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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY LEGISLATION (CARBON TAX REPEAL) BILL
AMENDMENT 2014

SUPPLEMENTARY EXPLANATORY MEMORANDUM
(Amendments to be moved on behalf of the Government)

(Circulated by the authority of the authority of the Minister for the Environment the
Hon Greg Hunt MP and the Minister for Small Business, the Hon Bruce Billson MP)

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>
	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
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	<i>Clean Energy (Unit Shortfall Charge —General) Act 2011;</i> <i>Clean Energy (Unit Issue Charges —Fixed Charge) Act 2011;</i> <i>Clean Energy (Unit Issue Charges —Auctions) Act 2011;</i> <i>Clean Energy (Charges—Excise) Act 2011; and</i> <i>Clean Energy (Charges —Customs) Act 2011.</i>
Clean Energy Legislation	<i>Clean Energy Act 2011;</i> <i>Clean Energy Regulator Act 2011;</i> <i>Climate Change Authority Act 2011;</i> <i>Clean Energy (Consequential Amendments) Act 2011;</i> <i>Clean Energy (Unit Shortfall Charge – General) Act 2011;</i> <i>Clean Energy (Unit Issue Charges – Fixed Charge) Act 2011;</i> <i>Clean Energy (Unit Issue Charges – Auctions) Act 2011;</i> <i>Clean Energy (Charges—Excise) Act 2011;</i> <i>Clean Energy (Charges—Customs) Act 2011;</i> <i>Ozone Protection and Synthetic Greenhouse Gas</i>

Abbreviation	Definition
	<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 2013
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.
<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition & Consumer Commission
ACL	Australian Consumer Law
AI Act	<i>Acts Interpretation Act 1901</i>
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

<i>Abbreviation</i>	<i>Definition</i>
	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
CC Act	<i>Competition and Consumer Act 2010</i>
CE Act	<i>Clean Energy Act 2011</i>
CE Regulations	<i>Clean Energy Regulations 2011</i>
Criminal Code	<i>Criminal Code Act 1995</i>
Main Repeal Bill	Clean Energy Legislation (Carbon Tax Repeal) Bill 2013
SGG	Synthetic greenhouse gas

General outline and statements

Background

Repealing the carbon tax

The Government has a clear commitment to repeal the carbon tax.

Repealing the carbon tax will, among other things, reduce wholesale electricity and gas prices, and reduce the cost of synthetic greenhouse gases, such as those used for refrigeration and air conditioning. These cost reductions are expected to flow through to businesses in the form of lower input costs, and to households through lower energy bills and lower retail prices.

The Government is implementing its commitment to repeal the carbon tax through the Carbon Tax Repeal Bills. The Carbon Tax Repeal Bills, among other things, provide a clear obligation to energy retailers to pass on any cost savings related to the carbon tax repeal, and new powers to the ACCC to ensure that price reductions relating to the carbon tax repeal are passed through the supply chain and on to consumers.

Ensuring cost savings are passed on to customers

These amendments to the Main Repeal Bill clarify the scope and operation of these new powers, and include a strengthened obligation on suppliers of electricity, natural gas and synthetic greenhouse gases to pass on all cost savings resulting from the repeal of the carbon tax. The ACCC will also be provided a new power to require retailers of electricity and natural gas and importers of bulk synthetic greenhouse gases to substantiate their efforts to pass on cost savings to customers.

Electricity and natural gas retailers and importers of bulk synthetic greenhouse gases would also be required to provide information to the ACCC on average estimated cost savings arising from the carbon tax repeal. In addition, electricity and natural gas retailers will also be required to provide this information directly to customers. There is intended to be some flexibility around the calculation of estimated cost savings and on the form in which the savings are communicated to customers.

The overall aim of these amendments is to ensure that lower prices resulting from the repeal of the carbon tax are passed on to customers.

Chapter 4 of the explanatory memorandum relating to the Carbon Tax Repeal Bills explains the effect and intent of the amendments to be made to the CC Act by the Main Repeal Bill.

Proposal announced: This proposal has not been previously announced.

Financial impact: Nil.

Chapter 1 Amendments to Chapter 4 of the Main Repeal Bill

Outline of chapter

1.1 This Chapter explains the amendments to be made to the Main Repeal Bill. The overall aim of these amendments is to ensure that lower prices resulting from the repeal of the carbon tax are passed on to consumers

1.2 The amendments are explained by way of modification to Chapter 4 of the explanatory memorandum to the Main Repeal Bill. The new Chapter 4 set out in these amendments incorporate the explanation of the provisions that will ensure that cost savings are passed on to customers.

Context of the Amendments

What the Main Bill already does to ensure cost savings are passed on

1.3 The Carbon Tax Repeal Bills repeal the legislation that imposes the carbon tax. The Bills also repeal, and make a range of amendments to, other associated legislation. When the carbon tax repeal takes effect, the Government expects prices for a range of goods and services across the Australian economy to be lower than they would be with the carbon tax in place. The Main Repeal Bill amends the CC Act to insert provisions that are directed at ensuring that cost savings for suppliers are passed on to consumers through lower prices. The Main Repeal Bill makes a range of other amendments to the CC Act to support those provisions.

1.4 The Main Repeal Bill inserts these new provisions in a new Part V of the CC Act, and includes two new principal obligations.

1.5 Section 60C, which makes clear that a corporation must not engage in price exploitation in relation to the carbon tax repeal.

- Section 60K, which provides that a corporation must not, in the circumstances specified in that section, make a false or misleading representation relating to the effect of the carbon tax repeal or the carbon tax scheme on the price for the supply of goods and services.

1.6 Section 60C of the CC Act is directed towards price exploitation that relates to ‘regulated goods’. The term ‘regulated goods’ is defined, in section 60B of the CC Act, as meaning natural gas, electricity, synthetic greenhouse gas, SGG equipment, and other goods specified in a legislative

instrument made under section 60B of the CC Act. Section 60K of the CC Act would not be limited to regulated goods.

1.7 The Main Repeal Bill also amends the CC Act to include sanctions for contraventions of these provisions. These sanctions include maximum civil pecuniary penalties of 6,461 penalty units (\$1,100,070) and 1,295 penalty units (\$220,150) for corporations and individuals respectively for contravention of the relevant provisions, and other redress and enforcement mechanisms. These 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.

1.8 In addition, the Main Repeal Bill amends the CC Act to insert new sections 60G and 60H, which would give the ACCC additional price monitoring and information-gathering powers.

What these amendments will do to further ensure cost savings are passed on to customers.

1.9 These amendments to the Main Repeal Bill seek to ensure that lower prices resulting from the repeal of the carbon tax are passed on to consumers, by:

- clarifying the intention underlying the expanded powers of the ACCC;
- including a strengthened obligation on suppliers of electricity, natural gas and bulk importers of SGGs to pass on all cost savings resulting from the carbon tax repeal;
- giving the ACCC an additional information-gathering power to issue a ‘carbon tax removal substantiation notice’; and
- requiring retailers of electricity and natural gas and importers of bulk importers of synthetic greenhouse gas to provide information to the ACCC
- requiring electricity and natural gas retailers to provide information to customers on average estimated cost savings arising from the carbon tax repeal.

1.10 Replace Chapter 4 of the Explanatory Memorandum to the Bill with the following new Chapter 4 which incorporates an explanation of all the amendments into the new Chapter 4.

New Chapter 4 –Amendments to the Competition and Consumer Act 2010 - ensuring cost savings are passed on to

1.11 The following new Chapter 4 replaces the existing Chapter 4 in the Explanatory Memorandum to the Main Repeal Bill.

Chapter 4

Amendments to the Competition and Consumer Act 2010 – ensuring cost savings are passed on to customers

Outline of chapter

4.1 Schedule 2 to the Main Repeal Bill amends the CC Act to prohibit carbon tax-related price exploitation, to ensure that all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods, and to ensure that lower prices resulting from the repeal of the carbon tax are passed on to consumers of regulated goods.

4.2 Schedule 2 to the Main Repeal Bill also amends the CC Act to:

- prohibit false or misleading representations about the effect of the carbon tax repeal;
- require the ACCC to require retailers of electricity, natural gas and entities that are importers of bulk synthetic greenhouse to provide it with a carbon tax removal substantiation notice;
- require entities that supply electricity, natural gas and entities that are importers of bulk synthetic greenhouse gas to provide the ACCC with a carbon tax removal substantiation statement;
- require entities that supply electricity, natural gas to provide their customers with a statement that explains how carbon tax removal savings will be passed on to them;
- provide the ACCC with additional price monitoring powers in relation to the carbon tax repeal;
- provide for stiff penalties to entities that fail to comply with these provisions.

Context of amendments

Overview

4.3 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 think that it is open to them not to pass through savings from the carbon tax repeal.

4.4 The amendments contained in Schedule 2 to the Main Repeal Bill will 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. Price exploitation will occur whenever an affected entity does not pass through all of its cost savings that are directly or indirectly attributable to the carbon tax repeal. These amendments are based on those made when the GST was first introduced, but impose greater levels of consumer protection and stiffer penalties on entities that do not comply with their cost saving pass through obligation.

4.5 The amendments prohibit entities 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. In addition, if the entity is a electricity retailer, natural gas retailer, or an importer of bulk synthetic greenhouse gases they would be required to pay the Commonwealth, by way of penalty, an amount equal to 250 per cent of those cost savings that were not passed through.

4.6 The amendments require the ACCC to give a 'carbon tax removal substantiation notice' to entities who supply electricity, natural gas and bulk synthetic greenhouse gas. In response to notice, electricity, natural gas suppliers and bulk synthetic greenhouse gas importers must explain how the cost savings that are directly or indirectly attributable to the carbon tax repeal are reflected in prices charged for electricity, natural gas and bulk synthetic greenhouse gas and provide supporting information and documentation

4.7 The amendments require retailers of electricity and natural gas and importers of synthetic greenhouse gases (who are defined) to provide a 'carbon tax removal substantiation statement' to the ACCC. In this statement, those retailers and importers will have to provide an estimate, expressed as an annual average percentage price or in dollars, of the entity's cost savings that result from the carbon tax repeal and that are passed on to customers.

4.8 The amendments also require that within 30 days after the Royal Assent, retailers of electricity and natural gas must prepare a statement to provide an estimate, expressed as an annual average percentage price or in an annual average dollar price, of the entity's cost savings that are directly or indirectly attributable to the carbon tax repeal and that are passed on to customers for the 2014-15 financial year. Retailers must communicate this statement to customers within 60 days after Royal Assent.

4.9 The amendments require retailers of electricity and natural gas to prepare and communicate the contents of a statement to customers that identifies the estimated cost savings that are directly or indirectly attributable to the carbon tax repeal in 2014-15.

4.10 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.

4.11 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>
<p>Introduces a new prohibition on entities 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.</p> <p>In addition, an entity that supplies electricity or natural gas or is an importer of bulk synthetic greenhouse gas that failed to pass through <i>all</i> of its cost savings resulting from the carbon tax repeal would be required to pay the Commonwealth, by way of penalty, an amount equal to 250 per cent of those cost savings that were not passed through.</p>	<p>There is currently no price exploitation provision under the CC Act.</p>
<p>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.</p>	<p>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.</p>

<p>Introduces a new prohibition preventing entities 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.</p>	<p>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.</p>
<p>Introduces a new obligation for the ACCC to give entities making regulated supplies of electricity, natural gas and synthetic greenhouse gas a carbon tax removal substantiation notice. In response to, this notice entities will have to explain how savings arising from the carbon tax repeal are reflected in prices charged for regulated supplies, and provide supporting information.</p>	<p>Currently section 219 of the ACL allows the ACCC to issue a substantiation notice in some circumstances in regard to a particular claim or representation made in the course of trade or commerce.</p>
<p>Introduces a new obligation for electricity and natural gas retailers and bulk synthetic greenhouse gas importers to give the ACCC a carbon tax removal substantiation statement. In this statement, retailers and importers will have to provide an estimate, expressed as a percentage or in dollars, of the entity's cost savings that result from the carbon tax repeal and that are passed on to customers, and provide supporting information. Electricity and natural gas retailers must also provided a corresponding statement to their customers.</p>	<p>Currently, there are no obligations in the CC Act that require electricity and natural gas suppliers to provide a statement to the ACCC and customers which estimates the entity's cost savings resulting from carbon tax repeal.</p>

Detailed explanation of new law

4.12 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 imposing a carbon tax price reduction obligation, 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*]

- require the ACCC to give entities making regulated supplies of electricity, natural gas and bulk synthetic greenhouse gas a carbon tax removal substantiation notice. In response to this notice, entities will have to explain how savings arising from the carbon tax repeal are reflected in prices charged for regulated supplies, and provide supporting information. *[Schedule 2, item 3, Division 2A, CC Act]*
- require electricity and natural gas retailers and bulk synthetic greenhouse gas importers to give the ACCC a carbon tax removal substantiation statement. In this statement, retailers and importers will have to provide an estimate, expressed as a percentage or in dollars, of the entity’s cost savings that result from the carbon tax repeal and that are passed on to customers, and provide supporting information. Electricity and natural gas retailers would also have to inform customers about price savings. *[Schedule 2, item 3, Division 2B and 2C, CC Act]*
- provides the ACCC additional price monitoring powers in relation to the carbon tax repeal. *[Schedule 2, item 3, section 60G, CC Act]*

4.13 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]*

4.14 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]*

4.15 Some provisions of Part V of the CC Act apply to ‘entities’. The term ‘entity’ is defined as meaning any of the following:

- a corporation (as defined by section 4 of the CC Act);
- an individual;
- a body corporate;
- a corporation sole;
- a body politic;
- a partnership;
- any other unincorporated association or body of entities; and
- a trust;
- any party or entity which can or does buy or sell electricity or natural gas. *[Schedule 2, item 3, section 60A, CC Act]*

Carbon tax price reduction obligation

4.16 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 entities that engage in price exploitation following the repeal of the carbon tax. *[Schedule 2, item 3, section 60, CC Act]*

4.17 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]*

4.18 The amendments insert a new objects clause into Part V of the CC Act *[Schedule 2, item 3, section 60AA, CC Act]*. This clause clarifies that the main objects of Part V of the CC Act are:

- to deter price exploitation in relation to the carbon tax repeal at each point in the supply chain for regulated goods; and
- to ensure that all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods. *[Schedule 2, item 3, section 60AA(1), CC Act]*

4.19 The amendments also clarify that the intention of the Parliament in enacting Part V of the CC Act is to ensure that all cost savings attributable to the carbon tax repeal are passed on to consumers of regulated goods through lower prices. *[Schedule 2, item 3, section 60AA(2), CC Act]*

4.20 By expressly stating the objects of Part V of the CC Act and the intention of the Parliament in enacting Part V, the intention is to ensure that Part V of the CC Act will be interpreted in such a manner that:

- price exploitation in relation to the carbon tax repeal will be deterred at each point in the supply chain for regulated goods; and
- all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods; and
- all cost savings attributable to the carbon tax repeal are passed on to consumers of regulated goods through lower prices.

4.21 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]*

4.22 ‘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]*

4.23 ‘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]*

4.24 ‘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]*

4.25 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). Definition of bulk SGG importer is an entity who holds a controlled substances licence for the import of synthetic greenhouse gas under the Ozone Management Act. *[Schedule 2, item 3, section 60A, CC Act]*

4.26 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. An entity that 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 does not pass through all of the entity’s cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal. *[Schedule 2, item 3, section 60C, CC Act] [Schedule 2, item 3, section 60C(2), CC Act]*

4.27 When determining whether the price for a supply made by an entity does not pass through all of the entity’s cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal, the amendments provide that regard is to be had to:

- the entity’s cost savings that are directly or indirectly attributable to the carbon tax repeal;
- how those cost savings can reasonably be attributed to the different supplies that the entity makes;
- the entity’s costs; and
- any other relevant matter that may reasonably influence the price. *[Schedule 2, item 3, section 60C(2), CC Act]*

4.28 The intention of these provisions is to ensure that suppliers of a regulated supply must pass on all savings that are directly or indirectly

attributable to the carbon tax. However, it also recognises that a number of factors influence prices. While all cost savings from the removal of the carbon tax are to be passed through in lower prices, other factors may affect prices in the opposite direction at the same time. For example, if the input costs of a supply are increasing significantly at the same time as the carbon tax is removed, pass through of cost savings from the removal of the carbon tax might result in a smaller price increase than would have occurred with the carbon tax in place, rather than a price reduction. The provision also requires that where an entity supplies multiple goods, they must pass on the cost savings that relate to each particular good in the price for that particular good.

4.29 If a Court finds that an entity 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 body corporate and a person other than a body corporate 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, section 76(1)(a)(i), CC Act] [Schedule 2, item 6, section 76(1A)(b), CC Act] [Schedule 2, item 7, section 76(1B)(a), CC Act]*

4.30 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 an entity who does not comply could obtain substantial financial gain through not passing through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal.

4.31 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.

4.32 The ACCC may issue a written notice to an entity if it considers the entity 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]*

4.33 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 for the supply did not pass through all of the entity's cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal. The ACCC is able to vary or revoke the notice, either on its own initiative, or on application by the entity 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 for the

supply did not pass through all of the entity's cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal 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]*

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

4.35 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, section 60E(4) CC Act]*
[Schedule 2, item 3, section 60J(2), CC Act]

4.36 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]*

Failure to pass on cost savings—250 per cent penalty

4.37 In addition, section 60CA imposes an additional penalty for entities that fail to pass through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal. This new penalty will apply if an entity contravenes new section 60C(1) in relation to a particular supply of electricity or natural gas. An entity that does this is liable to pay to the Commonwealth, by way of penalty, an amount equal to 250 per cent of those cost savings that were not passed through. No other entities are covered by this section, that is, suppliers of SGG's or SGG equipment are not subject to the 250% penalty provision. *[Schedule 2, item 3, section 60CA, CC Act]*

4.38 The penalty is akin to similar penalties in the competition provisions of the CC Act for price fixing relating to cartels (for example, section 44ZZRF of the CC Act), where a penalty of up to three times the total benefit that had been obtained may be imposed in certain situations.

4.39 To provide greater transparency, within 13 months after the Royal Assent day, the ACCC will be required to report to Parliament in respect of penalties payable by entities. *[Schedule 2, item 3, section 60CA(4), CC Act]*

4.40 This provision is intended to serve as a strong disincentive to prevent affected entities from engaging in price exploitation in relation to the carbon tax repeal, and to ensure that the full cost savings due to consumers are duly passed on. The penalty is a significant amount, and reflects the strength of the Parliament's commitment to ensure that entities do not make windfall gains from the repeal of the carbon tax, and to ensure that full cost savings resulting from the carbon tax repeal are passed on to consumers. This provision is in line with other provisions in the CC Act.

Carbon tax removal substantiation notices

4.41 The amendments insert a new Division 2A into Part V of the CC Act. The new Division 2A would deal with notices to be called 'carbon tax removal substantiation notices'. The CC Act includes, as part of the ACL, other substantiation notice provisions. The new provisions are based on the existing provisions, and operate in a similar manner. The penalty is akin to other similar penalties in the competition provisions of the CC Act for price fixing, where a penalty of three times the loss to those affected by a contravention can be imposed. *[Schedule 2, item 3, Division 2A, CC Act]*

4.42 The requirement for the ACCC to issue carbon tax removal substantiation notices expands and enhances the ACCC's existing powers under the CC Act.

4.43 A carbon tax removal substantiation notice is a written notice given to an entity who makes a regulated supply of electricity, natural gas or imports bulk synthetic greenhouse gas under new section 60FA of the CC Act. The ACCC would be required to give such a notice to an entity that has made, or is making, one or more regulated supplies of electricity, natural gas and bulk synthetic greenhouse gas. *[Schedule 2, item 3, section 60FA(1), CC Act]*

4.44 The term 'regulated supply' is defined in new section 60A of the CC Act and in relation to 'carbon tax removal substantiation notices' is limited to the supply of electricity, natural gas and bulk synthetic greenhouse gas occurring during the 'carbon repeal transition period'. Suppliers of other regulated goods such as SGG equipment are not covered by these notice provisions. *[Schedule 2, item 3, section 60A, CC Act] [Schedule 2, item 3, section 60FA(1), CC Act]*

4.45 Through such a notice, the ACCC will require the entity to do the following.

4.46 First, the ACCC will require the entity to give to the ACCC a statement that explains:

- how the carbon tax repeal has affected, or is affecting, the entity's regulated supply input costs; and
- how reductions in the entity's regulated supply input costs that are directly or indirectly attributable to the carbon tax

repeal are reflected in the prices charged by the entity for regulated supplies. *[Schedule 2, item 3, section 60FA(2), CC Act]*

4.47 The term ‘regulated supply input costs’, of an entity, means the corporation’s input costs in relation to the making by the entity of regulated supplies. *[Schedule 2, item 3, section 60A, CC Act]*

4.48 These input costs include costs directly attributable to the imposition of the carbon tax and the passing of those costs through the supply chain, as well as administrative and compliance costs associated with the carbon tax and its repeal.

4.49 Secondly, the ACCC would require the entity to give to the ACCC information, or produce to the ACCC documents, that substantiate the explanation set out in the statement. *[Schedule 2, item 3, section 60FA(2), CC Act]*

4.50 The ACCC must, in a carbon tax removal substantiation notice, set out a period within which the entity must comply with the notice. This is a period of 21 days after the notice is given. The ACCC could extend this period under section 60FB of the CC Act, if the recipient of the notice applied in writing for an extension within 14 days after the date of the notice. *[Schedule 2, item 3, sections 60FA(2), 60FA(4)] [Schedule 2, item 3, section 60FB, CC Act]*

4.51 The ACCC could extend this 21 day period, or decide not to extend it, at its discretion; it would not be required to extend the period whenever an application under section 60FB was made (see subsection 33(2A) of the *Acts Interpretation Act 1901*.) If the ACCC did decide to extend the period, the ACCC could only extend the time in which the entity must comply with a notice for a period of no more than 28 days. The ACCC could extend this period once only, and only if an application for an extension was made during this 14 day period. *[Schedule 2, item 3, sections 60FB(1), 60FB(2)] [Schedule 2, item 3, section 60FC(2), CC Act]*

4.52 The ACCC could also, in a ‘carbon tax removal substantiation notice’, specify a manner and form for provision of information and documents. *[Schedule 2, item 3, section 60FA(2), CC Act]*

4.53 An entity that was given a carbon tax removal substantiation notice must then comply with the notice within the ‘applicable compliance period’. *[Schedule 2, item 3 section 60FC(1), CC Act]*

4.54 The ‘applicable compliance period’ for a carbon tax removal substantiation notice is the period of 21 days specified in the notice, or, if that period had been extended under section 60FB of the CC Act, the period as so extended that is not more than 28 days. If an entity had applied for an extension, the applicable compliance period also includes the period up until the time when the entity is given notice of the ACCC’s decision on the extension. *[Schedule 2, item 3, section 60FA(2)] [Schedule 2, item 3, section 60FC(2), CC Act]*

4.55 The effect of this provision is that, if an entity applies under section 60FB for an extension of the period for complying with a carbon tax substantiation notice, and the ACCC decides not to extend that period, the ‘applicable compliance period’ ends on the day the entity is given notice of the ACCC’s decision, rather than at the end of the original 21 day period.

4.56 An entity that had been given a carbon tax removal substantiation notice would commit an offence if it was capable of complying with the notice, but did not do so. Such an offence is an offence of strict liability. Strict liability offences are dealt with in Division 6 of Part 2.2 of the Criminal Code. *[Schedule 2, item 3, section 60FA(2), CC Act] [Schedule 2, item 3, sections 60FC(3), 60FC(4), CC Act]*

4.57 The maximum penalty applicable to an entity found guilty of this offence would be 200 penalty units (\$34,000). *[Schedule 2, item 3, section 60FA(2), CC Act] [Schedule 2, item 3, section 60FC(3), CC Act]*

4.58 In the case that the offence applied to an individual, whether or not because of subsection 6(2) of the CC Act, the maximum penalty that would be applicable to that individual, if found guilty of the offence, would be 40 penalty units (\$6,800). *[Schedule 2, item 3, section 60FA(2), CC Act] [Schedule 2, item 3, section 60FC(5), CC Act]*

4.59 In addition, the individual would be excused from giving information or producing a document in accordance with a carbon tax removal substantiation notice on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty. This would preserve the operation of the common law privileges against self-incrimination or exposure to a penalty. *[Schedule 2, item 3, sections 60FA(2) CC Act] [Schedule 2, item 3, section 60FC(6), CC Act]*

4.60 The amendments do not preclude reliance on other applicable common law privileges, where those are available, for example, right to claim legal professional privilege.

4.61 A carbon tax removal substantiation notice must explain the effect of the following provisions:

- section 60FB of the CC Act (which deals with extending periods for complying with carbon tax removal substantiation notices);
- section 60FC of the CC Act (which creates an offence of a failure to comply with a carbon tax removal substantiation notice);
- sections 137.1 and 137.2 of the Criminal Code (which create offences relating to provision of false or misleading information and documents). *[Schedule 2, item 3, sections 60FA(2) and 60FA(5), CC Act]*

Requirements for electricity and gas retailers to inform customers of cost savings arising from the carbon tax repeal

4.62 A ‘carbon tax removal substantiation statement’ is required if an entity is an ‘electricity retailer’ that sells electricity to ‘electricity customers’, a ‘natural gas retailer’ that sells natural gas to ‘natural gas customers’ or is a ‘bulk SGG importer’ that sells ‘synthetic greenhouse gas’ to ‘SGG customers’. No other entities are covered by this section, that is, retailers of SGG equipment are not required to provide these statements.

[Schedule 2, item 3, section 60FD(1), CC Act]

4.63 The terms ‘electricity customer’, ‘natural gas customer’ and ‘SGG customer’ are defined in section 60A of the CC Act. An electricity customer is an entity who purchases electricity. A natural gas customer is an entity who purchases natural gas. An SGG customer is an entity who purchases synthetic greenhouse gas. *[Schedule 2, item 3, section 60A, CC Act]*

4.64 The term ‘electricity retailer’, ‘natural gas retailer’ and ‘bulk SGG importer’ are defined in section 60A of the CC Act, and encompass a range of entities who sell electricity and natural gas to both business and domestic customers and import synthetic greenhouse gas. The terms ‘electricity and natural gas retailer’ or ‘bulk SGG importer’ are not intended to include all entities right through the supply chain and reflect the definitions used in the ‘National Energy Retail Law’ and the Ozone Management Act. For example entities who re-sell electricity such as caravan parks, nursing homes, retirement villages are not ‘electricity retailers’.

4.65 Under Division 2B of Part V of the CC Act, within 30 days following Royal Assent day of the Main Repeal Bill the entity is required to do two things.

4.66 First, the entity is required to give to the ACCC a written carbon tax removal substantiation statement that sets out:

- if the entity has electricity customers – the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of its cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to those customers during the financial year that began on 1 July 2014; and
- if the entity has natural gas customers – the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of its cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to those customers during the financial year that began on 1 July 2014.

- if the entity has SGG customers – the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of SGG customers during the financial year that began on 1 July 2014. *[Schedule 2, item 3, section 60FD(2), CC Act]*

4.67 Secondly, the entity is required to give to the ACCC information that substantiates the estimate or estimates set out in the carbon tax removal substantiation statement. *[Schedule 2, item 3, section 60FD(2), CC Act]*

4.68 If the entity has given a carbon tax removal substantiation statement to the ACCC, the entity must ensure that a copy of the statement is available on its website, in a way that is readily accessible by the public, until the end of 30 June 2015. *[Schedule 2, item 3, section 60FD(4), CC Act]*

4.69 An entity that must give a carbon tax removal substantiation statement to the ACCC, or to ensure that a copy of that statement is available on its website, would commit an offence if it was capable of complying with the requirement, but did not do so. Such an offence is an offence of strict liability. Strict liability offences are dealt with in Division 6 of Part 2.2 of the Criminal Code. *[Schedule 2, item 3, sections 60FD(5), 60FD(6), CC Act]*

4.70 The maximum penalty applicable to a corporation found guilty of this offence would be 500 penalty units (\$85,000). *[Schedule 2, item 3, section 60FD(5), CC Act]*

4.71 In the case that the offence applied to an individual, whether or not because of subsection 6(2) of the CC Act, the maximum penalty that would be applicable to that individual, if found guilty of the offence, would be 40 penalty units (\$6,800). *[Schedule 2, item 3, sections 60FC(5) and 60FC(7), CC Act]*

4.72 In addition, the individual would be excused from giving an estimate or information in accordance with a carbon tax removal substantiation statement on the ground that the estimate or information might tend to incriminate the individual or expose the individual to a penalty. This would preserve the operation of the common law privileges against self-incrimination or exposure to a penalty. *[Schedule 2, item 3, section 60FD(8), CC Act]*

4.73 The provisions do not limit the ACCC’s other information-gathering powers. *[Schedule 2, item 3, sections 60FD(9) and 60FD(10), CC Act]*

4.74 This new Division 2B is intended to serve as a strong disincentive to ensure that costs savings resulting from the carbon tax repeal are passed onto customers, and to encourage greater transparency in the process. The penalties under this Division are significant ones, and reflect the strength of the Parliament’s commitment to ensure that entities do not make windfall

gains from the repeal of the carbon tax, and to ensure that full cost savings resulting from the carbon tax repeal are passed on to customers.

4.75 To ensure greater transparency, within 13 months after the date of the Royal Assent, the ACCC is required to report to the Parliament in respect of compliance with this Division by all affected entities. *[Schedule 2, item 3, section 60FD(11), CC Act]*

Statements for electricity and natural gas customers

4.76 The amendments insert a new Division 2C into Part V of the CC Act. The new Division 2C deals with statements provided to customers by ‘retailers of electricity and natural gas’. *[Schedule 2, item 3, Division 2C, CC Act]*

4.77 The new section 60FE only applies to an entity if the entity is an electricity retailer that sells electricity to electricity customers or a natural gas retailer that sells natural gas to natural gas customers. No other entities are covered by this section, that is, retailers of SGGs or SGG equipment are not required to provide statements to customers. *[Schedule 2, item 3, section 60FE(1), CC Act]*

4.78 The entity must prepare a statement within 30 days after the Royal Assent day of the Main Repeal Bill that:

- if the entity has electricity customers – identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of electricity customers, that:
 - have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
 - are for the financial year that began on 1 July 2014; and
 - if the entity has natural gas customers – identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of natural gas customers, that:
 - have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
 - are for the financial year that began on 1 July 2014.
- [Schedule 2, item 3, section 60FE(2), CC Act]*

4.79 There is flexibility in how retailers can meet this requirement, for example, a retailer may choose to provide average estimates that are specific to individual jurisdictions rather than a single average for each class of its customers.

4.80 During the period beginning 30 days after the Royal Assent day of the Main Repeal Bill and ending 30 days after the Royal Assent day, the entity must ensure that the contents of the statement it has prepared is

communicated to each of its customers. *[Schedule 2, item 3, section 60FE(3), CC Act]*

4.81 There is flexibility in how the contents of statements are communicated to customers. For example, the communication methods could involve information being included on invoices, bill inserts, separate letters to customers, and on websites.

4.82 An entity that must prepare a statement, and provide a statement to each customer, would commit an offence if it was capable of complying with the requirement, but did not do so. Such an offence is an offence of strict liability. Strict liability offences are dealt with in Division 6 of Part 2.2 of the Criminal Code. *[Schedule 2, item 3, sections 60FE(4), 60FE(5), CC Act]*

4.83 The maximum penalty applicable to an entity found guilty of this offence would be 400 penalty units (\$68,000). *[Schedule 2, item 3, section 60FE(4), CC Act]*

4.84 In the case that the offence applied to an individual, whether or not because of subsection 6(2) of the CC Act, the maximum penalty that would be applicable to that individual, if found guilty of the offence, would be 40 penalty units (\$6,800). *[Schedule 2, item 3, sections 60FE(5), and 60FE(6), CC Act]*

4.85 In addition, the individual would be excused from preparing or communicating the contents of this statement on the ground that the information in the statement might tend to incriminate the individual or expose the individual to a penalty. This would preserve the operation of the common law privileges against self-incrimination or exposure to a penalty. *[Schedule 2, item 3, section 60FE(8), CC Act]*

4.86 Section 155AAA of the CC Act restricts the disclosure of information that is 'protected information'. Information that was obtained by the ACCC under paragraph 60F(2)(b) of the CC Act is 'protected information', and its disclosure limited by this provision. *[Schedule 2, item 25, section 155AAA, CC Act]*

4.87 Division 2C is intended to serve as a strong disincentive to ensure that costs savings resulting from the carbon tax repeal are passed onto customers, to encourage greater transparency in the process, and to ensure that customers are made directly aware of the benefits to them of the carbon tax repeal. The penalties under this Division are significant ones, and reflect the strength of the Parliament's commitment to ensure that entities do not make windfall gains from the repeal of the carbon tax, to ensure that full cost savings resulting from the carbon tax repeal are passed on to customers, and to ensure that customers are made fully aware of the benefits they are receiving from the repeal.

Price monitoring in relation to the carbon tax repeal

4.88 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 entities for supplies for a period before and during the carbon tax repeal transition period, and to assist it in considering whether an entity 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), 60G(3), 60G(6) and 60G(8), CC Act]*

4.89 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), 60G(4), 60G(7), and 60G(9), CC Act]*

4.90 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 an entity 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]*

4.91 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]*

4.92 '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]*

4.93 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]*

4.94 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.

The ACCC, under direction from the Treasurer, started formal monitoring under section 95ZE of the CC Act on 1 March 2014. This will provide a baseline of prices. *[Schedule 2, item 3, section 60G(1)-(4), 60G(6)-(9) and 60G (13), CC Act]*

4.95 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]*

4.96 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]*

4.97 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]*

4.98 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]

4.99 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.

4.100 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]*

4.101 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)]*

4.102 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

4.103 The Main Repeal Bill introduces a new provision to prohibit an entity, 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]*

4.104 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.

4.105 Entities 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 body corporate and a person other than a body corporate 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, section 76(1)(a)(i), CC Act] [Schedule 2, item 6, section 76(1A)(b), CC Act] [Schedule 2, item 7, section 76(1B)(a), CC Act]*

Infringement notices and other enforcement provisions

4.106 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]*

4.107 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]*

4.108 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]*

4.109 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]*

4.110 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.

4.111 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.

4.112 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]*

4.113 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.

4.114 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.

4.115 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]*

4.116 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]*

4.117 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]*

4.118 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

4.119 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]*

4.120 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 body corporate and 1,295 penalty units for person other than a body corporate, which equates to \$1,100,070 and \$220,150, respectively. *[Schedule 2, items 5, section 76(1)(a)(i), CC Act] [Schedule 2, item 6, section 76(1A)(b), CC Act] [Schedule 2, item 7, section 76(1B)(a), CC Act]*

4.121 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

4.122 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]*

4.123 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]*

4.124 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]*

4.125 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]*

4.126 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.

4.127 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]*

4.128 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]*

4.129 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]*

4.130 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]*

4.131 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]*

4.132 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]*

4.133 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]*

4.134 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]*

4.135 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]*
