are met. The Main Repeal Bill removes the provisions of the NGER Act that create these obligations and the references to them. *[Schedule 1, items 293 to 295, section 22(1)(a)-(b), 22(2)(a)-(b) and Parts 3A and 3D, NGER Act]*

2.9 The Main Repeal Bill also removes the requirements in the NGER Act that liable entities apply to the Regulator to be registered, and the obligations of the Regulator to register or deregister a person who has applied, after the end of financial year 2013-14. *[Schedule 1, items 288 to 291 and 303, sections 15A, 15AA, 18A, 18B(3)(b) and 25(1), NGER Act]*

2.10 Under the existing CE Act and NGER Act, ‘liability transfer certificates’ allow liable entities to transfer responsibility for reporting under the NGER Act to another person, provided certain conditions are met. As no entities will have liability under the CE Act after 2013-14, this type of transfer mechanism is not required. However, reporting transfer certificates, which provide a similar function for NGER purposes, will continue to function under the NGER Act. The Main Repeal Bill removes the provisions in the NGER Act relating to liability transfer certificates – including applications, reporting and accounting. *[Schedule 1, items 287, 292 to 295 and 298 to 304, sections 13(4), 19(1)(note 4), 22(1)(a)-(b) and 22(2)(a)-(b), Parts 3A and 3D, sections 24(1AD), (1AE)(a), (1H), (1J), (8), 25(1) and 30(2A), NGER Act]*

2.11 The Main Repeal Bill removes from the NGER Act the requirements for large liable entities’ emission reports to be audited. These requirements are redundant once the carbon tax is repealed. However, the pre-submission audit requirement remains in place for 2013-14. Further, the auditing arrangements that existed prior to the introduction of the carbon tax will continue to apply. *[Schedule 1, item 310, section 74AA, NGER Act][Schedule 1, item 337]*

2.12 The Main Repeal Bill removes the obligation in the NGER Act for the Regulator to publish information related to reports submitted by liable entities. However, the publication obligations (as set out in section 24 of the NGER Act) that existed prior to the introduction of the carbon tax will continue to apply. A consequential amendment is also made to section 25 of the NGER Act to remove the ability for reporters to request that information related to reports submitted by liable entities not be published. *[Schedule 1, items 297 and 303, sections 24(1AA) and 25(1), NGER Act]*

Transitional provisions

2.13 Despite the repeal of the definitions and sections of the NGER Act detailed above, the Main Repeal Bill preserves key NGER Act provisions relating to registration, reporting and record keeping so that liable entities can meet their 2013-14 obligations. These transitional NGER Act provisions are necessary because obligations relating to 2013-14 must be met during 2014-15, after the aspects of the NGER Act that relate to the CE Act have been repealed on 1 July 2014. *[Schedule 1, item 337]*

2.14 For example, this means that reports under section 22A of the NGER Act relating to 2013-14 are due by 31 October 2014, despite the fact that that section is repealed from 1 July 2014. Definitions and measurement provisions required for entities to submit those reports also

continue. *[Schedule 1, item 337]* Audit requirements in section 74AA of the NGER Act will continue to apply for reports relating to 2013-14. *[Schedule 1, item 337]*

Removal of reporting obligations of ‘persons’ other than corporations

2.15 The Main Repeal Bill amends the NGER Act to transfer most of the obligations placed on ‘persons’ throughout the Act to ‘group entities’. This is because, ongoing reporting obligations only apply to constitutional corporations and members of their groups and will not extend to ‘persons’ more generally.

2.16 A ‘group entity’ is a new term defined as a corporation that is a member of a controlling corporation’s group. A ‘member’ has the meaning given by section 8(2) of the NGER Act, and includes the controlling corporation and its subsidiaries. These new terms are required to replace the defined term ‘person’, which is not required after repeal of the CE Act. *[Schedule 1, item 214, section 7, NGER Act]*

2.17 The application of the NGER Act to persons other than constitutional corporations was required to underpin the operation of the CE Act. The terms ‘person’ and ‘persons’ where they remain in the NGER Act, have the general meaning given to them by the *Acts Interpretation Act 1901*. *[Schedule 1, items 224, 243, 246, 248, 250, 251, 253, 255 to 258, 261 to 266, 269, 272, 276, 278 to 279 and 286, sections 7, 11(1), 11A, 11B and 13(2) and (3), NGER Act]*

2.18 With the introduction of the carbon tax, the NGER Act was amended to include the concept of ‘non-group entity’, which is a person who is not a member of a controlling corporation’s group. The term ‘non-group entity’ was used to expand specific provisions to account for a person who is not a member of a controlling corporation’s group. The term is used in provisions relating to:

- facility declarations;
- declarations of operational control; and
- auditing.

2.19 The Main Repeal Bill removes all references to ‘non-group entity’ as these entities do not have ongoing obligations under the NGER Act and are not relevant after repeal of the carbon tax. *[Schedule 1, item 220, section 7, NGER Act]*

2.20 The Main Repeal Bill repeals sections 54A and 55A of the NGER Act, which allowed non-group entities to request the Regulator to declare a facility or operational control over a facility. Only corporations may have a facility or operational control declared by the Regulator. *[Schedule 1, items 237, 244, 252, 259, 280 and 305-309, sections 7, 54A, 55A, 56(j) and 56(k)-(l), NGER Act]*

2.21 The Main Repeal Bill also removes references to non-group entities from the auditing provisions for certain entities. These auditing provisions will continue to apply to the responsible member under transfers made under section 22X of the NGER Act. *[Schedule 1, items 311 and 312, sections 74B(1) and 74C(1), NGER Act]*

2.22 Section 22X of the NGER Act allows a controlling corporation to transfer reporting obligations for a facility to a 'group entity', where that group entity has operational control over the facility. It allows entities flexibility in their reporting arrangements and allows them to reduce their reporting burden. The Main Repeal Bill removes the reference to liability transfer certificates in this section, which is redundant following repeal of the CE Act. This reporting transfer mechanism will continue to operate in relation to group entities with operational control. *[Schedule 1, item 296, section 22X(1)(a), NGER Act]*

Changes to provisions relating to 'operational control'

2.23 The term 'operational control' is fundamental in determining the entity that has the legal obligation to report under the NGER Act. The term was adopted under the CE Act for the purposes of assigning liability under the carbon tax. An entity has 'operational control' over a facility under sections 11, 11A and 11B of the NGER Act, where the entity has the authority to introduce and implement operating, health and safety and environmental policies in relation to the facility. In certain circumstances, entities can nominate the group entity with operational control over a facility to the Regulator.

2.24 The Main Repeal Bill removes the requirement for nominations of operational control to be made in relation to interim emissions numbers and fixed charge years. Interim emissions numbers and fixed charge years are only relevant to the carbon tax and these nomination provisions are no longer required. The Main Repeal Bill also removes references to joint ventures from the operational control nomination section as these are only relevant to the operation of the carbon tax. *[Schedule 1, item 267, section 11B(7), NGER Act] [Schedule 1, items 270 to 277, sections 11B(15)-(19) and 11B(15)(b)-(c) and 11B(17)(b)-(c), NGER Act]*

2.25 As a consequence of removing reporting obligations for persons other than constitutional corporations, the operational control test for trusts is no longer relevant and all references are removed. *[Schedule 1, items 221, 247, 281 and 307, sections 7, 11(4), 11C and 56(aab), (aa), (ga) and (gb), NGER Act]*

2.26 The Regulator may cancel a person's nomination for operational control over a facility if they have an unsatisfactory compliance record. The Main Repeal Bill amends the definition of 'unsatisfactory compliance record' to remove contraventions of the CE Act from the list of prescribed actions. *[Schedule 1, items 282 to 284, sections 11D(1)(c), (e)-(f) and (i)-(j), NGER Act]*

Changes to definitions

2.27 After the repeal of the carbon tax, certain definitions included in the NGER Act reference the definitions set out in section 5 of the CE Act, which will no longer exist. As a result new definitions for these terms are included in section 7 of the NGER Act to ensure their continued operation in the context of the NGER Act. These include definitions for ‘carbon dioxide equivalence’, ‘foreign country’ and ‘foreign corporation’.

[Schedule 1, items 204, 211 and 212, section 7, NGER Act]

2.28 The Main Repeal Bill introduces the term, ‘designated financial year’, which means a financial year that begins on 1 July 2012 or any later financial year. This term replaces the term eligible financial year, which was inserted as part of the introduction of the carbon tax. To provide clarity and remove any potential for unintended consequences, all references to ‘eligible financial year’ are replaced with ‘designated financial year’. *[Schedule 1, items 205, 207, 249, 260 and 268, section 7, NGER Act]*

2.29 The Main Repeal Bill removes a number of definitions and measurement provisions from sections 7, 7B, 7C and 10 of the NGER Act because they are redundant, having been included solely for the purpose of underpinning the reporting and measurement of liabilities under the carbon pricing mechanism. *[Schedule 1, items 206, 208 to 210, 213, 215 to 220, 222 to 232, 234, 238 and 241, sections 7, 7B and 7C, NGER Act]*

Administrative amendments

2.30 The NGER Act will no longer have the object of underpinning the CE Act. Accordingly, the Main Repeal Bill removes this object from section 3 of the NGER Act. *[Schedule 1, items 196 to 198, section 3, NGER Act]*

2.31 As a consequence of the CE Act being repealed, references to the CE Act in the NGER Act are redundant. The Main Repeal Bill removes these references. *[Schedule 1, items 199, 233, 235, 236, 239, 240, 242, 245, 254, sections 4(1), 7A(1), 8(1), 9(1), 10(1), 10(3), 11(1), 11(3) and 11A(2), NGER Act]*

2.32 With the introduction of the carbon tax, section 4 of the NGER Act was amended to include the constitutional powers underpinning the CE Act. With the repeal of the CE Act, these additional powers are no longer required. The Main Repeal Bill amends the constitutional basis of the NGER Act to remove reference to those powers that supported the CE Act. *[Schedule 1, items 199 to 200, sections 4(1)-(2), NGER Act]*

2.33 The Main Repeal Bill also amends the NGER Act provision dealing with the relationship between the NGER Act and State and Territory laws to return it to its pre-CE Act form. Section 5(2) was added to the NGER Act to ensure that the Act excluded State and Territory laws which required reporting of greenhouse gas emissions by most of the legal persons covered by the CE Act (and who were required to report under the

NGER Act). It will not be needed once the CE Act is repealed and reference to greenhouse gas emissions is reinstated in section 5(1).
[Schedule 1, items 201 to 203, section 5, NGER Act]

Australian National Registry of Emissions Units

Removal of carbon units

2.34 The repeal of the carbon tax will involve cancellation of all carbon units, as these units will not need to exist after repeal of the carbon tax. The Main Repeal Bill amends the ANREU Act to repeal redundant references to ‘carbon units’. *[Schedule 1, items 13, 25, 31, 38 to 39, 41, 45, 55, 58 to 60, 64, 71, 72, 78, 79, 80, 82, sections 3, 4, 9(4)(a), 11(5)(b), 15(2)(aa) 26(3)(a)(ia), 27(3B)(c), 28A(1)(aa), 28B(1)(aa), 28D(5)(ii), 61A and 64, ANREU Act]*

2.35 The amendments made by the Main Repeal Bill to the ANREU Act will commence on 1 July 2014. *[clause 2]*

2.36 However, carbon units will remain in existence until the ‘designated carbon unit day’ on Monday, 9 February 2015 (or a later day as specified by the Regulator) so that they can be used to satisfy liabilities for the 2013-14 eligible financial year. For that reason, the Main Repeal Bill provides that the ANREU Act in its unamended form continues to operate in relation to carbon units issued before the designated carbon unit day. This is a transitional arrangement, designed to support the finalisation of carbon tax liabilities for 2012-13 and 2013-14. *[Schedule 1, item 332]*

Removal of other references to the CE Act

2.37 The Main Repeal Bill makes consequential amendments to the ANREU Act to remove references to the CE Act and provisions of that Act. *[Schedule 1, items 13, 15, 16, 22, 25, 26, 29, 31, 37, 40, 48, 51, 54, 58 to 59, 63, 67 to 70, 72 and 73, sections 3, 4, 14A, 17(1A), 19(3B), 22(4B), 27(3B), 28A(4)(aa), 28B(11), 28C(17)(aa), 28D(5)(b) and 28D(16)(aa), ANREU Act]*

Removal of capacity to link to non-Kyoto markets

2.38 The Registry will no longer need the capacity to record trade in units that are not Kyoto units. The category of ‘prescribed international unit’ was intended to encompass a broad range of non-Kyoto international emissions units to facilitate trade in those units. As this category is no longer needed, the definition of prescribed international unit will be removed. *[Schedule 1, item 30, section 4, ANREU Act]*. The Main Repeal Bill provides for references to the term to be removed from the ANREU Act. *[Schedule 1, items 13, 18-19, 23, 32 to 34, 38, 42 to 44, 46 to 47, 52 to 53, 56 to 57, 61 to 62, 65 to 66, 68 to 69, 75 to 76, 79, 81, 87 to 89, sections 3, 4, 9(4)(a), 15(2)(d), 16(2)(b)(ii), 16(5), 16(7)(b), 21, 22(4A)(a), 26(3)(iii), 28A(1), 28B(1), 28B(11), 58, 63 to 63G, 64 and 82, ANREU Act]*

2.39 Operational provisions allowing the Regulator to facilitate trade in prescribed international units will be removed. *[Schedule 1, item 74, Part 4, ANREU Act]*

2.40 The Main Repeal Bill removes other Regulator functions necessary to give effect to trading instructions relating to prescribed international units, for example to make entries for prescribed international units on the Registry or to transfer prescribed international units between accounts. *[Schedule 1, items 36 and 49, sections 4, 17(3) and 50 to 53, ANREU Act]*

Removal of capacity to link to international emissions trading schemes

2.41 To facilitate linking with other international emissions trading schemes, including the EU ETS, the definition of ‘prescribed international units’ included European Union Allowances (EUAs) and Australian Issued International Units (AIUs). With the repeal of the carbon tax, it follows that linking to other emissions trading schemes will not proceed. Definitions and provisions that were inserted into the ANREU Act to achieve that outcome are no longer required and will be removed. *[Schedule 1, items 14, 17, 20, 21, 24, 27 to 29, 83 to 86 and 90 to 91, sections 4, 48A, 66, 79(1), 82 and 86A and Parts 6A and 6B, ANREU Act]*

2.42 As there will be no EUAs or AIUs held in the Registry, the Main Repeal Bill removes anti-fraud and oversight arrangements relating to EUAs and AIUs as they are redundant. *[Schedule 1, items 35 and 84, sections 4 and Parts 6A and 6B, ANREU Act]*

Clean Energy Regulator

Change in the role of the Regulator

2.43 Under section 12 of the Regulator Act, the Regulator has the functions conferred on it by a climate change law or another Commonwealth law. Sections 43 and 44 of the Regulator Act provide the Regulator with the power to disclose protected information for the purpose of a climate change law, including the Clean Energy Legislation.

2.44 The Main Repeal Bill removes the Clean Energy Legislation from the definition of ‘climate change law’ as a consequence of the repeal of that legislation. *[Schedule 1, item 97, section 4, Regulator Act] [Schedule 1, item 95, sections 3, 4 and 41(3)(a), Regulator Act]*

2.45 The Main Repeal Bill also updates the simplified outline of the Regulator Act and the objective of the Regulator to take account of the changed functions of the Regulator. *[Schedule 1, item 95 and 101, sections 3 and 4, Regulator Act]*

2.46 These amendments take effect on 1 July 2014. *[clause 2]*

2.47 The Regulator will need to perform functions under the Clean Energy Legislation in its preserved form and to disclose protected information for the purposes of that legislation. A transitional provision continues the existing definition of ‘climate change law’ to ensure that these things can happen. It also deems the definition to include the repeal legislation so that the Regulator can perform functions under those laws

and disclose protected information for the purposes of those laws.
[Schedule 1, item 333]

Other consequential amendments

- 2.48 Other consequential amendments to the Regulator Act are:
- to remove a reference to consistency with the objects of the CE Act in the provision authorising the Minister to give directions to the Regulator; *[Schedule 1, item 103, section 41(3)(a), Regulator Act]*
 - to transfer definitions currently contained in the CE Act to the Regulator Act because they are required for the continued operation of the Regulator Act after repeal of the carbon tax. The relevant definitions are ‘Climate Change Convention’, ‘international climate change agreement’, ‘greenhouse gas’, and ‘international agreement’; and *[Schedule 1, items 96, 98, 99 and 100, section 4, Regulator Act]*
 - to remove references in the Regulator Act to ‘prescribed international units’, consistent with the removal of the concept from the ANREU Act. *[Schedule 1, items 102 and 104, sections 4 and 49(1)(z), Regulator Act]*

Financial regulation and carbon units

ASIC Act Amendments

2.49 The Main Repeal Bill removes references to ‘carbon units’ in the ASIC Act, which means that a carbon unit ceases to be a financial product from a date specified in the legislation. *[Schedule 1, items 92 and 93, sections 12BAA(7)(ka) and 12BAB(1)(g), ASIC Act]*

2.50 A new Part 20 to the ASIC Act is inserted to provide transitional provisions to ensure that carbon units issued before the designated carbon unit day continue to be regulated as financial products. *[Schedule 1, item 94, Part 20, ASIC Act]*

2.51 ‘Designated carbon unit day’ has the same meaning as in Schedule 1, Part 3 of the Main Repeal Bill, that is, 9 February 2015, or a later day as specified by the Regulator. *[Schedule 1, item 94, section 295, ASIC Act]*

2.52 Carbon units issued prior to the designated carbon unit day will continue to be subject to the ASIC Act. For example, up until the designated carbon unit day, carbon units will continue to be subject to the consumer protection provisions provided for in the ASIC Act. *[Schedule 1, item 94, section 296, ASIC Act]*

Corporations Act amendments

2.53 The Main Repeal Bill removes references to ‘carbon units’ in the Corporations Act which has the effect of a carbon unit ceasing to be a

financial product from the date specified in the legislation. *[Schedule 1, items 105 and 106, sections 9 and 764A(1)(kaa), Corporations Act]*

2.54 The Main Repeal Bill inserts a new Part 10.23 into the Corporations Act to provide transitional arrangements relating to removal of carbon units as a financial product and ensure that carbon units issued before the ‘designated carbon unit day’ continue to be regulated as financial products. *[Schedule 1, item 107, Part 10.23, Corporations Act]*

2.55 ‘Designated carbon unit day’ has the same meaning as in the Main Repeal Bill, that is, 9 February 2015, or a later day as specified by the Regulator. *[Schedule 1, item 107, section 1542, Corporations Act]*

2.56 Carbon units issued prior to the designated carbon unit day will continue to be subject to the Corporations Act. For example, up until the designated carbon unit day, carbon units will continue to be subject to the financial services laws under the Corporations Act. *[Schedule 1, item 107, section 1543, Corporations Act]*

2.57 Where ASIC varies a condition of an AFS licence and that variation only has the effect of removing a carbon unit authorisation, section 914A(3), (4) and (5) of the Corporations Act does not apply. Primarily, ASIC is not required to give the licensee the opportunity to appear, or be represented at a hearing before ASIC or to make a submission to ASIC in relation to the removal of the carbon unit authorisation. *[Schedule 1, item 107, section 1544, Corporations Act]*

2.58 ASIC will have the ability to cancel an AFS licence that only has authorisations in respect of carbon units. Where ASIC cancels an AFS licence, ASIC is not required to provide a statement outlining the reasons for the cancellation (which is required under section 915G of the Corporations Act when a licence is ordinarily cancelled) because the question of cancellation is a purely factual one, rather than a discretionary decision, and should have no adverse effect on the licence holder. However, affected licensees will continue to have the ability to apply to have ASIC’s actions reviewed by the Administrative Appeals Tribunal or the court system. *[Schedule 1, item 107, sections 1545 and 1546, Corporations Act]*

2.59 In order to vary a condition of an AFS licence or cancel a licence as a result of carbon units ceasing to be a financial product, it will not be necessary for a licensee to apply to ASIC for this to occur – ASIC will have the ability to take such action without an application from the affected licensee.

Removal of carbon units from money laundering legislation

2.60 Security and anti-fraud measures introduced to address the risk of money laundering through trading in carbon units will no longer be needed after carbon units are cancelled.

2.61 References to carbon units in the Anti-Money Laundering Act will be removed. This will have the effect of ending the requirement for financial institutions to report on trade in carbon units to the Australian Transaction Reports and Analysis Centre (AUSTRAC). *[Schedule 1, items 10 to 12, sections 5 and 6(2) (paragraph (baa) and (d) in table item 33), Anti-Money Laundering Act]*

2.62 The amendments to the Anti-Money Laundering Act will commence on 1 July 2014. *[clause 2]* However, carbon units will remain in existence until the ‘designated carbon unit day’ on 9 February 2015 (or a later day specified by the Regulator) so that they can be used to satisfy liabilities for the 2013-14 eligible financial year. For that reason, the Main Repeal Bill also makes transitional provision that the Anti-Money Laundering Act in its unamended form continues to operate in relation to carbon units issued before the designated carbon unit day. *[Schedule 1, item 331, sections 5 and 6(2) (paragraph (baa) and (d) in table item 33), Anti-Money Laundering Act]*

Chapter 3

Consequential taxation amendments

Outline of chapter

3.1 Chapter 3 explains the consequential amendments to taxation provisions associated with repeal of the carbon tax. Specifically, these amendments repeal redundant provisions in the:

- income tax, goods & services tax (GST) and petroleum resource rent tax (PRRT) legislation relating to emissions units issued and charges imposed under the carbon tax; and
- taxation administration legislation relating to the disclosure of taxpayer information by the Commissioner of Taxation (Tax Commissioner) to the Regulator.

Context of amendments

3.2 The establishment of the carbon tax introduced a number of amendments to the existing tax provisions to provide specific income tax and GST treatment for emissions units. These amendments reduced the compliance costs that taxpayers would have otherwise faced in using the ordinary income tax and GST provisions.

3.3 Amendments also provided that where a liable entity failed to meet its surrender obligations the resulting unit shortfall charge was not deductible expenditure for income tax and PRRT purposes. This approach was designed to ensure that taxpayers who are non-compliant liable entities face the full costs of non-compliance.

3.4 Due to the repeal of the carbon tax these amendments are no longer required and are removed from the taxation provisions.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Income tax treatment of redundant units	
The discrete income tax provisions that apply to emissions units on the Registry no longer apply to redundant units, namely carbon units and prescribed international units.	Discrete income tax provisions apply to emissions units on the Registry, including carbon units, Kyoto units, prescribed international units and ACCUs.
GST treatment of redundant units	
GST-free treatment is removed from redundant emissions units, namely carbon units and prescribed international units.	Carbon units, eligible ACCUs and eligible international emissions units are GST-free.
Petroleum Resource Rent Tax treatment of redundant units	
As a result of ending the JCP, the provision which includes in the assessable receipts of a petroleum project amounts received from the sale of free JCP carbon units is removed as it is redundant.	Amounts received in relation to a petroleum project from the sale of free JCP carbon units are included in assessable receipts of that project.
Unit shortfall charge	
Redundant income tax and PRRT provisions relating to the unit shortfall charge are removed.	Unit shortfall charge is not deductible expenditure under the income tax provisions and is excluded expenditure under the PRRT provisions.
International Unit Surrender Charge	
Redundant income tax provisions relating to a charge imposed on the surrender of an eligible international emissions unit are removed.	An income tax deduction is available for a charge imposed on the surrender of an eligible international emissions unit.
Provision of information by the Tax Commissioner to the Regulator	
Redundant taxation administration provisions which allow the Tax Commissioner to provide carbon tax related information to the Regulator are removed.	The taxation administration provisions allow the Tax Commissioner to provide carbon tax related information to the Regulator.

Detailed explanation of new law

Taxation treatment of redundant units

Income tax treatment of units

3.5 Discrete income tax provisions were introduced as a part of the Clean Energy Legislation concerning the income tax treatment of units registered on the Registry, namely carbon units, Kyoto units, prescribed international units and ACCUs. The amendments inserted Division 420 of the ITAA 1997, which provided for a rolling balance treatment for units registered on the Registry.

3.6 As the taxation provisions in respect of carbon units and prescribed international units become redundant with the repeal of the carbon tax, these amendments remove these provisions from the ITAA 1997. *[Schedule 1, items 158 to 195 (excluding 179), sections 104-5, 104-205(1)(a)(i) to (iv), 112-97, 118-15(2), 420-10(a) and (c), 420-15(1) (note), 420-15(3), 420-20(3), 420-21(1)(a)(i)-(iv), 420-21(1) (example), 420-21(2)(a)(i)-(iv), 420-35(b)(i) and (ii), 420-35 (example), 420-51(1) and (2), 420-52(a)(i), 420-52(b), 420-55(6), 420-57(9), 420-58, 420-60(1), (2) and (4), 420-65(3), 420-70(3) and 995-1(1), ITAA 1997]*

3.7 Division 420 continues to apply to the other categories of emissions units that continue to be held on the Registry, namely ACCUs and Kyoto units. Retaining these provisions ensures continued certainty and reduced compliance costs for entities using these units, as it provides clarity on the tax treatment of these units without the need for further interpretation under various provisions of the tax law.

GST-free status of units

3.8 The Clean Energy Legislation also amended the GST Act to ensure that the supplies of eligible emissions units, as defined in the CE Act, are GST-free. These provisions in respect of carbon units and prescribed international units become redundant with the repeal of the carbon tax.

3.9 A definition of 'eligible emissions unit' is included in the GST Act to ensure that GST-free status continues to apply to the categories of emissions units that continue to exist. This definition effectively excludes redundant carbon units and prescribed international units. *[Schedule 1, items 7, 8 and 9, section 195-1, GST Act]*

3.10 The amendments achieve this by importing definitions of eligible international emissions unit and eligible Australian carbon credit unit into the GST Act under the definition of an 'eligible emissions unit'. 'Eligible Australian carbon credit unit' has the same meaning as in the CE Act prior to its repeal and 'eligible international emissions unit' has the same meaning as in the ANREU Act, which no longer includes prescribed international units due to the repeal of the carbon tax. The effect of importing these definitions into the GST Act is that ACCUs

and eligible international emissions units (excluding prescribed international units) retain their GST-free status. *[Schedule 1, items 7, 8, 9 and 19, section 195-1, GST Act and section 4, ANREU Act]*

Treatment of units under the Petroleum Resource Rent Tax provisions

3.11 The *Petroleum Resource Rent Tax Assessment Amendment Act 2012* made amendments to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTA Act) to ensure that amounts received from the sale of free carbon units issued under the JCP in relation to a petroleum project are included in assessable receipts of that project. The carbon tax repeal terminates the JCP and as a result a consequential amendment is required to remove provisions relating to this program. *[Schedule 1, items 316 and 317, section 28(1)(b)(iii) and 28(1)(c), PRRTA Act]*

Application and transitional provisions relating to redundant units

3.12 The amendments to the taxation provisions apply from the repeal of the carbon tax, effective on 1 July 2014. However, transitional amendments ensure that units issued up to the designated carbon unit day, that day being 9 February 2015 or a later date if specified in a disallowable legislative instrument made by the Regulator, continue to receive the tax treatment that existed prior to 1 July 2014. This ensures that where there is a requirement to issue carbon units to satisfy 2013-14 carbon tax liabilities on or after 1 July 2014, these carbon units continue to remain subject to the discrete taxation provisions that apply to emissions units. *[Schedule 1, items 322, 323, 330, 336(2) and 339(1)]*

3.13 As no prescribed international units have been issued, registered or prescribed no transitional provisions are needed in respect of these units in the income tax and GST provisions.

Taxation treatment of charges imposed under the Clean Energy Legislation

Unit shortfall charge

3.14 Under the current carbon tax arrangements, if liable entities do not surrender enough eligible emissions units to satisfy their liability, a unit shortfall charge is payable. To ensure non-compliant entities bear the full cost of this charge, provisions included in the ITAA 1997 prevent taxpayers from claiming an income tax deduction in respect of this charge. Provisions are also included in the PRRTA Act to ensure this charge is not recognised as expenditure (that is, it is excluded expenditure).

3.15 The Main Repeal Bill removes redundant provisions relating to the unit shortfall charge with 2013-14 being the last year in which the unit shortfall charge can be applied. Therefore, as the charge can be last applied in respect to the 2013-14 year, this Bill removes these redundant provisions in the ITAA 1997 and the PRRTA Act. Transitional provisions ensure these provisions continue to operate in respect to the periods for

which the charge can be applied. [Schedule 1, item 156, section 12-5, ITAA 1997] [Schedule 1, item 157, section 26-18, ITAA 1997] [Schedule 1, item 318, section 44(1)(ia), PRRTA Act] [Schedule 1, item 336(1)] [Schedule 1, item 339(2)]

International Unit Surrender Charge

3.16 Section 420-43 of the ITAA 1997 provides that a taxpayer can deduct an amount of charge imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* on the surrender of an eligible international emissions unit. As this charge was repealed by the *Clean Energy (International Emissions Trading and Other Measures) Act 2012*, this provision is redundant and as such is removed from the ITAA 1997. [Schedule 1, item 179, section 420-43, ITAA 1997]

Provision of information by the Tax Commissioner to the Regulator

3.17 Table 6, section 355-65(7) of Schedule 1 to the *Taxation Administration Act 1953* allows the Tax Commissioner to provide information to the Regulator in respect of the carbon pricing mechanism and the equivalent carbon price on taxable fuels.

3.18 As both of these mechanisms are repealed with effect from 1 July 2014, the information sharing provisions are also repealed with effect from this date. However, the repeal of these provisions does not affect the ability of the Tax Commissioner to continue to provide appropriate information to the Regulator in respect to relevant transactions relating to the operation of the carbon pricing mechanism and equivalent carbon price. For example, the Tax Commissioner may seek verification from the Regulator that a taxpayer was covered by the Opt-in scheme for liquid petroleum fuels when they lodge their claim for fuel tax credits in the second half of 2014 in respect of fuel acquired earlier that was covered by the Opt-in scheme. [Schedule 1, items 319 and 340, section 355-65(7) (table item 3), TAA 1953]

3.19 These amendments provide that provisions relating to the true-up shortfall levy are associated provisions for the purposes of the CE Act. As the existing disclosure of taxpayer information provisions allows the Tax Commissioner to disclose information to the Regulator for the purposes of the associated provisions of that Act, this has the effect that the Tax Commissioner can also disclose information to the Regulator for the purposes of the true-up shortfall levy. [Schedule 1, items 340 and 358A]

Chapter 4

Amendments to the Competition and Consumer Act 2010

Outline of chapter

4.1 Schedule 2 to the Main Repeal Bill amends the CC Act to prohibit carbon tax-related price exploitation and false or misleading representations about the effect of the carbon tax repeal. It also provides the ACCC with additional price monitoring powers in relation to the carbon tax repeal.

Context of amendments

Overview

4.2 The removal of the carbon tax is expected to lower input costs for some businesses. In some markets this will flow on in the form of lower consumer prices. However, in selected markets, especially where competition is limited, businesses may choose not to pass through savings from the carbon tax repeal.

4.3 The amendments contained in Schedule 2 to the Main Repeal Bill will help to ensure that consumers and businesses are not exploited by suppliers following the repeal of the carbon tax by prohibiting price exploitation with respect to certain key goods (such as electricity and gas) and false or misleading representations about the effects of the carbon tax repeal on prices. These amendments are similar to those made when the GST was first introduced.

4.4 The amendments will also give the ACCC monitoring powers to assess the general effect of the carbon tax repeal on certain prices, and for the purpose of assisting the ACCC's considerations with respect to the new price exploitation prohibition.

4.5 Under the CC Act as it currently stands, there is no prohibition against price exploitation. However, there are existing provisions that prohibit false and misleading misrepresentations, including about price. The amendments will complement these existing provisions of the CC Act.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Introduces a new prohibition on businesses engaging in carbon-specific price exploitation with respect to certain key goods in relation to the carbon tax repeal, with contraventions incurring maximum pecuniary penalties of 6,471 penalty units (\$1,100,070) for a corporation and 1,295 penalty units (\$220,150) for an individual.	There is currently no price exploitation provision under the CC Act.
Introduces new powers for the ACCC to: monitor the prices of certain goods before and during the carbon tax repeal transition period; assess the general effect of the carbon tax repeal on these prices; and assist the ACCC in considering whether a corporation has engaged, is or may engage in price exploitation.	Under Part VIIA, Division 5 of the CC Act, the Minister may direct the ACCC to monitor prices, costs and profits relating to the supply of goods or services for defined businesses or sectors.
Introduces a new prohibition preventing corporations from making false or misleading representations about either the effect of the carbon tax repeal or the carbon tax scheme on prices during the carbon tax repeal transition period.	Currently, section 29(1)(i) of the Australian Consumer Law (ACL) prohibits false or misleading representations in connection with the supply or possible supply of goods or services, and the promotion of the supply or use of goods and services with respect to price. Section 18 of the ACL provides a general prohibition on misleading or deceptive conduct.

Detailed explanation of new law

4.6 With a view to ensuring that consumers and businesses are not exploited by suppliers following the repeal of the carbon tax, the Main Repeal Bill:

- inserts a new Part V in the CC Act prohibiting carbon tax-related price exploitation and false or misleading representations about the effect of the carbon tax repeal; and *[Schedule 2, item 3, Division 1, CC Act]*
- provides the ACCC additional price monitoring powers in relation to the carbon tax repeal. *[Schedule 2, item 3, section 60G, CC Act]*

4.7 New Part V of the CC Act applies to the States and Territories insofar as they conduct business either directly or through an authority of the State or Territory. *[Schedule 2, item 1, section 2B(1), CC Act]*

4.8 Section 6(2)(b) of the CC Act currently extends the application of parts of the CC Act in reliance of the Commonwealth's constitutional trade and commerce power. It is amended to similarly extend the application of the new Part V (other than Division 5). *[Schedule 2, item 2, section 6(2)(b), CC Act]*

Price exploitation in relation to the carbon tax repeal

4.9 The Main Repeal Bill amends the CC Act to include a new prohibition against price exploitation in relation to the carbon tax repeal. This will let the ACCC take action against corporations that engage in price exploitation following the repeal of the carbon tax. *[Schedule 2, item 3, section 60, CC Act]*

4.10 The amendments to the CC Act include a summary of new Part V, which provides a simplified outline of the new price exploitation and monitoring provisions. *[Schedule 2, item 3, section 60, CC Act]*

4.11 The price exploitation prohibition applies to the regulated supply of regulated goods during the carbon tax repeal transition period, which is the period beginning at the start of 1 July 2014 and ending at the end of 30 June 2015. *[Schedule 2, item 3, Part V, CC Act]*

4.12 'Regulated supply' means a supply of regulated goods that occurs during the carbon tax repeal transition period (from 1 July 2014 to 30 June 2015). *[Schedule 2, item 3, section 60A, CC Act]*

4.13 'Price' means a charge of any description for the supply and any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply. *[Schedule 2, item 3, section 60A, CC Act]*

4.14 'Regulated goods' means natural gas, electricity, SGGs, SGG equipment or any other kind of good prescribed by the Minister through a legislative instrument, which is disallowable by either House of the Parliament under section 42 of the *Legislative Instruments Act 2003*. This power will allow the Minister, in the event that there are significant concerns about pricing behaviour in other markets or sectors, to extend the operation of the price exploitation power to these additional markets or sectors. The list of regulated goods is intended to cover retail and wholesale electricity and natural gas, as well as supplies of SGGs throughout the supply chain. *[Schedule 2, item 3, section 60B, CC Act] [Schedule 2, item 3, section 60A, CC Act] [Schedule 2, item 3, section 60B(1), CC Act]*

4.15 Definitions for 'synthetic greenhouse gases' and 'synthetic greenhouse gas equipment' are the same as their respective meanings in the *Ozone Protection and Synthetic Greenhouse Gases Management Act 1989* (Ozone Management Act). *[Schedule 2, item 3, section 60A, CC Act]*

4.16 New section 60C of the CC Act sets out the prohibition on price exploitation in relation to the carbon tax repeal. It contains a number of elements. A corporation engages in price exploitation in relation to the carbon tax repeal if, and only if:

- it makes a regulated supply;
- the price for the supply is unreasonably high, having regard alone to the carbon tax repeal; and
- the price for the supply is unreasonably high even taking into account the supplier's costs, supply and demand conditions, and any other relevant matter. *[Schedule 2, item 3, section 60C, CC Act] [Schedule 2, item 3, section 60C(2), CC Act]*

4.17 The amendments to the CC Act do not insert a definition of 'supplier's costs'. This is deliberate as the costs faced by a supplier will vary on a case-by-case basis, and it would not be possible to draft a useful, all-inclusive definition.

4.18 A corporation engages in price exploitation where it makes a regulated supply at an unreasonably high price having regard to the carbon tax repeal, the supplier's costs, supply and demand conditions, and any other relevant matter. The test of what constitutes an 'unreasonably high' price is one of reasonableness. The court is expected to take into account the specific circumstances of the case in considering whether the price of supply was unreasonably high. Further, while prices may reduce in some markets following the carbon tax repeal, in other markets there may be valid reasons as to why they may not. *[Schedule 2, item 3, section 60C(2), CC Act]*

4.19 If a Court finds that a corporation or an individual has contravened this prohibition, then it may be subject to maximum civil pecuniary penalties of 6,471 penalty units (\$1,100,070) and 1,295 penalty units (\$220,150) for a corporation and an individual respectively. These penalty amounts are in line with the penalty amounts under the ACL for a wide range of offences, including false and misleading representations. *[Schedule 2, items 5, 6 and 7, section 76(1)(a), 76(1A)(b) and 76(1B)(a), CC Act]*

4.20 The levels of pecuniary penalties reflect the seriousness of the contraventions and represent clear and strong disincentives for non-compliance. The effectiveness of the new prohibitions hinges on the ability to deter, and where necessary enforce, contraventions. This is particularly important given that a person who does not comply could obtain substantial financial gain through charging unreasonably high prices.

4.21 Other redress and enforcement mechanisms include actions for damages, injunctions and a range of punitive, non-punitive and other

orders, including a new power for the court to make orders limiting prices and requiring refunds.

4.22 The ACCC may issue a written notice to a corporation if it considers the corporation has engaged in price exploitation in relation to the carbon tax repeal. New section 60D(2) of the CC Act sets out the form and content of the notice. *[Schedule 2, item 3, section 60D, CC Act]*

4.23 In proceedings seeking pecuniary penalties, injunctions or orders (both punitive and non-punitive) in relation to a contravention of new section 60C of the CC Act, the notice will be prima facie evidence that the price charged for the supply was unreasonably high, and that unreasonably high price was not attributable to the matters referred to in new section 60C(2)(c) of the CC Act. The ACCC is able to vary or revoke the notice, either on its own initiative, or on application by the corporation to which the notice is issued. New section 60D of CC Act creates additional incentive for compliance by putting the onus on the supplier to prove that price was not unreasonably high in any relevant court proceedings. The issuing of such notices would also serve as a warning for suppliers to stop or refrain from future conduct that may be considered by the ACCC to be in breach of the new section 60C of the CC Act. *[Schedule 2, item 3, section 60D(3) and (4), CC Act]*

4.24 The ACCC may also issue a written notice to a corporation which allows the ACCC to indicate to a corporation that supplies specified in the notice should not be made above a maximum price. In effect these notices will give a warning to a corporation that supplies above the maximum price specified will, in the ACCC's opinion, indicate price exploitation. *[Schedule 2, item 3, section 60E, CC Act]*

4.25 Unlike notices issued under new section 60D of the CC Act, notices issued under new section 60E of the CC Act will not constitute prima facie evidence in any subsequent proceedings. However, the ACCC will be able to publish notices issued under new section 60E of the CC Act, and will also be required to include them in its report to the Minister under new section 60J of the CC Act. *[Schedule 2, item 3, sections 60E(4) and 60J(2), CC Act]*

4.26 To the extent that the operation of a provision in new Part V of the CC Act would result in an acquisition of property from a person without just terms within the meaning of section 51(xxxi) of the Constitution, the provision does not have any operation and the Act remains constitutionally valid. *[Schedule 2, item 3, section 60F, CC Act]*

Price monitoring in relation to the carbon tax repeal

4.27 New section 60G of the CC Act provides the ACCC with new powers to monitor the prices of certain goods to assess the general effect of the carbon tax scheme and carbon tax repeal on prices charged by corporations for supplies for a period before and during the carbon tax

repeal transition period, and to assist it in considering whether a corporation has engaged, is or may engage in price exploitation. This will inform the ACCC's reports to the Minister under new section 60J of the CC Act. *[Schedule 2, item 3, section 60G, CC Act] [Schedule 2, item 3, section 60G(1), (3), (6) and (8), CC Act]*

4.28 The ACCC's monitoring power will extend beyond the prices actually charged for supplies. In assessing the general effect of the carbon tax scheme and carbon tax repeal on prices, it may also monitor prices advertised, displayed and offered. This allows for the general effect of the carbon tax repeal to be monitored more comprehensively, and potentially allows the ACCC to become aware of possible price exploitation before it has actually occurred. *[Schedule 2, item 3, section 60G(2), (4), (7), and (9), CC Act]*

4.29 In addition to the monitoring for the purpose of assessing the general effects of the carbon tax scheme and carbon tax repeal on pricing, the ACCC will also be able to monitor prices to assist its consideration of whether a corporation has engaged, is engaging or may in the future engage in price exploitation in relation to the carbon tax repeal. It is expected that targeted price monitoring will be an important element of the ACCC's enforcement regime with respect to the price exploitation prohibition. *[Schedule 2, item 3, section 60G(5), CC Act]*

4.30 The new ACCC monitoring powers will not be economy-wide, but will be focused in scope. The provisions apply to 'relevant goods' and any goods supplied by a corporation when that corporation is on the Liable Entities Public Information Database. *[Schedule 2, item 3, section 60G(11), CC Act]*

4.31 'Relevant goods' include all 'regulated goods' and any other kind of goods specified by regulation under the section. In addition, as 'relevant goods' capture all 'regulated goods', any kind of goods added to the scope of 'regulated goods' would automatically flow through to expand the scope of price monitoring. This focused monitoring approach will allow the ACCC to identify the most important price effects of the carbon tax scheme and carbon tax repeal in the economy, and target its monitoring efforts under the new section. *[Schedule 2, item 3, section 60G(11), CC Act]*

4.32 The power to prescribe additional relevant goods will allow the Minister, in the event that there are significant concerns about pricing behaviour in other markets or sectors, to extend the operation of the price monitoring power to these additional markets or sectors. *[Schedule 2, item 3, section 60G(12), CC Act]*

4.33 ACCC monitoring powers will have effect for the 'carbon tax repeal transition period' (that is from 1 July 2014 to 30 June 2015) and the 'pre-repeal transition period' (that is from the commencement of the section until 30 June 2014). For example, if Schedule 2 commences on 1 January 2014, then the monitoring power will last from that time until

30 June 2015. It is expected that the ACCC will commence monitoring six months prior to the repeal of the carbon tax to establish baseline prices. *[Schedule 2, item 3, section 60G(1)-(4), (6)-(9) and (13), CC Act]*

4.34 However, the new section does not limit the ACCC's existing price surveillance powers under Part VIIA of the CC Act. *[Schedule 2, item 3, section 60G (10), CC Act]*

4.35 To enable the ACCC to effectively exercise its new monitoring powers, it will also be given complementary information-gathering powers, similar to those it was given for its role in relation to the introduction of the GST. *[Schedule 2, item 3, section 60H, CC Act]*

4.36 Under these powers, a member of the ACCC may request a person to produce specified information or to produce documents containing information relating to prices or the setting of prices, that the member reasonably believes will or may be useful to the Commission in monitoring prices (the new section 60G(1) to (9) of the CC Act). *[Schedule 2, item 3, section 60H, CC Act]*

4.37 The information or documents that may be required by the ACCC may relate to prices, or the setting of prices:

- before or after the carbon tax repeal;
- before or after the start of the carbon tax repeal transition period; and
- in a situation, or during a period, specified in the notice. *[Schedule 2, item 3, section 60H(2), CC Act]*

4.38 Therefore, it will be possible for the ACCC to request information or documents relating to prices and the setting of prices prior to the repeal of the carbon tax, and prior to the commencement of the carbon tax repeal transition period, in order to compare them with prices and pricing decisions after the changes take place.

4.39 New section 60H(4) of the CC Act provides that it is an offence to refuse or fail to comply with a request under section 60H(1) of the CC Act, with a maximum penalty of 20 penalty units (\$3,400). This penalty amount is equal to the penalty amount provided for under the ACCC's general information gathering powers (section 155 of the CC Act) for an equivalent breach. *[Schedule 2, item 3, section 60H, CC Act]*

4.40 The new information-gathering powers do not limit the general information-gathering powers of the ACCC under section 155 of the CC Act. *[Schedule 2, item 3, section 60H(6)]*

4.41 The ACCC will be required to give the Minister a written report about its operations under the new Part V of the CC Act within 28 days after the end of each quarter. *[Schedule 2, item 3, section 60J, CC Act]*

False or misleading representations about the effect of the carbon tax repeal on prices

4.42 The Main Repeal Bill introduces a new provision to prohibit a corporation, in connection with the supply or possible supply of goods or services, from making false or misleading representations about the effect of the carbon tax scheme and carbon tax repeal on prices for the supply of those goods or services during the carbon tax repeal transition period (from 1 July 2014 to 30 June 2015). Unlike the price exploitation provisions, these carbon-specific prohibitions will apply across the economy, to cover all goods and services. *[Schedule 2, item 3, section 60K, CC Act]*

4.43 There are existing provisions under the ACL that prohibit false and misleading misrepresentations, including with respect to price (section 29 of Schedule 2 to the CC Act). The new carbon-specific prohibition on false or misleading representations will complement and operate in conjunction with existing law to help ensure that consumers are not exploited by those businesses that make false or misleading representations in relation to the pricing effect of the carbon tax scheme and carbon tax repeal. The explicit inclusion of a carbon-specific prohibition on false or misleading representations is intended to make it very clear that misrepresentations with respect to the carbon tax are prohibited.

4.44 Corporations that contravene this prohibition can be subject to maximum civil pecuniary penalties of 6,471 penalty units (\$1,100,070) and 1,295 penalty units (\$220,150) for a corporation and an individual respectively. These penalty amounts reflect the seriousness of the contravention and are in line with the penalty amounts under the ACL for false and misleading representations. *[Schedule 2, items 5, 6 and 7, section 76(1)(a), 76(1A)(b) and 76(1B)(a), CC Act]*

Infringement notices and other enforcement provisions

4.45 New Part V, Division 5 of the CC Act provides the ACCC with the power to issue infringement notices in relation to provisions concerning price exploitation related to the carbon tax repeal. This power is consistent with the ACCC's existing powers to issue infringement notices in relation to the ACL. The use of infringement notices will supplement the civil pecuniary penalties as well as the other enforcement powers included in the Main Repeal Bill. *[Schedule 2, item 3, Division 5, CC Act]*

4.46 The capacity to issue an infringement notice is not intended to amount to the imposition of a financial penalty by the ACCC. It is intended, instead, to provide a mechanism through which a person who, in the opinion of the ACCC, has contravened new sections 60C or 60K of the CC Act may forestall an application to the courts by the ACCC for the imposition of a civil pecuniary penalty. *[Schedule 2, item 3, Division 5, CC Act]*

4.47 Infringement notices allow the ACCC to take action against minor breaches of the provisions more efficiently and effectively than through court action alone, and provide the potential for a speedier resolution of matters than is possible through the courts (although this would depend on the complexity of each matter). *[Schedule 2, item 3, section 60L, CC Act]*

4.48 For infringement notices relating to those contraventions of the new section 60C and 60K, with corresponding maximum civil pecuniary penalty of \$1,100,070 for bodies corporate and \$220,150 for persons other than bodies corporate, the infringement notice amounts are:

- 600 penalty units (presently \$102,000) for listed corporations;
- 60 penalty units (presently \$10,200) for bodies corporate that are not listed corporations; and
- 12 penalty units (presently \$2,040) for persons other than bodies corporate. *[Schedule 2, item 3, section 60L(5), CC Act]*

4.49 These infringement notice amounts are consistent with the infringement notice amounts that apply for the rest of the ACL set out in section 134C of the CC Act.

4.50 These penalties are substantially less than the maximum civil pecuniary penalties proposed for contraventions of these provisions, which reflects their intended application to minor infringements of the law.

4.51 Compliance with an infringement notice requires payment of the financial penalty within a certain period of time to avoid legal proceedings in respect of the alleged contravention. *[Schedule 2, item 3, section 60M(1), CC Act]*

4.52 Compliance with an infringement notice brings the process for enforcing the alleged contravention to an end after its administrative phase. This reflects the intention behind the infringement notice mechanism of providing a process through which the entity may forestall court proceedings by the ACCC in relation to the alleged contravention.

4.53 Compliance with an infringement notice is not taken as an admission of liability or a contravention of the CC Act. Furthermore, if a person complies, he or she is not subject to further civil or criminal proceedings in relation to the alleged contravention.

4.54 An infringement notice does not give rise to an enforceable requirement to pay the financial penalty. If a person does not comply with the infringement notice within the period of time specified, the ACCC cannot enforce the infringement notice. Instead, the ACCC may bring civil or criminal proceedings against the person in relation to the same

alleged contravention, but not for failure to pay the penalty in the infringement notice. *[Schedule 2, item 3, section 60N, CC Act]*

4.55 The ACCC will have the power both to issue and revoke an infringement notice, as well as the ability to extend the compliance period. *[Schedule 2, item 3, section 60P, CC Act]*

4.56 The infringement notice compliance period is initially 28 days. However, the ACCC may extend the infringement notice compliance period once for a further period of 28 days. *[Schedule 2, item 3, section 60P, CC Act]*

4.57 The ACCC may withdraw an infringement notice if it considers it appropriate, by written notice to the person. The mechanism under which an infringement notice can be withdrawn is set out in the new section 60Q. *[Schedule 2, item 3, section 60Q, CC Act]*

Amendments of CC Act consequential on new ACCC powers

Enforcement and penalties

4.58 Part VI of the CC Act deals with enforcement and remedies. Section 75B(1) of the CC Act provides that a reference in Part VI to a person involved in a contravention of Part IV, IVB or section 95AZN shall be read as a reference to a person who has been involved in the contravention, for example, by aiding, abetting, being knowingly concerned or conspiring in the contravention. Section 75B(1) is amended so that it also applies in relation to a contravention of new sections 60C and 60K. *[Schedule 2, item 4, section 75B(1), CC Act]*

4.59 Section 76(1)(a)(i) of the CC Act is amended to provide that a contravention of new sections 60C and 60K will attract around the same penalties as a contravention of the prohibition on false or misleading representations in section 29 of Schedule 2 to the CC Act. Contravention of the new sections 60C and 60K of the CC Act will incur maximum pecuniary penalties of 6,471 penalty units for a corporation and 1,295 penalty units for an individual, which equates to \$1,100,070 and \$220,150, respectively. *[Schedule 2, items 5, 6 and 7, sections 76(1)(a), 76(1A)(b) and 76(1B)(a), CC Act]*

4.60 The levels of pecuniary penalties reflect the seriousness of the contraventions and represent clear and strong disincentives for non-compliance. The effectiveness of the new prohibitions hinges on the ability to deter, and where necessary enforce, contraventions. This is particularly important given that a person who does not comply could obtain substantial financial gain through charging unreasonably high prices. Further, these penalty amounts are in line with the penalty amounts under the ACL for a wide range of offences, including false and misleading representations.

Civil remedies

4.61 Section 77A of the CC Act prevents a body corporate from indemnifying a person against a civil liability incurred as an officer of the body corporate. The definition of ‘civil liability’ under section 77A(3) is amended to include the new Part V of the CC Act. *[Schedule 2, item 8, section 77A, CC Act]*

4.62 Section 80(1) of the CC Act states who may apply for injunctions, and in what circumstances. Section 80(1)(a) is amended so that an injunction may be granted if the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of new sections 60C and 60K. *[Schedule 2, item 9, section 80(1), CC Act]*

4.63 Section 80(1A) of the CC Act places restrictions on who may apply for an injunction in relation to certain provisions. Currently, the ACCC may apply for an injunction in relation to a contravention of section 50 of the CC Act. Section 80(1A) of the CC Act is amended to similarly provide that the ACCC may also apply for an injunction relating to a contravention of new sections 60C and 60K of the CC Act. *[Schedule 2, item 10, section 80(1A), CC Act]*

4.64 New section 80A of the CC Act provides that, if on the application of the ACCC, the Court is satisfied that new section 60C of the CC Act has been contravened, it may make orders requiring the person who contravened the section, or someone involved in the contravention, not to make a regulated supply at a price above that specified in the order. The Court may also make an order requiring the person who contravened new section 60C of the CC Act, or a person involved in the contravention, to refund money to a person specified in the order. *[Schedule 2, item 11, section 80A, CC Act]*

4.65 In essence new section 80A of the CC Act makes clear that where new section 60C has been contravened, the Court may make orders restraining supplies above a certain price and/or requiring refunds. However, the discretion whether to grant such orders remains with the Court and new section 80A does not limit the Court’s general power to grant injunctions under section 80 of the CC Act.

4.66 Section 82 of the CC Act currently provides that a person who suffers loss or damage by conduct of another person done in contravention of a provision of Part IV or IVB may recover that amount against any person involved in contravention. Section 82(1) of the CC Act is amended to apply it in relation to new sections 60C and 60K of the CC Act. *[Schedule 2, item 12, section 82(1), CC Act]*

4.67 Section 83 of the CC Act provides that findings of fact in which a person has been found to have contravened or been involved in a contravention of Part IV or Part IVB of the CC Act is prima facie evidence of that fact for the purposes of section 82 proceedings.

Section 83 is amended to apply it in relation to new sections 60C and 60K of the CC Act. *[Schedule 2, item 13, section 83, CC Act]*

4.68 Section 84(1) of the CC Act provides for the state of mind of a body corporate to be established by reference to the state of mind of a director, employee or agent of the body corporate in certain circumstances. Section 84(1) of the CC Act is amended to apply it in relation to the new Part V of the CC Act. *[Schedule 2, item 14, section 84(1), CC Act]*

4.69 Section 84(3) of the CC Act makes a person vicariously liable by imputing the state of mind of an employee or agent to the person in certain circumstances. Section 84(3) of the CC Act is amended to apply it in relation to the new Part V of the CC Act. *[Schedule 2, item 14, section 84(3), CC Act]*

4.70 Section 85 of the CC Act provides a defence to conduct in breach of Part IV of the CC Act or conduct referred to in section 76(1)(b), (c), (d), (e) or (f) if the person ought fairly to be excused. Section 85 is amended to ensure defences apply in relation to new sections 60C and 60K. *[Schedule 2, item 15, section 85(a), CC Act]*

4.71 Section 86C of the CC Act provides for the Court to impose an order to undertake a community awareness program, publish an advertisement, attend trade practices awareness training or implement a trade practices compliance program. Section 86C is amended so that these types of non-punitive orders are available as a remedy for a contravention of new sections 60C and 60K. The amendments expressly provide that a community service order or a probation order is not available as a remedy for either of these new sections. *[Schedule 2, items 16, 17 and 18, section 86C, CC Act]*

4.72 Section 87 confers a wide power on the Court to make remedial orders in appropriate cases relating to conduct engaged in contravention of Part IV or Division 2 of Part IVB. Section 87 is amended to apply in relation to new sections 60C and 60K. *[Schedule 2, items 19 to 23, section 87, CC Act]*

4.73 Section 155AAA of the CC Act protects information given to the ACCC in confidence. The definition of ‘core statutory provision’ is amended to include the new Part V of the CC Act. The definition of ‘protected information’ is amended to apply to information given to the ACCC under new section 60H of the CC Act. *[Schedule 2, items 24 and 25, section 155AAA, CC Act]*

4.74 Section 163A of the CC Act confers on the Court jurisdiction to order prohibition, certiorari or mandamus, or to make a declaration, in relation to the operation or effect of any provision of the CC Act and the ACL (other than the implied warranties provisions of ACL, Part 3-2, Division 1 and Part 5-4) and the validity of any Act or thing done, or purporting to have been done under the CC Act. However provisions

under Part XIB and XIC of the CC Act are exempted. The Main Repeal Bill expressly provides that new Part V is also exempted from the application of section 163A. *[Schedule 2, item 26, section 163A, CC Act]*

Chapter 5

Removal of equivalent carbon price from taxable fuels

Outline of chapter

5.1 Chapter 5 describes the changes to relevant legislation to remove the equivalent carbon price from liquid and gaseous fuels. These amendments:

- adjust fuel tax credits (FTCs) for certain uses of taxable fuel; and
- reduce excise and excise equivalent customs duty imposed on aviation fuel.

Context of amendments

5.2 All taxable fuel (including petrol and diesel) produced in, or imported into, Australia has excise or excise equivalent customs duty (fuel tax) imposed on it when it enters the Australian market. To reduce the incidence of fuel tax on certain business users, fuel tax credits (FTCs) are provided to business taxpayers for a variety of uses of fuel.

5.3 In particular, FTCs are provided to:

- all off-road business users of taxable fuel; and
- business users of heavy vehicles (over 4.5 tonnes) for fuel used for travelling on public roads (these FTCs are reduced by the road user charge).

5.4 FTCs are also available for non-business users for taxable fuel that they acquire or manufacture in, or import into, Australia to the extent that it is used to generate electricity for domestic use.

5.5 The equivalent carbon price was applied to certain uses of taxable fuels through several mechanisms. These mechanisms included reducing the entitlement to FTCs for fuels such as petrol and diesel as well as increasing the rates of excise and excise equivalent customs duty applied to aviation fuel. The rates of duty were not increased on other types of fuel.

5.6 These amendments remove the equivalent carbon price from taxable fuels by repealing the changes which were made to impose the equivalent carbon price.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Increases to FTCs for certain uses of taxable fuel	
FTCs for certain uses of taxable fuel are increased to remove the reduction attributable to the equivalent carbon price.	Reduced FTCs provided for certain uses of taxable fuel to reflect an equivalent carbon price.
Reductions in excise and excise equivalent customs duty for aviation fuel	
Rates of duty on aviation fuel are reduced to exclude the equivalent carbon price.	Rates of duty on aviation fuel are increased to include the equivalent carbon price.
Removal of other additional FTCs to reflect the repeal of the carbon tax	
The additional FTC for non-transport gaseous fuel used in specified agriculture, forestry and fisheries activities is removed. This additional FTC was provided to compensate those users for the carbon tax that was passed through in the cost of non-transport gaseous fuels.	An additional FTC is available for non-transport gaseous fuel used in specified agriculture, forestry and fisheries activities.
No FTCs are available for aviation fuel.	A FTC is available for aviation fuel covered by the Opt-in scheme.

Detailed explanation of new law

Increases to FTCs for certain uses of taxable fuel

5.7 To implement an equivalent carbon price on certain uses of taxable fuel, FTCs were reduced for some recipients with effect from 1 July 2012. However, specified uses of fuel were exempt from the equivalent carbon price. For example, there was no reduction in FTCs for business users of fuel in heavy vehicles travelling on public roads or for fuel used otherwise than by combustion. Fuel used in specified agriculture, forestry and fisheries activities was also exempt from the equivalent carbon price.

5.8 The amount of the reduction in FTCs to remove the carbon reduction from taxable fuels subject to the equivalent carbon price is called the 'amount of carbon reduction'. The amount of carbon reduction

is different for different fuel types, reflecting the different emission rates for different fuels.

5.9 These amendments increase FTCs for taxable fuel that was subject to the equivalent carbon price through a reduction in FTCs. For these recipients, FTCs are increased by the applicable amount of carbon reduction. This ensures that FTCs for fuel use subject to the equivalent carbon price are restored to what they would have been had the carbon tax not been implemented. The current and new FTC rates are set out below for taxable fuels subject to the equivalent carbon price.

[Schedule 1, items 121, 122 and 123, sections 43-5 and 43-8, Fuel Tax Act]

Table 5.1 Changes in rates of FTCs for liquid fuels

<i>Use</i>	<i>Eligible liquid fuel</i>	<i>FTCs at 1 July 2013 (cents per litre)</i>	<i>FTCs at 1 July 2014 (cents per litre)</i>
Off-road business activities where the fuel is combusted (except for specified agriculture, forestry and fisheries activities).	Petrol	32.347	38.143
	Diesel and other liquid fuels	31.622	38.143
Supply of fuel for domestic heating.	Heating oil and kerosene	31.622	38.143

Table 5.2 Changes in rates of FTCs for gaseous fuels

<i>Use</i>	<i>Eligible gaseous fuel</i>	<i>FTCs at 1 July 2013</i>	<i>FTCs at 1 July 2014</i>
Off-road business activities where the fuel is combusted (except for specified agriculture, forestry and fisheries activities).	Duty paid LPG – transport	3.636 cents per litre	10.0 cents per litre
	Duty paid LNG or CNG – transport	8.666 cents per kilogram	20.9 cents per kilogram
Supplying LPG: <ul style="list-style-type: none"> • by filling cylinders of 210kg capacity or less for non-transport use; and • in tanks for residential use 	Duty paid LPG – transport	3.636 cents per litre	10.0 cents per litre

Table 5.3 Rate of fuel tax credit for blended fuels

<i>Use</i>	<i>Eligible blended fuel</i>	<i>FTCs at 1 July 2013 (cents per litre)</i>	<i>FTCs at 1 July 2014 (cents per litre)</i>
Off-road business activities where the fuel is combusted (except for specified agriculture, forestry and fisheries activities).	B5	31.94805	38.143
	B20	32.9262	38.143
	E10	32.9266	38.143
	E85	4.85205	5.72145

5.10 Consequential amendments are also made to *Fuel Tax (Consequential and Transitional Provisions) Act 2006* to remove references to the reductions in FTCs due to the equivalent carbon price. These references are not required following the repeal of the carbon tax. [Schedule 1, items 108, 109, 110, 122, 135, 136, 138, 143, 147, 152 and 155, sections 2-1, 40-5, 43-5 and 110-5, Fuel Tax Act; item 12(2A), Schedule 3, Fuel Tax (Consequential and Transitional Provisions) Act 2006]

Reductions in excise and excise equivalent customs duty for aviation fuel

General provisions

5.11 The reductions in excise and excise equivalent customs duty will be implemented by the Excise Amendment Bill and the Customs Amendment Bill. When enacted, the names of those Bills will be the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014* and the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014*. [Excise Amendment Bill, clause 1] [Customs Amendment Bill, clause 1]

5.12 All amendments made by the Excise Amendment Bill and the Customs Amendment Bill have effect according to the terms set out in the Bills. [Excise Amendment Bill, clause 3] [Customs Amendment Bill, clause 3]

5.13 The formal provisions in sections 1, 2 and 3 of the Excise Amendment Bill and the Customs Amendment Bill commence on the day that the Governor-General gives the Royal Assent. The operative provisions commence on 1 July 2014. [Excise Amendment Bill, clause 2] [Customs Amendment Bill, clause 2]

Changes in rates of duty for all aviation fuel

5.14 Prior to the implementation of the carbon tax, FTCs were not available for aviation fuel in any circumstances. Increases to the rates of excise and excise equivalent customs duty were made to implement an equivalent carbon price on aviation fuel. The equivalent carbon price was represented by increases in the rates of duty equal to a 'carbon component rate'. The carbon component rates are different for aviation kerosene and

aviation gasoline, reflecting the different emission rates for the different aviation fuels.

5.15 Prior to the imposition of the equivalent carbon price on aviation fuel, the rates of duty on aviation fuel were equal to the amount representing a levy to fund the Civil Aviation Safety Authority (CASA).

5.16 These amendments remove the ‘carbon component rate’ from the rates of excise and excise equivalent customs duty imposed on aviation fuels. With the removal of the carbon component rate, the rates of duty for both aviation kerosene and aviation gasoline are reduced to the pre-carbon tax rate of 3.556 cents per litre, which represents the hypothecated levy to fund CASA. [*Excise Amendment Bill, items 6 and 7, Schedule (cell at table subitem 10.6 and 10.17, column headed “Rate of Duty”), Excise Tariff Act 1921*] [*Customs Amendment Bill, items 2 to 37, Schedule 3 (subheadings 2710.12.61, 2710.19.40, 2710.91.40, 2710.91.61, 2710.99.40 and 2710.99.61, column 3), Schedule 5 (cells at table items 60, 66, 76, 80, 88 and 92, column 3), Schedule 6 (cells at table item 63, 69, 79, 83, 91 and 95, column 3), Schedule 7 (cells at table item 62, 68, 78, 82, 90 and 94, column 3), Schedule 8 (cells at table item 68,74, 84, 88, 96 and 100, column 3), Schedule 9 (cells at table item 67, 74, 85, 89, 99 and 103, column 3), Customs Tariff Act 1995*]

Table 5.4 Aviation fuel duty rates

<i>Aviation fuel</i>	<i>Rate of duty as at 1 July 2013 (cents per litre)</i>	<i>Rate of duty as at 1 July 2014 (cents per litre)</i>
Aviation kerosene	9.835	3.556
Aviation gasoline	8.869	3.556

5.17 Consequential amendments are made to the *Excise Tariff Act 1921* and *Customs Tariff Act 1995* to accommodate the removal of the carbon component rate from excise and excise equivalent customs duty on aviation fuel. [*Excise Amendment Bill, items 1 to 5, sections 3(1) and 5(1) and sections 6FA, 6FB and 6FC, Excise Tariff Act 1921, Schedule (note 2 to Schedule heading and table heading), Excise Tariff Act 1921*] [*Customs Amendment Bill, item 1, section 19A, Customs Tariff Act 1995*]

Removal of additional FTC for aviation fuel subject to the Opt-in scheme

5.18 As large users of aviation fuel were able to opt-in to be covered by the carbon pricing mechanism from 1 July 2013, the increases in rates of excise and excise equivalent customs duty were offset by the provision of an additional FTC for aviation fuel covered by the Opt-in scheme. However, only the part of the fuel tax attributable to the carbon component rate was eligible for FTCs (the part of the fuel tax comprising the hypothecated levy to fund CASA was not eligible for a FTC).

5.19 These amendments remove the additional FTC for aviation fuel covered by the Opt-in scheme, to reflect that the rates of duty on aviation fuel are reduced by the removal of the equivalent carbon price and that the

fuels are also no longer covered by the carbon pricing mechanism. *[Schedule 1, items 117 and 126, sections 41-30(2) and 43-11, Fuel Tax Act]*

5.20 Consequential amendments are made to the Fuel Tax Act to reflect the removal of the additional FTC for aviation fuel covered by the Opt-in scheme. *[Schedule 1, items 108, 110, 111, 112, 115, 116, 120, 124, 125 and 138, sections 2-1, 40-5, 41-1, 41-5(3)(b), 41-30, 43-1, 43-10 and 110-5, Fuel Tax Act]*

Consequential amendments to reflect the removal of the carbon pricing mechanism

Removal of additional FTC for certain uses of non-transport gaseous fuels

5.21 The equivalent carbon price is imposed on the non-transport use of gaseous fuels through the carbon pricing mechanism. However, as specified agriculture, forestry and fishery activities are exempt from the carbon tax, the non-transport use of gaseous fuels used in these activities receive an additional FTC to compensate for the effect of the equivalent carbon price which is embedded in the price of the gaseous fuel.

5.22 With the repeal of the carbon tax, this additional FTC for the non-transport use of gaseous fuels used in these activities is no longer required. Therefore, this additional FTC for the non-transport use of gaseous fuels used in specified agriculture, forestry and fishery activities is removed. *[Schedule 1, item 119, Division 42A, Fuel Tax Act]*

5.23 Consequential amendments are also made to the Fuel Tax Act to reflect the removal of this additional FTC. *[Schedule 1, items 113, 114, 118, 127 to 134, 137, 139 to 142, 144 to 146, 148 to 151, 153 and 154, sections 41-15(1), 41-25(2)(a)(ii), 41-35 and 110-5 and Subdivision 43-B, Fuel Tax Act]*

Application provisions

5.24 The changes to FTCs apply to taxable fuel acquired, manufactured or imported on or after 1 July 2014. *[Schedule 1, items 334 and 335]*

5.25 Nothing in the Carbon Tax Repeal Bills is intended to alter the existing definitions in the Fuel Tax Act. The meaning of the terms 'acquire', 'manufacture' and 'import' are set out in Fuel Taxation Ruling FTR 2007/1. The changes to rates of excise duty apply to goods that are entered for home consumption on or after 1 July 2014. *[Excise Amendment Bill, item 8]*

5.26 The changes to rates of excise equivalent customs duty apply to goods imported into Australia on or after 1 July 2014, and to goods imported before that time where the time for working out the rate of import duty on the goods has not yet occurred. *[Customs Amendment Bill, item 38]*

Chapter 6

Removal of equivalent carbon price from synthetic greenhouse gases

Outline of chapter

6.1 Chapter 6 describes the arrangements necessary for repealing the equivalent carbon price applied to SGGs and equipment containing SGGs through the Ozone Management Act, Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act, including the following specific amendments:

- repealing the equivalent carbon price from the Ozone (Import Levy) Act;
- repealing the equivalent carbon price from the Ozone (Manufacture Levy) Act;
- allowing the importation or manufacture of SGGs to be used in medical equipment to be exempt from the Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act;
- repealing provisions to allow for refund of the equivalent carbon price on SGGs and products containing these gases on export (export refund scheme); and
- providing transitional provisions for the export refund scheme.

Context of amendments

Repealing the equivalent carbon price

6.2 The Clean Energy Legislation introduced an equivalent carbon price, which applies to the import or manufacture of bulk SGGs and import of all products containing these gases. The equivalent carbon price is applied and calculated at the point of import or manufacture.

6.3 The equivalent carbon price for SGGs is calculated using the value of the carbon tax and the global warming potential for each gas relative to carbon dioxide. The combination of these is called the ‘applicable charge rate’ in the Ozone (Import Levy) Act or Ozone (Manufacture Levy) Act. The applicable charge rate is part of the levy charged on the import or manufacture of SGGs or products that contain

these gases. The other part of the levy (the cost recovery component), outlined in section 65D of the Ozone Management Act, was applied before the introduction of the Clean Energy Legislation and will continue after the carbon tax is repealed as it relates to administering the Ozone Protection and SGG Program, including the legislation.

6.4 The Main Repeal Bill, the Ozone Manufacture Amendment Bill and the Ozone Import Amendment Bill remove the applicable charge rate from the Ozone Management Act, Ozone (Import Levy) Act and the Ozone (Manufacture Levy) Act from 1 July 2014. This ensures that importers and manufactures of SGG and products containing these gases will not incur a liability to pay the equivalent carbon price for gas manufactured, and gas and equipment imported, from 1 July 2014.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Repealing the equivalent carbon price on SGGs	
An equivalent carbon price applies to SGGs imported or manufactured before 1 July 2014 but not from that date.	An equivalent carbon price applies to the import or manufacture of bulk SGGs and import of all products containing these gases. The equivalent carbon price is applied and calculated at the point of import or manufacture.

Detailed explanation of new law

General provisions

6.5 When enacted, the names of the Ozone Manufacture Amendment Bill and the Ozone Import Amendment Bill will be the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Act 2014* and the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Act 2014*. [*Ozone Manufacture Amendment Bill, clause 1*] [*Ozone Import Amendment Bill, clause 1*]

6.6 All amendments made by the Ozone Manufacture Amendment Bill and the Ozone Import Amendment Bill have effect according to the terms set out in the Bills. [*Ozone Manufacture Amendment Bill, clause 3*] [*Ozone Import Amendment Bill, clause 3*]

6.7 The formal provisions in sections 1, 2 and 3 of the Ozone Manufacture Amendment Bill and the Ozone Import Amendment Bill commence on the day that the Governor-General gives the Royal Assent.

The operative provisions commence on 1 July 2014. *[Ozone Manufacture Amendment Bill, clause 2] [Ozone Import Amendment Bill, clause 2]*

Repealing the equivalent carbon price

Repealing the equivalent carbon price

6.8 The equivalent carbon price does not apply to the importation or manufacture of SGGs or products that contain these gases on or after 1 July 2014. This is achieved by repealing the applicable charge rate of the levy applied to the import or manufacture of SGGs or products containing these gases and removing all definitions that are associated with these provisions. *[Ozone Manufacture Amendment Bill, items 1 to 9 and 13, sections 2A, 2B and 3A, Ozone (Manufacture Levy) Act] [Ozone Import Amendment Bill, items 1 to 9, 13 to 14, sections 2A, 2B, 3A and 4A, Ozone (Import Levy) Act]*

Payment of levies after the repeal of the equivalent carbon price

6.9 Prior to the introduction of the Clean Energy Legislation, all imports and manufacture of SGG and some products containing these gases were charged a cost recovery levy. The cost recovery component of the levy, referred to as the prescribed rate in the Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act, will continue after the repeal of the equivalent carbon price.

6.10 The cost recovery component of the levy will be \$165 per tonne of SGG imported or manufactured, or a lower rate if specified in the regulations. The rate currently set in regulations, and which also applied prior to 1 July 2012, is \$165 per tonne. *[Ozone Manufacture Amendment Bill, item 9, section 3A, Ozone (Manufacture Levy) Act] [Ozone Import Amendment Bill, items 9 and 13, sections 3A and 4A, Ozone (Import Levy) Act]*

Treatment of levy exemptions for medical equipment

6.11 The Ozone Management Act, Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act contain exemptions from the equivalent carbon price and in some cases from the entire Ozone Management Act. These exemptions are available in circumstances where it is impractical to apply the tax, or where the SGGs are used for medical, veterinary, health or safety purposes. These exemptions are specifically available for the cost recovery component of the levy through other provisions in the Act.

6.12 The Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act contain an exemption for SGGs used in medical equipment. The exemption for SGGs to be used in medical equipment will apply to the cost recovery levy from 1 July 2014. The amendment ensures a consistent treatment for all SGGs imported for use in medical equipment. *[Ozone Manufacture Amendment Bill, items 10 to 12, section 3A, Ozone (Manufacture Levy) Act] [Ozone Import Amendment Bill, items 10 to 12, section 3A, Ozone (Import Levy) Act]*

Amounts to be credited to the Ozone Protection and SGG Account

6.13 The cost recovery levy, referred to as the prescribed rate component in the Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act, is paid into the Ozone Protection and SGG Account. The equivalent carbon price is paid into the Consolidated Revenue Fund.

6.14 Once the equivalent carbon price is repealed and no longer collected, the cost recovery levy collected through the Ozone (Import Levy) Act and Ozone (Manufacture Levy) Act will continue to be paid into the Ozone Protection and SGG Account as it is necessary for the administration of the Ozone Protection and SGG Program. *[Schedule 1, items 313 to 314, section 65D, Ozone Management Act] [Schedule 1, item 338(1), section 65C, Ozone Management Act]*

Export refund scheme

6.15 Under the Ozone and SGG Management Act, Controlled Substance licensees and Synthetic Greenhouse Gas Equipment licensees are able to claim a refund of the equivalent carbon price paid on SGGs through the export refund scheme. Licensees can claim an export refund if they are able to demonstrate that an amount of SGG has been imported in the previous 12 months, the equivalent carbon price has been paid on this and that the gases have been exported within 12 months of import.

6.16 The export refund scheme will be repealed on 1 July 2014 as it is no longer required after the carbon tax ends. *[Schedule 1, item 315, sections 69AA to 69AD, Ozone Management Act]*

6.17 Transitional provisions are included to allow licensees to claim the export refund on gases imported prior to the repeal of the equivalent carbon price. Applications will be accepted and assessed by the Department administering the Ozone Management Act until 1 January 2016. At this time, the export refund scheme will cease. This time extension is to provide time for licensees to use the SGGs on-hand and export as either SGGs or products containing these gases. *[Schedule 1, item 338(2), sections 69AA to 69AD, Ozone Management Act]*

Chapter 7

Specific repeal issues

Outline of chapter

- 7.1 Chapter 7 describes the provisions necessary to:
- repeal the *Steel Transformation Plan Act 2011* (STP Act);
 - repeal the *Steel Transformation Plan 2012*;
 - repeal the refundable tax offset for conservation tillage (conservation tillage offset); and
 - adjust funding for the Australian Renewable Energy Agency (ARENA).

Context of amendments

Repeal of the Steel Transformation Plan

7.2 The STP Act was introduced to establish the legislative framework and administrative details for the STP. The STP is a self-assessment entitlement scheme designed to encourage investment, innovation and competitiveness in the Australian steel manufacturing industry in order to assist the industry to transition to a low carbon economy. Industry assistance is no longer required due to the repeal of the carbon tax, and steel manufacturers no longer face a cost burden associated with the production of greenhouse gas emissions.

Repeal of the conservation tillage offset

7.3 The conservation tillage offset was introduced as part of the Clean Energy Legislation.

7.4 Under the ITAA 1997, from 2012-13 a taxpayer is eligible to claim the conservation tillage offset for an income year if:

- during the income year the taxpayer used for the first time, or installed ready for use, a new eligible no-till seeder that they held for the purposes of carrying on a primary production business; and
- the taxpayer held a Research Participation Certificate for the income year.

7.5 The amount of the offset is 15 per cent of the cost of the eligible no-till seeder and the offset was refundable. The offset was legislated to be a temporary measure and was to only be available from 2012-13 to 2014-15 (inclusive) and only for seeders first used or installed between 1 July 2012 and 30 June 2015.

7.6 Research Participation Certificates are issued by the Secretary of the Department of Agriculture in respect of an income year. Before issuing a certificate, the Secretary must be satisfied that the taxpayer has completed a conservation tillage survey during the relevant income year.

Adjusting funding for the Australian Renewable Energy Agency

7.7 The Main Repeal Bill changes the future funding for the ARENA as a result of a 2013 Budget measure to re-profile funding and the decision to reduce funding to partially offset the costs associated with repealing the carbon tax.

7.8 Changes to the ARENA's future funding require amendment to the *Australian Renewable Energy Agency Act 2011* (ARENA Act), which outlines the maximum amounts payable to the ARENA for each financial year up to 2019-2020.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Repeal of the STP	
No further STP payments are made from 1 July 2014.	Funding provided to the Australian steel manufacturing industry to assist the industry transition to a low carbon economy.
Adjusting funding for the ARENA	
Funding for the ARENA is reduced to reflect budget re-profiling and cost savings.	The ARENA's future funding arrangements are set out in the ARENA Act.
Repeal of the conservation tillage offset	
Taxpayers who first use or install an eligible no-till seeder from 1 July 2014 will not be entitled to claim the conservation tillage offset.	Taxpayers may claim the conservation tillage offset for an eligible no-till seeder that they first used or installed between 1 July 2012 and 30 June 2015.

Detailed explanation of new law

Repeal of the Steel Transformation Plan

7.9 The STP Act is repealed in its entirety, with effect from 1 July 2014. The legislative instrument under the STP Act, the *Steel Transformation Plan 2012*, also ceases to have effect from 1 July 2014. *[Schedule 4, item 1]*

7.10 The consequences for the STP participants is that after 30 June 2014:

- no further STP payments are payable;
- any conditions associated with previous payment of competitiveness assistance advances, under Part 2 of the STP Act, including reporting requirements relating to the half-year ending on 30 June 2014, no longer apply; and
- any conditions, such as document retention obligations, under Part 3 of the STP Act and the *Steel Transformation Plan 2012* are no longer enforceable. *[Schedule 4, item 2]*

7.11 From 1 July 2014 the Department of Industry is no longer required to include details in its annual report regarding aspects of the STP. This includes details of the total amount of STP payments paid to the STP participants and information about the progress of the Australian steel manufacturing industry towards improved environmental outcomes and workforce skills development. *[Schedule 4, item 2]*

7.12 Definitions for ‘old Act’ and ‘old Plan’ are provided to clearly identify and differentiate references to the STP Act and the *Steel Transformation Plan 2012*, respectively. *[Schedule 4, item 2, 2]*

Conservation tillage offset

Repealing the offset

7.13 The conservation tillage offset provisions set out in the ITAA 1997 are repealed for 2014-15 and subsequent years. As a result, taxpayers will no longer be able to claim the tax offset when they first use or install an eligible no-till seeder. *[Schedule 3, item 4, Subdivision 385-J, ITAA 1997]*

7.14 References to the offset in the general rules for offsets, the Dictionary and the explanatory and guidance material for the Act are also repealed. *[Schedule 3, items 3 and 5, table item 24 in sections 67-23 and section 995-1(1), ITAA 1997]*

7.15 A sunset clause was included when the offset was introduced to repeal the provisions after the offset ceased to be available from 1 July 2015. As this sunset clause is no longer needed it

is repealed. *[Schedule 3, items 1 and 2, table item 6 in section 2(1) and Part 3 of Schedule 2, Clean Energy (Consequential Amendments) Act 2011]*

Application date and transitional arrangements

7.16 This repeal applies to 2014-15 and later income years.
[Schedule 3, item 6]

7.17 Taxpayers who have claimed, or who are eligible to claim, the offset for prior income years will not lose their entitlements as a result of this change. Further, related administrative processes will continue to operate. For example, Research Participation Certificates may still be issued in respect of income years prior to 2014-15, and the Secretary of the Department of Agriculture may revoke a Research Participation Certificate issued before or after the repeal if it is demonstrated that the certificate was issued as a result of fraud or misrepresentation. *[Schedule 3, item 7]*

7.18 The Main Repeal Bill also includes a transitional provision, which ensures that the new end date for the offset (30 June 2014) is treated in the same way as the old end date for the offset (30 June 2015). The transitional provisions are not subject to the application provision for the repeal and so apply from the commencement of the Main Repeal Bill. *[Schedule 3, items 6 and 7]*

Adjusting funding for the Australian Renewable Energy Agency

7.19 The Main Repeal Bill repeals the table at section 64(1) of the ARENA Act and inserts a revised table of yearly maximum payments to the ARENA. *[Schedule 5, item 1, section 64(1)(table), ARENA Act]* The yearly maximum payments listed in the amended table include:

- a 2013 Budget measure to re-profile \$370 million in funding for the ARENA over the forward estimates (2014-15 to 2016-17) into later years (2019-20 to 2021-22); and
- a reduction in funding for the ARENA by \$434.9 million over the forward estimates (2014-15 to 2016-17).

7.20 The new table does not include the 2012-13 year, which has passed. In relation to the amount originally specified in the ARENA Act, the unspent funds for the 2012-13 year have been carried over into the amended forward year figures, consistent with section 64(2) of the ARENA Act.

7.21 The Main Repeal Bill repeals section 64(3) to 64(6) of the ARENA Act, as it is now redundant. *[Schedule 5, items 2 and 3, sections 64(3)-(6) and 65(4)(note), ARENA Act]*

7.22 The transfers of the credit balance of the Clean Energy Initiative Special Account and additional money from ASI Limited to the ARENA have already occurred and these funds have been incorporated into the funding amounts included the table in section 64(1) of the ARENA Act.

7.23 To provide clarity, the Main Repeal Bill includes an application provision to ensure the amendments do not affect funding for the ARENA prior to commencement of the Main Repeal Bill. Funding carried over from 2012-13 into 2013-14 has been factored into the amended table in section 64(1) of the ARENA Act. *[Schedule 5, item 4]*

7.24 The new amount specified for 2013-14 includes funds already spent by the ARENA in 2013-14.

Chapter 8

Regulation impact statement

Introduction

This is a Regulation Impact Statement (RIS) for the Government's commitment to repeal the carbon tax (the carbon pricing mechanism).

The Australian Government is committed to repealing the carbon tax to reduce households' living costs and input costs for business.

The Australian Government is also committed to reducing Australia's emissions of greenhouse gases (GHG) by 5 per cent below 2000 levels by 2020 but it believes there is a simpler, more practical way to achieve it than by taxing carbon.

The carbon tax is directly applied to a limited range of inputs, and is paid by a relatively small number of 'liable entities'. Directly, the carbon tax increases the cost of:

- electricity and gas;
- managing landfill and wastewater;
- taxable fuels for off-road use; and
- synthetic greenhouse gases.

However, the importance of many of these inputs to the Australian economy means that the incidence of the tax is felt by households as well as throughout the business sectors. As a result of the carbon tax, liable entities are required to either absorb the higher costs of production or pass them on to their customers (or, more likely a combination of both); to the extent that higher costs are passed through to customers, the prices that businesses and households pay for goods and services are indirectly increased. As an example the regulated retail electricity prices in New South Wales were allowed to increase by an average of 8.9 per cent in 2012-13 as a result of the carbon tax (IPART 2012).

As of the *Final Budget Outcome* 2012-13, the carbon tax is estimated to raise \$6.5 billion of revenue in 2012-13.¹

¹ This estimate is considered preliminary as certain emitters are not required to report in interim emissions reports, and emitters may base their interim report on the previous year's emissions. Information on actual 2012-13 emissions will become available following the

See Attachment A for further detail on how the carbon tax operates.

Problem

The problem the Government is addressing through the repeal legislation is twofold. Firstly, the carbon tax increases the cost of living for the household sector. Secondly, it increases costs for business, both in terms of higher input costs, and the costs incurred by liable entities in complying with carbon tax obligations.

Household costs of living

Broadly, the carbon tax impacts households through increases in consumer prices. The carbon tax has increased prices for goods and services consumed by households that are emissions-intensive in their production or supply chains.

Impacts on business

The carbon tax has two broad impacts on business costs: the impacts associated with the imposition of the tax itself; and the additional costs the liable entities face in complying with the administrative requirements associated with the carbon tax.

Objectives

The objectives of Government action in this area are to remove the carbon tax altogether to:

- reduce cost of living pressures on households; and
- reduce cost pressures faced by business.

The Government does not propose to transition to an emissions trading scheme. The Government will implement its direct action plan to achieve its emission reduction target in the absence of the carbon tax. However the purpose of this RIS is to consider the impacts of repealing the Clean Energy Act and associated regulations. Further RISs will be prepared, as required, for the Government's alternative emissions-reduction measures.

final emissions reporting in October 2013. This estimate does not include the equivalent carbon taxes on liquid fuels or synthetic greenhouse gases.

Option: The Government's election commitments

The Government was elected with a commitment to abolish the carbon tax. In practice, this involves:

- the repeal of six Clean Energy Acts, the Climate Change Authority Act, the Steel Transformation Plan Act and consequential amendments to other legislation;
- the extinguishment of carbon tax liabilities for approximately 370 liable entities under the carbon pricing mechanism, as well as equivalent carbon taxes on liquid fuels and synthetic greenhouse gases;
- ending mandatory audit of reported emissions for large emitters;
- ending the requirement for liable entities to report emissions;
- ending industry support schemes related to the carbon tax; and
- abolishing the Climate Change Authority.

In addition, the Government made an election commitment to require the Australian Competition and Consumer Commission (ACCC) to monitor and enforce reasonably expected price reductions following the abolition of the carbon tax. This will include:

- changes to the Consumer and Competition Act 2010 to provide the ACCC with new powers to monitor prices and prohibit carbon-related price exploitation and misrepresentations following its repeal; and
- pecuniary penalties of around \$220,000 for individuals and \$1.1 million for corporations that engage in carbon-related price exploitation or misrepresentations following its repeal.

The Government also made an election commitment to discontinue, or take savings from a range of carbon-related programs.

Impact Analysis

Carbon abatement

The Government remains committed to reducing GHG emissions by 5 per cent below 2000 levels by 2020. This is the same target the carbon tax was implemented to achieve. The Government considers that its Direct Action Plan, including an Emissions Reduction Fund, is a simpler, more practical way of achieving abatement. The Direct Action Plan is under development. Further RISs will be prepared, as required, for

various elements of the plan as they are developed. Stakeholders will be closely engaged in this process.

Terms of Reference for the development of a White Paper in relation to an Emissions Reduction Fund were released to assist interested parties in making submissions on the design of the Fund on 16 October 2013. Submissions in response to the Terms of Reference will inform the development of a Green Paper setting out the Government's preferred options for the design of the Fund which will be released in December 2013. A White Paper outlining the final design of the Fund will be released in early 2014, in order to enable it to commence operations on 1 July 2014.

Household costs of living

Household costs will be lower than they otherwise would be under a \$25.40 carbon price. Recent modelling by the Australian Treasury suggests that the removal of the carbon tax in 2014-15 will reduce the Consumer Price Index by around 0.7 percentage points than it otherwise would be in 2014-15. This is based on the currently legislated fixed carbon price of \$25.40 for 2014-15 and the scope intended by the former government, including fuel use by heavy on-road transport.

Treasury modelling suggests that the removal of the carbon tax in 2014-15 will leave average costs of living across all households (based on existing expenditure patterns) around \$10.50 per week (or around \$550 over the year) lower than they would otherwise be in 2014-15.

It is also estimated that retail electricity and gas prices should on average be around 9 and 7 per cent lower respectively in 2014-15 than they would otherwise be. On this basis, household average electricity and gas bills would on average be around \$3.80 per week (or around \$200 over the year) and \$1.40 per week (or \$70 over the year) lower respectively than they would otherwise be in 2014-15 with a \$25.40 carbon tax.

The prices of other goods and services are more difficult to estimate. A range of factors, including general movements in inflation and other broader economic impacts, have influenced prices over the intervening period since the carbon tax was introduced, and it is possible that prices will not, in all cases, reduce to their former levels. However to the extent that the cost bases of goods and services are affected by the repeal of the carbon tax, and there is competitive pressure in the market to pass these cost reductions on, price reductions could reasonably be expected.

As noted above, the ACCC will be provided additional powers to monitor and enforce reasonably expected price reductions following the abolition of the carbon tax. This element of the repeal package is discussed in more detail later in this RIS.

The removal of the carbon tax is likely to affect different households in different ways. For example, low income households are currently disproportionately affected by the carbon tax as they spend, on average, a higher proportion of their disposable income on emission-intensive goods, such as electricity and gas.

A range of measures were put in place to assist households with the cost of living pressures associated with the introduction of the carbon tax. These measures include increases to fortnightly pension and benefit rates and income tax cuts equivalent to around \$300 per annum for most taxpayers. This assistance will continue after the repeal of the carbon tax. However, the second round of personal income tax cuts legislated to commence in 2015-16 will no longer proceed.

Impacts on business

The primary impact of repealing the carbon tax on businesses is to reduce the cost of inputs. While the carbon tax is directly applied to a relatively small number of activities and liable entities, the size and importance of these activities means that as these costs are passed on through the economy the carbon tax results in an increase in input costs for the majority of businesses. The main driver of these input cost increases is the impact of the carbon tax on energy prices – primarily electricity and gas prices.

Table 1 provides an indication of which sectors are likely to have been affected the most by the imposition of the carbon tax. It shows the projected changes in industry gross output (a measure of economic activity) in 2020 under the carbon tax compared with a no carbon tax scenario.

Within the services sector, the production of electricity (particularly coal-fired electricity) was most heavily affected and should benefit most from the repeal of the carbon tax. In the mining sector, coal mining would be the major beneficiary. In the manufacturing sector, producers with emissions- or energy-intensive activities that were unable to access carbon tax-related assistance would be the main beneficiaries of repeal. There would be minimal impact on dwelling ownership².

² While modelling undertaken for the Strong Growth, Low Pollution update report provides a robust picture of the Clean Energy Package at an aggregate industry and macroeconomic level, it does not capture the impacts of those programs and measures that had not been finalised at the time the modelling task was undertaken in September 2011. While impacts on the CPI were estimated, changes in producer prices were not. Similarly impacts on investment and capital stock were estimated at the national level. For more details see http://carbonpricemodelling.treasury.gov.au/carbonpricemodelling/content/update/Modelling_update.asp.

Table 8.1 Change in gross output in 2020 as a result of the carbon tax, compared with a 'no carbon tax' scenario

<i>Industry sector</i>	<i>Change in gross output (per cent)^a</i>
Agriculture	0.4
Sheep and cattle	0.3
Dairy cattle	0.2
Other animals	0.4
Grains	0.5
Other agriculture	0.2
Agricultural services and fisheries	0.6
Forestry	0.3
Mining	-0.9
Coal	-2.4
Oil	0.0
Gas	-1.5
Iron ore	0.8
Non-ferrous ore	-0.9
Other	0.6
Manufacturing	0.3
Meat products	0.2
Other food	0.1
Textiles, clothing and footwear	0.7
Wood products	-0.1
Paper products	0.3
Printing	0.0
Refinery	0.0
Chemicals	1.7
Rubber and plastic products	0.5
Non-metallic construction products	-0.7
Cement	-0.8
Iron and steel	0.9
Alumina	2.3
Aluminium	0.8
Other metals	-0.3
Metal products	-0.1
Motor vehicles and parts	0.6
Other	0.2
Construction	-0.9
Services	-0.3
Electricity generation – coal fired	-9.4

<i>Industry sector</i>	<i>Change in gross output (per cent)^a</i>
Electricity generation – gas fired	0.2
Electricity generation – hydro	-1.4
Electricity generation – other	21.6
Electricity supply	-3.2
Gas supply	-1.2
Water supply	-0.3
Trade	-0.2
Accommodation and hotels	-0.4
Road transport – passenger	-0.1
Road transport – freight	-0.2
Rail transport – passenger	0.2
Rail transport – freight	-0.1
Water transport	-0.1
Air transport	-0.2
Communication	-0.3
Financial	-0.2
Business	-0.2
Public	0.0
Other	-0.4
Ownership of dwellings	-0.1

Note: a. Modelled estimates include the impact of industry and household assistance measures. *Source: Strong growth, low pollution: modelling a carbon price – update*, p. 8

Investment in emissions reduction

Some businesses may incur costs following the repeal of the carbon tax where they have made investments in clean technology solely on the basis of avoiding emissions liabilities. In most cases, such investments are likely to have associated benefits, such as lower energy usage or lower waste disposal costs, as was intended. These benefits will be ongoing. In such cases, the repeal of the carbon tax is likely to extend the payback period or reduce the internal rate of return. The risks associated with stranded investments or sunk costs were not raised as significant issues in stakeholder consultation.

Carbon price pass-through

The extent to which the carbon tax has been absorbed by businesses or has been passed on to consumers depends on the nature and structure of each market, including relative demand and supply elasticities, and the type of competition in the market.

In some cases, it is likely that the carbon price would have been passed through in full (for example, in the case of synthetic greenhouse gases where a carbon-tax equivalent levy or excise was imposed).

The range and complexity of sector specific factors, including commercial and contractual arrangements and the specific features at each point in any given supply chain mean it is not possible to say with certainty what proportion of the carbon price may have been passed through or was absorbed in any given sector. In addition, other changes in the production cost base and general inflationary impacts since the carbon tax was introduced mean that at this stage any specific price changes that could occur are difficult to quantify. However, as noted above, likely price changes in energy markets are more easily quantified.

As such, while price reductions are expected, they may not be entirely symmetrical to price increases that occurred after the carbon tax was introduced and may not be uniform across sectors of the economy. We note that the Australian Government has not collected detailed sectoral or industry-level data on price movements that specifically measure the impact of introducing the carbon tax.

The ACCC's new monitoring and enforcement powers

To address potential pricing concerns, the ACCC will be provided new time-limited powers in relation to price monitoring and enforcement of carbon-specific prohibitions on price exploitation and false or misleading representations.

Under its price monitoring role, the ACCC may be able to monitor the prices of regulated goods such as natural gas, electricity, synthetic greenhouse gas (SGG) and SGG equipment, goods supplied by entities that have an entry in the Liable Entities Public Information Database, and any other goods designated by regulation.

The ACCC will be provided with information-gathering powers allowing it to compel certain businesses to provide relevant pricing information with respect to certain key goods relating to the carbon tax repeal.

The direct costs of complying with the ACCC's price monitoring requirements cannot be easily quantified as the ACCC has the discretion to determine which businesses will be subject to price monitoring and how it will monitor. The vast majority of businesses in the economy will not be affected by price monitoring at all.

For those affected businesses, there will be some administrative and compliance costs incurred, however these requirements should not be overly onerous or expensive as businesses would already have detailed pricing information available. In addition, these compliance costs would not be ongoing and be limited to the duration of the ACCC's new powers (for example, for a six month period prior to the repeal, and for one year afterwards).

Where the ACCC cannot otherwise access public information, it may request primary information. To comply with a monitoring request a business will need to provide copies of the current prices it is offering in

the market. If the request is made after the carbon tax repeal, the business may also need to explain how the carbon tax repeal has affected their input costs and how that has been reflected in its current prices. Current price offerings will need to be compiled by the business but are not likely to require detailed searches. For example, in the energy sector, similar information is already provided to the Energy Made Easy comparator website. Input costs, including the carbon tax, will already be known to the business in its price setting.

The ACCC will take a targeted approach to the use of its new powers. It is likely to monitor around 500 businesses, including liable entities, plus energy retailers and synthetic greenhouse gas importers and wholesalers. As a preliminary estimate, the estimated total compliance cost for 500 businesses is \$2,320,000 per year, with an average ongoing compliance cost of \$4,640 per business. As noted above, these compliance costs will ultimately depend on the number of businesses monitored by the ACCC and the individual costs for each business to respond to these requirements.

The ACCC was given a similar price monitoring role for a period of three years following the introduction of the New Tax System (NTS).

Submissions by business focussing on ACCC issues suggest they are conscious of the need to pass through cost savings. However some submissions claim there may be practical difficulties in immediately passing on savings in some sectors due to sectoral and structural complexities (such as the treatment of intermediate inputs).

Carbon tax compliance costs

The removal of the carbon tax is expected to reduce annual ongoing compliance costs for liable entities by \$85.3 million per annum³. The avoided costs fall into two categories: administrative costs (including remaining abreast of changes in carbon pricing legislation, meeting recording and reporting obligations, negotiating contracts for carbon price pass-through, and discharging emissions liabilities) and substantive costs (emissions verification costs for large emitters).

All liable entities will no longer face the administrative costs associated with emissions monitoring, reporting, unit acquisition and surrendering obligations under the carbon tax. These costs are estimated at \$67.1 million per annum and are in addition to those imposed on entities under separate reporting obligations under the National Greenhouse and Energy

³ These estimates exclude the costs of complying with assistance arrangements, including the Jobs and Competitiveness Program, which were included in the total figure of \$94.8 million set out in the earlier Options Stage RIS, as these costs are incurred voluntarily by applicants. They include the costs of complying with price monitoring arrangements which, as noted above, are uncertain but non-ongoing.

Reporting Scheme. This estimate is based on feedback from liable entities that the introduction of the CPM has required the equivalent of one additional F.T.E. position to monitor, record and report emissions, to understand, and keep abreast of changes in, the legislation, and to acquit emissions liabilities⁴. A labour rate of 1.7 times average earnings⁵ was adopted reflecting the higher than average skills of those entrusted with these tasks (generally accounting, legal or engineering professionals), and the higher level of management oversight compared with the oversight given to emissions reporting when there were no associated financial liabilities. (The ongoing administrative cost of separate reporting obligations under NGER legislation is estimated at between 0.5 and 0.75 F.T.E. per reporting entity.)

These estimates do not include the additional costs businesses may have incurred in managing permit obligations (for example purchasing, banking or selling) when the carbon tax moved to a flexible pricing period in 2015.

These estimates were made public through the consultation process, but no substantive comments were received through formal submissions or in meetings with stakeholders.

Approximately 154 large liable entities will also avoid the substantive costs associated with verifying their total emissions. (Verification costs currently apply to entities with more than 125,000 tonnes carbon dioxide equivalent (CO₂-e) emissions per year.) The average avoided cost of emissions verification audits for large emitters is estimated at approximately \$133,000 per entity per annum (an ongoing reduction in compliance costs of around \$20.5 million per annum).

These estimates were also made public through the consultation process, but no substantive comments were received through formal submissions or in meetings with stakeholders.

⁴ In keeping with the Victorian approach to measuring compliance costs and the methodology used in the Business Cost Calculator, the cost categories used to analyse administrative costs included: education/capacity building; enforcement; monitoring/record keeping; reporting/notification; and internal assurance (sub-set of reporting/notification). The costs of external assurance/verification are discussed later in the RIS.

⁵ Source: ABS Cat. No. 6302.0 – Average Weekly Earnings, Australia, May 2013.

Table 8.2 Compliance Cost and Offset (CCO) Estimate Table⁶

<i>Average Annual Compliance Costs (from Business as usual)</i>				
Sector/Cost Categories	Business	Not-for-profit	Individuals	Total by cost category
Administrative Costs	-\$67.1m	\$-	\$-	-\$67.1m
Substantive Compliance Costs	-\$20.5m	\$-	\$-	-\$20.5m
Delay Costs	\$-	\$-	\$-	\$-
Total by Sector	-\$87.6m	\$-	\$-	-\$87.6m
Contingent administrative costs ⁷	\$2.3m	\$-	\$-	\$2.3m
Potential total by sector	-\$85.3m	\$-	\$-	-\$85.3m
<i>Annual Cost Offset</i>				
	Agency	Within portfolio	Outside portfolio	Total
Business	\$	\$	\$	\$
Not-for-profit	\$	\$	\$	\$
Individuals	\$	\$	\$	\$
Total	\$	\$	\$	\$
Proposal is cost neutral? no				
Proposal is deregulatory yes				
Balance of cost offsets \$85.3m				

Measures currently in place to address carbon tax cost pressures

A number of Australian Government programs were put in place to address some of the cost pressures faced by households and businesses.

For households, these measures include increases to fortnightly pension and benefit rates and income tax cuts equivalent to around \$300 per annum for most taxpayers. Assistance provided in 2013-14 will remain.

⁶ These estimates exclude the costs of complying with assistance arrangements, including the Jobs and Competitiveness Program, as these costs are incurred voluntarily by applicants. They include the costs of complying with price monitoring arrangements which, as noted above, are uncertain but non-ongoing.

⁷ Contingent administrative costs are those that would only be incurred if a business was subject to an ACCC price monitoring notice.

However, the second round of personal income tax cuts legislated to commence in 2015-16 will no longer proceed.

For businesses, these measures include the Jobs and Competitiveness Program (JCP) to support emissions intensive, trade exposed industries; the Energy Security Fund to maintain secure energy supplies through supporting electricity generators that are strongly affected by a carbon tax; and targeted grants to provide transitional assistance to specific industries.

Removing these programs will impact on a range of stakeholders and potential grant recipients. Sectors likely to be affected are the steel industry, energy intensive manufacturing, emissions-intensive electricity generators and the land sector.

Consultation

The draft legislation to repeal the carbon tax was released for public consultation by the Government on 15 October 2013. The consultation period closed at 5 pm on 4 November 2013.

The Department received formal submissions and campaign e-mails during the consultation period. Formal submissions were received from industry peak bodies and companies, legal and academic institutions, individuals and non-government organisations

In addition, the Government held meetings or teleconferences with a range of stakeholders including:

- industry peak bodies, including the Business Council of Australia (BCA), the Australian Chamber of Commerce and Industry (ACCI), the Australian Greenhouse Industry Network (AIGN) and the Australian Industry Group (AIG);
- local governments through the Australian Local Government Association;
- electricity suppliers, retailers and users;
- state government electricity price regulators;
- synthetic greenhouse gas manufacturers, importers and suppliers;
- resource peak bodies and companies;
- manufacturing peak bodies and companies;
- natural gas suppliers, users and pipeline organisations;
- landfill and recycling peak bodies;
- financial peak bodies and institutions;
- non-government organisations;

- renewable energy organisations; and
- legal experts.

Further details are provided in Attachment B.

With regard to the options-stage RIS, the agency has fully complied with the RIS requirements.

- The options-stage RIS did not include at least three options as this is a specific election commitment.
- The options-stage RIS was certified at the secretary or deputy secretary level and provided to the OBPR before consideration by the decision-maker.
- The options-stage RIS was published following the public announcement of an initial decision to regulate.

Issues related to the bills

The principal concern of all business stakeholders were the consequences of delayed passage of the repeal legislation. Several stakeholders noted that existing contractual and other commercial arrangements are likely to complicate cost pass-through arrangements if passage is delayed. Others noted that cost reductions may not be passed through in the supply chain immediately, and in full, if passage was delayed, despite public expectations.

For example, electricity suppliers and major users raised concerns including: the practical implications of how price reductions will be passed through to consumers; how expectations about the timing of these price reductions will be managed; and how the ACCC will apply its new powers to prevent price exploitation.

The Government's clear intention is that the carbon tax repeal legislation will be passed before 30 June 2014. If there is a delay, the legislation will apply retrospectively from 1 July 2014. The Government will not become involved in commercial issues between companies, including contracts.

Most business stakeholders, particularly the energy and synthetic greenhouse gas sectors, were concerned by the expanded temporary scope of the ACCC's powers. Several suggested that the ACCC should consider industry circumstances and the difficulty in immediate and full cost pass-through when determining whether price exploitation has occurred.

The Department of the Environment notes that in undertaking its price monitoring and enforcement activities, the ACCC has advised it will engage stakeholders to ensure that they understand their regulatory obligations; issue guidance material; and emphasise that its regulatory approach will be carefully considered and proportionate.

If necessary, the Treasurer has the power, under section 29 of the *Competition and Consumer Act 2010* to direct the ACCC in connection with the performance of its functions, including issuing sector-specific guidance in relation to the carbon tax repeal.

Other issues raised in submissions included:

- allowing imports of synthetic greenhouse gases imported before 1 July 2014 not to accrue a carbon tax liability unless sold before 1 July 2014 (Refrigerants Australia);
 - Consideration will be given to use of the bonded warehouse system to avoid the payment of carbon tax liabilities until SGGs are entered for domestic sale. This provision will impact on up to forty seven licensed importers.
- simplifying transition arrangements for holders of Financial Liability Transfer Certificates for NGERs purposes (Baker & McKenzie);
 - The Clean Energy Regulator is considering ways to streamline the transitioning of LTCs into Reporting Transfer Certificates for the purpose of future NGERs reporting.

During the workshops with stakeholders a number of other minor technical items were raised and discussed, including: the operation of the true-up process for the Jobs and Competitiveness Program and the process for developing the true-up process rules; the proposed approach for continuation of industry assistance, including the steel transformation plan; and the structure of the Renewable Energy Target (RET) reviews after abolition of the Climate Change Authority, and the timing, frequency and scope of RET reviews.

Conclusion

Repeal of the Clean Energy Act and associated regulations is expected to reduce cost of living pressures on households and cost pressures on business.

Recent modelling by the Australian Treasury suggests that the removal of the carbon tax in 2014-15 will reduce the Consumer Price Index by around 0.7 percentage points than it would otherwise be. This is based on the currently legislated fixed carbon price of \$25.40 and the scope intended by the former government, including fuel use by heavy on-road transport.

Treasury modelling also suggests that the removal of the carbon tax in 2014-15 will leave average costs of living across all households (based on

existing expenditure patterns) around \$10.50 per week (or around \$550 over the year) lower than it would otherwise be in 2014-15.

It is also estimated that retail electricity and gas prices should be around 9 and 7 per cent lower respectively than they would otherwise be. On this basis, household average electricity and gas bills would be around \$3.80 per week (or around \$200 over the year) and \$1.40 per week (or \$70 over the year) lower respectively than they would otherwise be in 2014-15 with a \$25.40 carbon tax.

The prices of other goods and services are more difficult to estimate. A range of factors have influenced prices over the intervening period since the carbon tax was introduced, and it would therefore be likely that prices would not return to their former levels. However to the extent that the cost bases of goods and services are affected by the repeal of the carbon tax, and there is competitive pressure in the market to pass these cost reductions on, price reductions could reasonably be expected.

The primary impact on business of repealing the carbon tax is to reduce the cost of inputs. While the carbon tax is directly applied to a relatively small number of activities and liable entities, the size and importance of these activities means that as these costs are passed on through the economy the carbon tax results in an increase in input costs for the majority of businesses. The main driver of these input cost increases is the impact of the carbon tax on energy prices – primarily electricity and gas prices. Due to the complexity in many commercial arrangements it is difficult to provide a detailed breakdown of where producer prices could be expected to change.

The removal of the carbon tax is expected to increase gross output in the mining, construction and services sectors. Within the services sector, the production of electricity (particularly coal-fired electricity) is expected to benefit most from the repeal of the carbon tax. In the mining sector, coal mining is expected to be the major beneficiary. In the manufacturing sector, producers with emissions- or energy-intensive activities that were unable to access carbon tax-related assistance would be the main beneficiaries of repeal.

Business compliance costs are expected to fall by around \$85.3 million per annum as a consequence of repealing the carbon tax although many businesses have concerns around the potential costs imposed by the ACCC exercising its proposed price monitoring and enforcement powers. These estimates exclude the costs of complying with assistance arrangements, including the Jobs and Competitiveness Program, as these costs are incurred voluntarily by applicants. The costs of complying with price monitoring arrangements are also excluded, being uncertain and non-ongoing.

The Government remains committed to reducing GHG emissions by 5 per cent below 2000 levels by 2020. This is the same target adopted by

the carbon tax. The Government believes its direct action plan is a simpler, less costly way of achieving abatement. The direct action plan is under development and the details of the plan are beyond the scope of this RIS. Further RISs will be prepared, as required, for various elements of the direct action plan.

Implementation and review

Legislation to repeal the Clean Energy Act and associated regulations will be introduced in November 2013. The legislation will remove carbon tax liabilities from 30 June 2014 which, rather than a date part-way through the 2013-14 financial year, will simplify the transition for business. This is because it avoids the need to change compliance systems and renegotiate contracts that involve carbon tax pass-through in the middle of a financial year. It will also allow liquid fuel users to better manage their inventories during the transition period to reduce the risk of a shortage.

The ACCC will monitor and enforce reasonably expected price reductions following the abolition of the carbon tax.

- Amendments to the *Consumer and Competition Act 2010* (CC Act) will prohibit carbon-related price exploitation and misrepresentations following its repeal; and introduce pecuniary penalties of around \$220,000 for individuals and \$1.1 million for corporations that engage in carbon-related price exploitation or misrepresentations following its repeal.
- In undertaking its price monitoring and enforcement activities, the ACCC will engage stakeholders to ensure that they understand their regulatory obligations; issue guidance material; and emphasise that its regulatory approach will be carefully considered and proportionate.
- The Treasurer may also under section 29 of the CC Act direct the ACCC to issue sector-specific guidance where that would assist businesses in meeting their obligations under the Act.

RIS Attachment A: Carbon Tax Background

The carbon tax puts a price on Australia's carbon pollution, and applies directly to Australia's biggest carbon emitters (called liable entities). In addition, a number of businesses pay 'effective carbon taxes' on liquid fuels and on synthetic greenhouse gases.

Under the mechanism, liable entities must pay a tax on the carbon emissions they produce each year. As at July 2013, there were approximately 370 liable entities, covering approximately 60 per cent of Australia's carbon emissions. The carbon tax covers a range of large

business and industrial facilities, and includes emissions from electricity generation, natural gas supply, stationary energy, landfills, wastewater, industrial processes and fugitive emissions.

How does it work?

Liable entities must report annually on their emissions or potential emissions under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).

Under current arrangements, liable entities must surrender one carbon unit for every tonne of carbon dioxide equivalent (CO₂-e) that they have produced in that year.

There are two stages to the carbon tax:

- Fixed price – The price of carbon units – effectively the carbon tax – is fixed for the first three years. In 2012–13 it was \$23 a tonne of carbon pollution, in 2013–14 it is \$24.15 a tonne and in 2014–15 it will be \$25.40 a tonne. Liable entities can purchase units up to their emissions levels. Purchased units cannot be traded or banked.
- Flexible price – From 1 July 2015 the price will be set by the market. Most units will be auctioned by the Clean Energy Regulator – auctions are scheduled to take place before June 2014, in the lead up to the flexible price. The number of units the Government issues each year will be limited by a pollution cap set by regulations.

If a liable entity does not surrender any or enough units, it must pay a 'unit shortfall charge':

- from 2012 to 2015, this charge is set at 130 per cent of the fixed price for the relevant fixed price year; and
- from 2015 onwards, once the carbon tax moves to the flexible price period, the unit shortfall charge will be up to 200 per cent of the benchmark average auction price for the relevant period.

The shortfall charge creates an incentive to surrender units under the mechanism rather than pay the higher shortfall charge. The carbon tax arrangements include systems for assessing liability for emissions, meeting liability for emissions through payment and surrender processes for eligible emissions units, and relinquishing units (in certain circumstances units are returned to the Commonwealth without them being surrendered).

What are 'liable entities'?

Entities are liable if they operate facilities that exceed the threshold for covered direct emissions, or if they supply or use natural gas. The types of direct emissions covered by the carbon tax include:

- carbon dioxide (CO₂);
- methane (CH₄);
- nitrous oxide (N₂O); or
- perfluorocarbons specified in the NGER Regulations and that are attributable to aluminium production,

but do not include:

- agricultural emissions;
- fugitive emissions from decommissioned underground mines;
- emissions from legacy waste or closed landfill facilities;
- emissions of certain synthetic greenhouse gases;
- emissions from biomass, biofuels or biogas; or
- emissions from the combustion of fuels subject to duties under the *Excise Tariff Act 1921* or the *Customs Tariff Act 1995*.

The threshold for covered scope 1 emissions is 25 000 tonnes CO₂-e per year. Information collected through national greenhouse and energy reporting provides the basis for assessing liability under the tax arrangements.

The carbon tax covers approximately 60 per cent of Australia's carbon emissions including from electricity generation, natural gas supply, stationary energy, landfills, wastewater, industrial processes and fugitive emissions; Table A1 displays the proportion of emissions by industry according to reported interim emissions numbers for 2012-13. It should be noted that these are interim numbers and do not represent the full year's emissions data and that, due to the effect of the industry support programs described in this RIS, do not fully reflect the relative impact of the carbon tax on the various industries.

Equivalent carbon taxes

In addition to the carbon tax on liable entities, a number of businesses pay an equivalent carbon tax on liquid fuels and on synthetic greenhouse gases.

- Some businesses effectively pay no excise or excise-equivalent customs duty (fuel tax) on the fuel they use off-

road, as their 'fuel tax' is offset under the fuel tax credits scheme. By reducing applicable fuel tax credits by an amount equal to the carbon tax, the Government imposes an effective carbon tax on businesses' liquid fuel emissions through the existing fuel tax regime. Aviation fuel that is not covered by the carbon pricing mechanism has had an increase in fuel tax representing the equivalent carbon price.

- Synthetic greenhouse gases are industrial chemicals used mainly as refrigerant gases in air conditioning and refrigeration equipment, but also for other purposes. Importers of synthetic greenhouse gases, including in manufactured products, are required to pay an equivalent carbon tax based on the carbon tax and the global warming potential of each gas relative to carbon dioxide. There are no Australian manufacturers of these gases.

Table 8.3 Reported emissions by industry^a

	Proportion of emissions^b (per cent)
Electricity Gas, Water and Waste Services	63.9
- Electricity generation	63.1
- Gas and water supply ^b	0.7
Manufacturing	16.7
- Basic non-ferrous metal manufacturing	5.1
- Basic ferrous metal manufacturing	3.3
- Cement, lime, plaster and concrete product manufacturing	2.5
- Petroleum and coal product manufacturing	1.8
- Fertiliser and pesticide manufacturing	1.2
- Other manufacturing ^c	2.7
Mining	14.7
- Coal mining	7.6
- Oil and gas extraction	6.5
- Metal ore mining	0.7
Natural Gas Supply embodied emissions^d	4.8

Notes: a. Emissions are the Interim Emissions Numbers reported in June 2013. An Interim Emissions Number is: for a direct emitter 75 per cent of the provisional emissions numbers relating to the relevant facilities for the 2011-12 financial year, or an estimate of 75 per cent of the person's provisional emissions number relating to the relevant facilities for 2012-13; for a natural gas supplier that person's provisional emissions number in relation to the supply of natural gas/fuel for the nine months to 31 March 2013. Emissions from waste to landfill are not included in estimates as waste deposited prior to 2012-13 is not liable. Numbers may not add due to rounding.

- b.** Includes emissions from water supply, waste and drainage services and gas supply (both through a pipeline or mains system).
- c.** Includes 14 ANZSIC subdivisions including emissions associated with agricultural manufacturing processes (e.g. dairy, meat and grain product manufacturing).
- d.** Includes embodied emissions from natural gas supply. Excludes emissions from natural gas supplied to large gas consuming facilities, which are included in the totals for each industry sector above.

Source: Clean Energy Regulator, unpublished.

RIS Attachment B: List of Stakeholders consulted

Carbon Tax Repeal Stakeholder Engagement

Summary of stakeholder engagement (as at 5:00 pm on Thursday, 7 November 2013):

<i>Total number of meetings or teleconferences:</i>	42
<i>Submissions or emails addressing content of bills received:</i>	82 submissions from industry peak bodies and companies 8 submissions from state and local governments 10 submissions from legal and academic institutions 142 submissions from individuals 28 submissions from non-government organisations 720 emails as part of the Australian Ethical Investment Campaign

Summary of stakeholder meetings and teleconferences (as at 5:00 pm on Thursday, 7 November 2013):

<i>Date</i>	<i>Participants</i>
11 October	Energy Suppliers Association of Australia (ESAA)
15 October	Carbon Markets Institute
16 October	ESAA and Energy Network Association of Australia (ENAA)
16 October	Origin Energy
17 October	Energy Retailers Association of Australia (ERAA), Energy Users Association of Australia (EUAA), National Generators Forum and ESAA
17 October	Synthetic Greenhouse Gases Roundtable ABB, Actrol, A-Gas, Air conditioning and Heating (AIRAH), Air Conditioning and Mechanical Contractors' Association (AMCA), Air Conditioning and Refrigeration Equipment Manufacturers Association (AREMA), ARKEMA, Australian Airports Association (AAA), Australian Federation of International Forwarders (AFIF), Australian Industry Group (AIG), Australian Institute of Refrigeration, Australian Refrigeration Association (ARA), Automotive Air-conditioning, BOC, Consumer Electronics Suppliers' Association (CESA), Customs Brokers & Forwarders Council of Australia (CBFCA), Du Pont, Electrical and Cooling Technicians of Australia (AAECTA), Federal Chamber of Automotive Industries (FCAI), Fire Protection Association of Australia (FPAA), Ford, Heatcraft, Holden, Institute of Automotive Mechanical Engineers (IAME), National Electrical and Communications Association (NECA), Plastics and Chemicals Industry Association (PACIA), Refrigerant Reclaim Australia, Refrigerants Australia, Refrigeration and Air Conditioning Contractors Association (RACCA), Schneider Electric, Siemens, Solvents Australia, Toyota and Victorian Automobile Chamber of Commerce (VACC),
18 October	Australian Industry Group ABB, AGL, Alcoa, Alstom, Amcor, Arrium (Onesteel), B&R Enclosures, Bluescope, Checkpoint Systems, CSR, Dow, ERM Power, GDF Suez, Incitec Pivot, Murray Goulburn, Orica, Pacific Hydro, Qenos, Rio Tinto, Schneider Electric, Veolia and Wilson Transformer

<i>Date</i>	<i>Participants</i>
18 October	Business Council of Australia Adelaide Brighton, AGL Energy, Alcoa, ANZ, APA Group, BP, BG Group, BHP, Brickworks, Energy Australia, General Electric (GE), GDF Suez, Incitec Pivot, Leighton Holdings, Lend Lease, Macquarie Group, Norton Rose Fulbright, Origin Energy, Parsons Brinckerhoff, PricewaterhouseCoopers Australia (PwC), Rio Tinto, Santos, Shell, Transurban Group and Westpac
21 October	Dampier-Bunbury Pipeline (DBP)
21 October	Australian Energy Market Operator (AEMO)
21 October	ESAA
21 October	International Emissions Trading Association Baker & McKenzie, BG, BP, Chevron, Climate Friendly, Energy Australia, Norton Rose, Rio Tinto and Shell
22 October	Australian Financial Markets Association AGL Energy, Alinta Energy, AMP, ANZ, Ashurst, Australian Energy Market Operator (AEMO), Baker & Mackenzie, Clayton Utz, Clean Energy Regulator (CER), Commonwealth Bank, Delta Electricity, Deutsche Bank, Energy Developments, EnergyAustralia, ERM Power, Financial and Energy Exchange, GDF Suez, Hydro Tasmania, ICAP, Infigen, InterGen, Johnson Winter & Slattery, K&L Gates, King & Wood Mallesons, Macquarie Generation, NAB, Nextgen, Norton Rose Fulbright, Origin Energy, Snowy Hydro and Westpac
22 October	Energy Retailers Association of Australia (ERAA)
22 October	Fuel industry stakeholders including Association of Mining & Exploration Companies (AMEC) and Caltex (arranged by ATO)
22 October	Fuel industry stakeholders including the Australian Institute of Petroleum, Caltex, Exxon Mobil, Shell, and Woodside (arranged by ATO)
23 October	Aviation fuel stakeholders including Caltex, Qantas and Shell (arranged by ATO)

Date	Participants
23 October	Australian Industry Greenhouse Network AI Group, Australian Aluminium Council, Australian Food & Grocery Council, Australian Institute of Petroleum, Australian Pipeline Industry Association (APIA), Australian Plastics & Chemicals Industries Association, Australian Sugar Milling Council, BP, Business Council of Australia (BCA), Caltex, Cement Industry Federation, Chevron, CSR, Dampier-Bunbury Pipeline (DBP), Exxon, Minerals Council of Australia, National Generators Forum, Origin, Rio Tinto, Santos, Shell, Wesfarmers,
23 October	Legal experts (Sydney) Ashurst, Baker & McKenzie, Clayton Utz, Dr Damien Lockie (Victorian Bar), Hunt & Hunt, Johnson Winter & Slattery, K&L Gates, the Law Council of Australia's Climate Change Law Committee and Sparke Helmore
24 October	Legal experts (Melbourne) Allens, Ashurst, King & Wood Mallesons, Minter Ellison and Norton Rose
24 Oct	Waste sector Australian Landfill Operators Association, Australian Local Government Association (ALGA) and Waste Management Association of Australia
24 October	BlueScope Steel
24 October	Minerals Council of Australia Downer EDI, Glencore and Rio Tinto
25 October	Australian Aluminium Council Alcoa, Rio Tinto and others
25 October	Energy Australia
28 October	Gas Energy Australia and members
28 October	Energy Users Association of Australia (EUAA) and members
28 October	Cement Industry Federation
28 October	Tasmanian Regulation Authority
29 October	AGL
29 October	WA Economic Regulatory Authority
30 October	Clean Energy Council Acciona, Energy Developments Limited (EDL), Finlaysons, Hydro Tasmania, Infigen, Marchmont Hill, Pacific Hydro and Rheem

<i>Date</i>	<i>Participants</i>
30 October	Ergon
30 October	Non-government organisations Australian Conservation Foundation, Australian Council of Trade Unions (ACTU), Australian Youth Climate Coalition, Climate Action Network Australia (CANA), ClimateWorks, Climate Institute, Grattan Institute UnitingJustice and World Wildlife Fund (WWF),
30 October	Australian Slag Association
30 October	Australian Pipeline Industry Association APA, Dampier-Bunbury Pipeline, Epic Energy and SEAGAS,
30 October	ACT Independent Competition & Regulatory Commission
31 October	NSW Independent Pricing and Regulatory Authority
31 October	EUAA and members
4 November	Synergy
6 November	Queensland Competition Authority; Glencore

RIS References

Australian Government 2011a, *Strong growth, low pollution: modelling a carbon price*

(http://carbonpricingmodelling.treasury.gov.au/carbonpricingmodelling/content/report/downloads/Modelling_Report_Consolidated_update.pdf).

Australian Government 2011b, *Strong growth, low pollution: modelling a carbon price – update,*

(http://carbonpricingmodelling.treasury.gov.au/carbonpricingmodelling/content/update/downloads/Modelling_update.pdf).

Australian Government 2013, *Portfolio Budget Statements 2013-14 – Industry, Innovation, Climate Change, Science, Research and Tertiary Education Portfolio.*

IPART (Independent Pricing and Regulatory Tribunal), 2012, *Final Report – Changes in regulated electricity retail prices from 1 July 2012.*

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Main Repeal Bill: Preliminaries

<i>Bill reference</i>	<i>Paragraph number</i>
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Clause 2, table item 1	1.15
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<i>Bill reference</i>	<i>Paragraph number</i>
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Item 94, Part 20, ASIC Act	2.50
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<i>Bill reference</i>	<i>Paragraph number</i>
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<i>Bill reference</i>	<i>Paragraph number</i>
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<i>Bill reference</i>	<i>Paragraph number</i>
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True-up Shortfall Levy (General) Bill

<i>Bill reference</i>	<i>Paragraph number</i>
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Clause 2	1.59
Clause 3	1.61
Clause 4	1.63
Clauses 4 and 9	1.62
Clauses 5 to 7	1.62
Clause 8	1.55

True-up Shortfall Levy (Excise) Bill

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 1	1.55
Clause 2	1.59
Clause 3	1.61
Clause 4	1.63
Clauses 4 and 9	1.62
Clauses 5 to 7	1.62
Clause 8	1.55

Customs Tariff Amendment Bill

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Excise Amendment Bill

<i>Bill reference</i>	<i>Paragraph number</i>
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Clause 2	5.13
Clause 3	5.12
Items 1 to 5, sections 3(1) and 5(1) and sections 6FA, 6FB and 6FC, Excise Tariff Act 1921, Schedule (note 2 to Schedule heading and table heading) Excise Tariff Act 1921	5.17
Items 6 and 7, Schedule (cell at table subitem 10.6 and 10.17, column headed “Rate of Duty”), Excise Tariff Act 1921	5.16
Item 8	5.26

Ozone Import Amendment Bill

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 1	6.5
Clause 2	6.7
Clause 3	6.6
Items 1 to 9, 13 to 14, sections 2A, 2B, 3A and 4A, Ozone (Import Levy) Act	6.8
Items 9 and 13, sections 3A and 4A, Ozone (Import Levy) Act	6.10
Items 10 to 12, section 3A, Ozone (Import Levy) Act	6.12

Ozone Manufacture Amendment Bill

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 1	6.5
Clause 2	6.7
Clause 3	6.6
Items 1 to 9 and 13, sections 2A, 2B and 3A, Ozone (Manufacture Levy) Act	6.8
Item 9, section 3A, Ozone (Manufacture Levy) Act	6.10
Items 10 to 12, section 3A, Ozone (Manufacture Levy) Act	6.12