



Appendix D – Details of the bills

Linking with overseas emission trading schemes

Using eligible international emission units for compliance

- 1.1 As the law stands, the only limit that applies to international units is a 50 per cent surrender limit on eligible international emissions units. 'European allowance units' are presently not included in Australia's 'prescribed international unit' list and are therefore not eligible for use in Australia's carbon pricing mechanism.¹ A 'European allowance unit' is defined as an allowance issued by a country implementing the *European Union Greenhouse Gas Emission Allowance Trading Directive*.²
- 1.2 The proposed amendment will allow for the inclusion of European allowance units in the definition of 'prescribed international unit' in section 4 of the *Australian National Registry of Emissions Units Act 2011* (ANREU Act).³ This means that European allowance units can be surrendered to discharge carbon liabilities from 2015-2016.⁴ In the future other eligible international 'listed units' may be included to discharge liabilities. This will not include European allowance units or AIUs issued in relation to European allowance units.

Surrender limits

- 1.3 To ensure that Australia has a robust carbon reduction framework, a 50 per cent limit was placed on the number of international emission units

1 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 22.

2 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 25.

3 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 25.

4 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 22.

that can be surrendered to cover an emitter's liability after 2015.⁵ In the bill this 50 per cent limit will be referred to as the 'general limit'.⁶ This term is used as in the future multiple 'surrender limits' may be applicable as other trading partnerships come online. The general limit will be maintained until 2020.

- 1.4 The term 'designated limit' will be introduced. The designated limit constrains the number of eligible international emissions units of a certain class that a liable entity can surrender in a year.⁷ By regulation the Government can introduce designated limits on international emissions units. The regulations must specify the years in which the designated limit will apply. All regulations made in this regard are disallowable legislative instruments.
- 1.5 To provide sufficient notice to liable entities, designated limits will come into effect one to three financial years after the regulation is registered.⁸ In general, three years notice must be given before a new designated limit is introduced or an existing limit is changed. However, to give effect to an international arrangement, at least one year's notice must be given before a designated limit associated with the arrangement is introduced.
- 1.6 Under the new arrangement the Minister must consider the expert recommendations of the Climate Change Authority when setting designated limits or qualitative restrictions.⁹
- 1.7 The 12.5 per cent designated limit on Kyoto units is set until 2020-2021 through the 'listed unit designated limit'.¹⁰

Excess surrender provisions

- 1.8 In limited circumstances an entity may surrender units in excess of its liability for that financial year.¹¹ According to the EM:

If a liable entity surrenders units in excess of a limit, it will lose control of the use to which these units will be put. For this reason, liable entities would reasonably not be expected to surrender units in excess of surrender limits.¹²
- 1.9 However, the bill provides rules for the treatment of excess surrendered units. At the end of a financial year a liable entity's surrendered

5 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 26.

6 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 26.

7 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 26.

8 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 27.

9 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 28.

10 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 28.

11 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 29.

12 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 29.

international units will be tested against quotas outlined in the ‘unacceptable designated limit situation’ and an ‘unacceptable general limit situation’.¹³ Limits are applied consecutively, with all designated limits to be applied before the general limit is applied.

- 1.10 Eligible international emissions units may be subject to more than one unacceptable designated limit situation. In this case designated limits will be applied consecutively in an order determined by the Minister.¹⁴ If a legislative instrument is not in force, the designated limits can be applied consecutively using numerical order starting from the smallest percentage first, and where limits are of the same percentage, alphabetical order.¹⁵
- 1.11 Units surrendered in excess of either limit are treated as having been surrendered liabilities in the next eligible financial year.¹⁶

Registry amendments to facilitate indirect linking of emissions trading schemes

- 1.12 At present the Australian National Registry of Emissions Units (the Registry) only provides for the direct (registry-to-registry) linking of emissions trading schemes.¹⁷ The Government will seek to facilitate direct links between registries, however, in circumstances where this is not possible the proposed amendments will allow for indirect linking.

Registry amendments to facilitate indirect linking

- 1.13 Changes to the ANREU Act provide the framework for indirect linking by allowing the Clean Energy Regulator (the Regulator) to operate a foreign registry account, and putting in place provisions for the issuance and transfer of AIUs.¹⁸ According to the EM:

In most cases, these arrangements will be of a highly technical nature, reflecting the practicalities of linking the Registry with other registries and specific issues concerning the acceptance of international emissions units. These regulations will be the subject of Parliamentary oversight as they will be legislative instruments ... and the subject of disallowance.¹⁹

13 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 29.

14 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 31.

15 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 30-31.

16 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 29.

17 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 22.

18 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 32.

19 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 32-33.

Opening and operating Commonwealth foreign accounts

- 1.14 The Regulator, acting on behalf of the Commonwealth, may open and operate a 'Commonwealth foreign registry account'.²⁰ This is undertaken at the direction of the Minister, through a disallowable legislative instrument. The administrator of the foreign registry will decide whether the Commonwealth can open an account in their jurisdiction.
- 1.15 The Regulator has the power, under Section 21 of the ANREU Act, to alter the Registry to 'ensure compliance with provision of an international agreement relating to prescribed international units'.²¹

Issuance of AIUs

- 1.16 A new class of prescribed international units known as AIUs is created under part 4 of the ANREU Act.²² For income taxation purposes they will be treated in a way consistent with the treatment of other eligible international emissions units. The Regulator will be required to publish certain information about prescribed international units, including AIUs.²³
- 1.17 Regulations will stipulate the issuance of AIUs.²⁴ According to the EM:
The Regulator must not issue an AIU unless conditions set out in regulations are satisfied ... Conditions on the issuance of AIUs must give effect to the principle that an AIU must not be issued unless a corresponding foreign emissions unit has been withdrawn from circulation ... these regulations are disallowable.²⁵

Transfer, cancellation and relinquishment of AIUs

- 1.18 New provisions for dealing with prescribed international units, including AIUs, are provided for in Division 3 of Part 4 of the ANREU Act. By regulation the Government may modify the provisions. According to the EM:
This regulation-making power provides the Government with necessary flexibility to implement future international linking arrangements, which may differ in their nature and scope ... This approach also provides the Government with an efficient way to modify the rules governing a specific international linking

20 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 33.

21 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 37.

22 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 22-23, 34.

23 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 41-42.

24 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 22.

25 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 34.

arrangement to ensure compliance with any requirements under the relevant international arrangement.²⁶

- 1.19 In the event that the regulations do not specify transfer arrangements for AIIUs ‘then the general provisions relating to prescribed international units will apply’.²⁷
- 1.20 AIIUs can be cancelled from a person’s Registry account by the Regulator if the conditions set out in the regulations are not satisfied.
- 1.21 The relinquishment provisions ensure that the treatment of fraudulent conduct relating to AIIUs and other carbon units is consistent. A court may order a person to relinquish a specified number of AIIUs if they are convicted of an offence under the relevant sections of the *Criminal Code* relating to fraudulent conduct or foreign law.²⁸ According to the EM:
- A person must comply with such an order even when the person is not the registered holder of any AIIUs nor the holder of those units required to be relinquished ... The purpose of these provisions is to ensure that relinquishment can be required in cases where the fraudulent conduct occurs overseas, which is particularly important given the basis of which AIIUs are issued.²⁹
- 1.22 If a person required to relinquish units does not have enough AIIUs to cover their liability, they are permitted to make up the shortfall with substitute units.³⁰ If a person misses the deadline for relinquishing AIIUs then an administrative penalty or late payment penalty applies.³¹ The Regulator has no discretion about whether a person is liable, however there is room to remit a late payment in certain circumstances.

Civil penalties

- 1.23 Civil penalties will apply if a person contravenes, or aids a contravention of, a regulatory requirement relating to AIIUs.³² The proposed civil penalties regime provides a disincentive for non-compliance with the Registry’s rules and requirements. According to the EM:

Pecuniary penalties for contravention of a civil penalty are set out in Part 7 of the ANREU Act. Subsection 69(4)(b) provides that the pecuniary penalty payable by a body corporate must not exceed 10,000 penalty units for each contravention of a civil penalty

26 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 36.

27 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 35.

28 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 38.

29 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 38.

30 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 38.

31 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 38-39.

32 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 40.

provision. Subsection 69(5)(b) of the ANREU Act provides that the pecuniary penalty payable by a person other than a body corporate must not exceed 2,000 penalty units for each contravention.³³

Removal of the price floor

- 1.24 The price floor represents a minimum carbon price which was to be implemented through a minimum auction reserve price and a charge on the surrender of eligible international emissions units.³⁴ While enabling legislation existed to implement these, the Government had not made regulations pursuant to this legislation, pending consultation with stakeholders.
- 1.25 To remove the surrender charge on eligible international emissions units, the current amendments will repeal section 124 of the *Clean Energy Act 2011* (CE Act), which introduced the surrender charge, and the entire *Clean Energy (International Unit Surrender Charge) Act 2011*.³⁵
- 1.26 Reference to a minimum auction reserve price will no longer be provided in subsection 111(5) of the CE Act.³⁶
- 1.27 The Minister in a legislative instrument may establish a ‘reserve charge amount’ for a specific auction. According to the EM:
- The ‘auction reserve charge amount’ is a mechanism aimed at enhancing the price discovery of the auction. A reserve charge amount can serve to counteract bid shading (that is, bidding an amount which is less than the amount that the participant believes that the unit is worth) or collusion by auction participants by minimising the potential gains from such behaviour.³⁷

Equivalent carbon pricing for liquid fuels and synthetic greenhouse gases

- 1.28 As the current provisions stand, the equivalent carbon price for liquid fuels and synthetic greenhouse gases reflects the price of carbon units sold at domestic auctions. These provisions cannot accommodate the change to the effective carbon price that liable entities will face as a result of the arrangements to link with the EU ETS, including the 12.5 per cent designated limit on Kyoto units. The proposed amendments will apply a

33 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 40.

34 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 42.

35 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 42.

36 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 43.

37 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 43.

new measure, the ‘per-tonne carbon price equivalent’.³⁸ This measure will reflect the effective carbon price in Australia. According to the EM:

The Regulator will calculate the per-tonne carbon price equivalent based on a weighted average of prices for domestic units and international units.³⁹

- 1.29 The basic rule for calculating the per-tonne carbon price is:

Total of adjusted references prices +
[(1-total designated limit percentages) x
Average carbon unit auction price]⁴⁰

- 1.30 The introduction of the per-tonne carbon price equivalent will ensure that compliance costs are consistent for all liable entities under the carbon pricing mechanism.⁴¹

Other amendments

Advance auctions of carbon units

- 1.31 Under the current law the Regulator can auction units in the financial year prior to their surrender. These are termed ‘advance auctions’.⁴² The number of carbon units that can be advance auctioned is currently limited to 15 million carbon units for each vintage per year.
- 1.32 As a result of the proposed legislative changes, the number of carbon units available for advance auction will be increased. The number of units available in advance auctions will be increased to 40 million carbon units for 2013-2014 to be surrendered in 2015-2016 and a limit of 20 million units for other advance auctions will be set for subsequent years.⁴³
- 1.33 The EM has the caveat that the limits only apply ‘if no carbon pollution cap is in place for that vintage year’.⁴⁴

Changes to the treatment of relinquished carbon units

- 1.34 Under the new law relinquished carbon units will be cancelled and, if its vintage year is a flexible charge year, a new carbon unit auctioned in its

38 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 44.

39 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 45.

40 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 46; see pp. 47-49 for a discussion on modifications to the basic rule for calculating the per-tonne carbon price equivalent.

41 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 23, 44.

42 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 51.

43 Explanatory Memorandum, Clean Energy Amendment Bills 2012, pp. 55-56.

44 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 56.

place.⁴⁵ This removes the need to transfer them to the Commonwealth relinquished units account and re-auction them on a secondary auction market for relinquished units.

Measuring amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions

- 1.35 To simplify ascertaining the potential gas emissions embodied in an amount of fuel, the Minister may determine, by legislative instrument, the 'energy consumption and production and emissions reductions, removals and offsets'.⁴⁶ The Minister's powers are to be extended to include 'methods for measuring fuels for the purposes of ascertaining potential greenhouse gas emissions' and determining 'a method for adjusting a person's PEN [Provisional Emissions Number]'.⁴⁷ This will provide greater certainty about carbon liabilities to the liquid and gaseous fuel sectors.⁴⁸

The treatment of some natural gas supply and use arrangements

- 1.36 Currently, liability arises under the natural gas supply provisions where natural gas is supplied and is withdrawn from a natural gas supply pipeline for use.
- 1.37 According to the EM, under the new law:
- Regulations may set out the circumstances in which liability applies to a natural gas end user or natural gas supplier where natural gas is used and the use is not covered by the existing direct emitter or natural gas supply provisions.⁴⁹

The Opt-in Scheme eligibility test

- 1.38 Currently the eligibility test that must be passed for a designated opt-in person to be liable for the potential emissions embodied in an amount of fuel is limited to GST joint venture participants.⁵⁰ The new amendment will extend liability to GST joint venture operators.
- 1.39 The new law will allow for a person who meets the Opt-in Scheme's criteria to decide how they will pay for their carbon liability from specified liquid fuels. They will be able to choose to cover their liability through the

45 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 56.

46 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 54.

47 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 54.

48 DCCCE website, <<http://www.climatechange.gov.au/government/clean-energy-future/legislation.aspx>>, viewed 23 September 2012.

49 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 55.

50 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 55.

carbon pricing mechanism rather than paying an equivalent liability through the fuel tax system.⁵¹

51 Explanatory Memorandum, Clean Energy Amendment Bills 2012, p. 64.