

Advisory Report on the

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

Clean Energy (Charges—Excise) Amendment Bill 2012

Clean Energy (Charges—Customs) Amendment Bill 2012

Excise Tariff Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012

Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012

House of Representatives
Standing Committee on Economics

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Chair's foreword

There exist a number of carbon markets around the world. Individually, these markets work in a localised way to reduce pollution, but linked, they can create an international market place that fosters least-cost abatement and helps contribute to a global solution to climate change.

The Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, and six associated bills, provide the framework for Australia's emissions trading scheme to link with other schemes, which will contribute to the development of a global carbon market.

The provisions will initially facilitate a one-way link with the European Union Emissions Trading System (EU ETS) from 2015, through which Australian entities can acquit up to 50 per cent of their annual carbon liability through eligible international carbon units like EU allowances. A two-way link between the Australian and European schemes will commence from 2018.

The committee's inquiry focused on four issues raised by the bills: the implications for Australia of linking with international emissions trading schemes; the removal of the price floor; the surrender limit on Kyoto units; and the treatment of natural gas.

Following its inquiry, the committee considers that linking the Australian emissions trading scheme to other schemes will deliver the Government's overarching policy objective to foster a low-cost transition to a low-carbon pollution future. Witnesses generally supported the concept of linking emissions trading schemes to this end. The committee also believes that the process of formally linking with other schemes provides the Government with the opportunity to participate in treaty negotiations to ensure Australia's interests are promoted.

To facilitate a link with the EU ETS, the Government agreed to remove the floor price for carbon units, which these amendments provide for. Evidence presented

to the committee in its inquiry corroborated that the Government's approach was sound in this regard. The link to the EU ETS should present carbon price stability to the Australian carbon market in absence of the price floor.

A limit on eligible Kyoto units was another condition of the linking arrangement, which the amendment bills also provide. The committee believes some limitation on Kyoto units is necessary to ensure the integrity of the linked schemes and for this to help foster a transition to a low-carbon economy in Australia.

The committee further found that the amendments relating to the coverage of the natural gas sector were necessary to give effect to the original policy intent of the clean energy legislation. These amendments aim to ensure that liability for carbon pollution is realised as high as possible in the natural gas supply chain and that the principle of universal coverage for all liable entities applies. The committee was satisfied that the remit of the amendments was limited, and was also encouraged by the proposed consultation arrangements with the natural gas sector.

The committee supports the provisions of the amendment bills and recommends that the House of Representatives pass them.

I would like to thank the submitters and witnesses who appeared before the committee at its roundtable hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair

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Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Steven Ciobo MP
Members	Mr Scott Buchholz MP
	Mr Stephen Jones MP
	The Hon Joel Fitzgibbon MP
	Dr Andrew Leigh MP
	Ms Kelly O'Dwyer MP
	Mr Craig Thomson MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Zoë Smith
Technical Advisor	Ms Felicity Ryan
Inquiry staff	Dr Bill Pender
	Ms Samantha Mannette
Administrative Officers	Ms Natasha Petrović
	Ms Carissa Skinner



Terms of reference

On 20 September 2012 the Selection Committee asked the House of Representatives Standing Committee on Economics to inquire into and report on the:

- Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012;
- Clean Energy (Charges – Excise) Amendment Bill 2012;
- Clean Energy (Charges – Customs) Amendment Bill 2012;
- Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
- Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
- Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012; and
- Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012.

Under Standing Order 222(e), the House is taken to have adopted the Selection Committee's reports when they are presented.



List of abbreviations

AIU	Australian-issued international unit
ANREU Act	Australian National Registry of Emissions Units Act 2011
ANREU Regulations	Australian National Registry of Emissions Units Regulations 2011
The bill	References to 'the bill' are to the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012
Carbon pricing mechanism or mechanism	The carbon pricing mechanism set up by the CE Act
CE Act	Clean Energy Act 2011
CE (Charges-Customs) Act	Clean Energy (Charges-Customs) Act 2011
CE (Charges-Excise) Act	Clean Energy (Charges-Excise) Act 2011
CE (IUSC) Act	Clean Energy (International Unit Surrender Charge) Act 2011
CE (Unit Issue Charge-Auctions) Act	Clean Energy (Unit Issue Charge-Auctions) Act 2011
CER	Certified Emission Reduction unit
CFI	The Carbon Farming Initiative

Clean Energy
Amendment Bills

The package of bills including the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, the Clean Energy (Charges-Excise) Amendment Bill 2012, the Clean Energy (Charges-Customs) Amendment Bill 2012, the Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, and the Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012

Clean Energy
Legislative Package

The package of Acts including:

- Clean Energy Act 2011;
- Clean Energy (Consequential Amendments) Act 2011;
- Clean Energy Regulator Act 2011;
- Climate Change Authority Act 2011;
- Clean Energy (Unit Shortfall Charge-General) Act 2011;
- Clean Energy (Unit Issue Charge-General) Act 2011;
- Clean Energy (Charges-Excise) Act 2011;
- Clean Energy (International Unit Surrender Charge) Act 2011;
- Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011;
- Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011;
- Fuel Tax Legislation Amendment (Clean Energy) Act 2011;
- Excise Tariff Legislation Amendment (Clean Energy) Act 2011;
- Customs Tariff Amendment (Clean Energy) Act 2011;
- Clean Energy Legislation Amendment Act 2012.

DCCEE

Department of Climate Change and Energy Efficiency

Eligible Kyoto unit	A Kyoto unit that is also an eligible international emissions unit
ERU	Emissions Reduction Unit
EU	European Union
EU Directive	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC
EU ETS	The European Union Emissions Trading System
European allowance unit	An allowance within the meaning of the European Union Greenhouse Gas Emission Allowance Trading Directive, but excluding allowances issued in respect of aviation activities
Excise Tariff Act	Excise Tariff Act 1921
Fuel Tax Act	Fuel Tax Act 200
GST	Goods and Services Tax
JSCACEFL	Joint Select Committee on Australia's Clean Energy Future Legislation
Kyoto unit	An Assigned Amount Unit, a Certified Emission Reduction unit, an Emission Reduction Unit, a Removal Unit or a prescribed unit issued in accordance with the Kyoto rules
NGER Act	National Greenhouse and Energy Reporting Act 2007
OTN	Obligation Transfer Number
PEN	Provisional Emissions Number
Registry	Australian National Registry of Emissions Units
Regulator	The Clean Energy Regulator
RMU	Removal Unit
SGG (Import Levy) Act	Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995
SGG (Manufacture Levy) Act	Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995



List of recommendations

Recommendation 1

The House pass the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 and associated bills as proposed.

Introduction

Referral of the bills

- 1.1 On 20 September 2012, the Selection Committee referred the following bills to the House of Representatives Standing Committee on Economics (the committee) for inquiry and report:
- Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012;
 - Clean Energy (Charges – Excise) Amendment Bill 2012;
 - Clean Energy (Charges – Customs) Amendment Bill 2012;
 - Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
 - Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
 - Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012; and
 - Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012.
- 1.2 These bills will be referred to as the Clean Energy Amendment Bills in this report.

Origins of the bills

- 1.3 In November 2011, the Australian Parliament passed the Clean Energy Legislative Package. The package introduced a carbon pricing mechanism

to reduce Australia's carbon pollution and move to a clean energy future. The design of the Government's climate change plan has been the subject of considerable public debate and policy development. The Joint Select Committee on Australia's Clean Energy Future Legislation examined the package in 2011 and noted that 'the science of climate change and climate change mitigation policy have been subject to extensive review and inquiry'.¹

- 1.4 The Australian Government announced on 10 July 2011 that its plan to address climate change would include putting a price on carbon. Australia will move from a fixed carbon price to an emissions trading scheme. The price of each tonne of carbon pollution commenced at \$23 on 1 July 2012 for a fixed three year period. From 1 July 2015, a cap and trade emissions trading scheme will come into effect.²
 - 1.5 In the Government's initial plan, the carbon price mechanism was to include a price floor of \$15 a tonne to commence on 1 July 2015, and rise at four per cent in real terms each year. This would mean that the carbon price could not fall below that level. It was intended 'to reduce the risk of sharp downward movements in the price, which could undermine long-term investment in clean technologies'.³ The Clean Energy Legislative Package made provision to 'implement the price floor by combining a minimum auction reserve price for domestic carbon units with a surrender charge for international units'.⁴ It was intended that the surrender charge would be based on the estimated international price for a unit class and the floor price.
 - 1.6 In January 2012, the Department of Climate Change and Energy Efficiency (DCCEE) sought public comment on its discussion paper *Price floor for Australia's carbon pricing mechanism: Implementing a surrender charge for international units*. The discussion paper covered four options for implementing the surrender charge on international units.
 - 1.7 On 28 August 2012, in a joint media release, the Australian Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP,
-

1 Joint Select Committee on Australia's Clean Energy Future Legislation (JSCACEFL), *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, October 2011, p. 6.

2 Prime Minister, Deputy Prime Minister and Treasurer, Minister for Climate Change and Energy Efficiency, Joint media release, *Putting a price on carbon pollution*, 10 July 2011, <<http://www.pm.gov.au/press-office/putting-price-carbon-pollution>>, viewed 21 September 2012.

3 Australian Government, *Securing a clean energy future: The Australian Government's climate change plan*, 2011, p. 27.

4 Department of Climate Change and Energy Efficiency (DCCEE), *Price floor for Australia's carbon pricing mechanism: Implementing a surrender charge for international units*, December 2011, p. 5.

and the European Commissioner for Climate Change, Ms Connie Hedegaard, announced linking the Australian and the European Union emissions trading schemes.⁵

- 1.8 The European Union Emissions Trading System (EU ETS) commenced operation in 2005 and is a mandatory scheme that covers the 27 member states of the European Union (EU), and Norway, Iceland and Liechtenstein.⁶
- 1.9 It is planned that a full two-way link for carbon emissions trading should commence by 1 July 2018, which would allow businesses in Australia and Europe to use carbon units from either scheme to comply with their respective carbon pollution obligations. In the interim period, from 2015 Australian businesses will be able to use EU allowances to meet their obligations under the Australian scheme. The Minister announced that:
- To facilitate linking, the Australian Government will make two changes to the design of the Australian carbon price. These are that:
- the price floor will not be implemented
 - a new sub-limit will apply to the use of eligible Kyoto units. While liable entities in Australia will still be able to meet up to 50 per cent of their liabilities through purchasing eligible international units, only 12.5 per cent of their liabilities will be able to be met by Kyoto units.⁷
- 1.10 The result of these arrangements is that Australia's carbon price will reflect that in the EU ETS and be consistent with at least 30 other countries.
- 1.11 The seven bills referred to the committee build on the existing Clean Energy legislative framework and according to the Explanatory Memorandum:

The amendment bills package makes provision for the linking of the Australian carbon pricing mechanism with overseas emissions

5 DCCEE, Media release, *Australia and European Commission agree on pathway towards fully linking emissions trading systems*, 28 August 2012, <<http://www.climatechange.gov.au/minister/greg-combet/2012/media-releases/August/JMR-20120828.aspx>>, viewed 21 September 2012.

6 European Commission, Climate Action, <http://ec.europa.eu/clima/policies/ets/index_en.htm>, viewed 21 September 2012

7 DCCEE, Media release, *Australia and European Commission agree on pathway towards fully linking emissions trading systems*, 28 August 2012, p. 1, <<http://www.climatechange.gov.au/minister/greg-combet/2012/media-releases/August/JMR-20120828.aspx>>, viewed 21 September 2012.

trading schemes, including the EU ETS. The amendments are designed to enable the Government to make and implement arrangements to link with a variety of schemes, and are therefore designed to provide appropriate flexibility for the Government in implementing these technical arrangements.⁸

1.12 Provided below is an overview of the amendments and the bills.⁹

Overview of the amendments

1.13 The proposed amendments related to linking with overseas emissions trading schemes, include:

- the use of eligible international emissions units for compliance under the carbon pricing mechanism;
- registry amendments to facilitate indirect linking;
- removal of the price floor; and
- equivalent carbon pricing for liquid fuels and synthetic greenhouse gases.

1.14 Other amendments include:

- advance auctions of carbon units;
- changes to the treatment of relinquished carbon units;
- changes related to measuring and adjusting amounts of fuels to ascertain potential greenhouse gas emissions;
- changes to the treatment of some natural gas supply and use arrangements; and
- changes to the Opt-in Scheme eligibility test.

8 Explanatory Memorandum (Combined), Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, Clean Energy (Charges – Excise) Amendment Bill 2012, Clean Energy (Charges – Customs) Amendment Bill 2012, Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, and Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012, p. 8.

9 Also see Appendix D which provides a summary of the Explanatory Memorandum.

Financial impact of the amendments

- 1.15 The Explanatory Memorandum stated that the amendments 'are not anticipated to have a financial impact'.¹⁰ The 2012-2013 Budget set out carbon price projections based on Treasury modelling in the *Strong Growth, Low Pollution* report.¹¹ According to the Explanatory Memorandum:

... there would be no impact on domestic carbon prices of establishing a partial link to the EU ETS under these interim arrangements. This is because the international carbon price is projected to be above the price floor and because the projections assume a single international unit price and do not distinguish between Kyoto unit and European allowance unit prices.¹²

- 1.16 When addressing possible market price differences between Australian units and EU and Kyoto units, the Explanatory Memorandum stated:

On balance, the advantages of providing liable entities with access to another secure source of international units, greater effective assistance to recipients of free permits and reduced administrative complexity outweigh these costs.¹³

Overview of the bills

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

- 1.17 The Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 will amend the *Clean Energy Act 2011* to:
- facilitate linking Australia's emissions trading scheme and the EU ETS;
 - remove the floor price for carbon units;
 - limit the use of Kyoto units to 12.5 per cent of an entity's liability;

10 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 12.

11 Department of the Treasury, *Strong Growth, Low Pollution: Modelling a carbon price*, <http://cache.treasury.gov.au/treasury/carbonpricemodelling/content/report/downloads/Modelling_Report_Consolidated.pdf>.

12 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 13.

13 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 14.

- provide for the calculation of an equivalent carbon price that reflects liable entities' cost of compliance under the arrangement;
- prevent units being issued at auction more than three years in advance of their vintage year (the first year from which the unit can be surrendered);
- change the treatment of relinquished carbon units, by cancelling a relinquished carbon unit rather than transferring it to the Commonwealth relinquished units account – the Regulator will issue a new carbon unit if the vintage year is a flexible charge year; and
- allow regulations to be made to determine how specific circumstances relating to the supply and use of natural gas are treated.¹⁴

1.18 The amendments will also increase the limit on 'advance auctioned' carbon units from 15 million to 20 million to be auctioned in the financial year before their vintage year, if no carbon pollution cap has been set for that vintage year. In 2013-2014, up to 40 million carbon units of the 2015-2016 vintage can be auctioned if no carbon pollution cap has been set for 2015-2016.¹⁵

1.19 The bill also amends the *Australian National Registry of Emission Units Act 2011* to:

- enable European allowance units to be held in the Australian National Registry of Emissions Units (ANREU), and used for compliance purposes under the Clean Energy Act; and
- in the event that a direct link with a foreign emissions trading scheme, including the EU ETS, is not possible, to enable the Clean Energy Regulator to issue Australian-issued international units which correspond to foreign emissions units withdrawn from circulation within the relevant foreign registry, and which can be used for compliance purposes under the Clean Energy Act.¹⁶

1.20 The Clean Energy Legislation Package provided that gaseous fuels would be subject to an equivalent carbon price through the fuel tax system. The bill amends the *Fuel Tax Act 2006* to adjust the calculation of the equivalent carbon price to ensure that it remains equivalent to the effective carbon price for liable entities under the carbon pricing mechanism.¹⁷

14 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 15.

15 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 54.

16 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

17 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

- 1.21 These amendments aim to ensure that the equivalent carbon price applied to liquid fuels and synthetic greenhouse gases will reflect the impact of quantitative limits on the surrender of eligible international units.¹⁸ The Explanatory Memorandum stated:
- In making these changes, it is also necessary to ensure that the equivalent carbon price paid by users of liquid fuels and synthetic greenhouse gases is more clearly reflective of the carbon price under the linking arrangements. To this end, the application of an equivalent carbon price is amended in the Fuel Tax Act, the Excise Tariff Act, the SGG (Import) Act and the SGG (Manufacture) Act to introduce a new concept: the 'per-tonne carbon price equivalent'.¹⁹
- 1.22 The other significant amendment in the bill is to repeal the *Clean Energy (International Unit Surrender Charge) Act 2011*, which imposes a charge for surrender of an eligible international emissions unit during the eligible financial years from 2015 to 2017. The references to the surrender charge in the CE Act will also be removed. These changes will remove the price floor completely from the Clean Energy Legislative Package.
- 1.23 The bill also amends the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to provide the Minister for Climate Change and Energy Efficiency the power to determine the measurement methods and to adjust the amounts of designated fuels for the purposes of ascertaining potential greenhouse gas emissions.²⁰
- 1.24 Sections 1, 2 and 3 commence on the date the bill receives the Royal Assent. Schedule 1, Parts 1 and 3, which make general amendments to the ANREU Act and the CE Act, will commence on the day after the bill receives the Royal Assent.
- 1.25 Schedule 1, Part 2, which makes amendments relating to fuel to the CE Act and the NGER Act, will commence on 1 July 2013. The amendments to the NGER Act made by this Part apply to reports relating to the 2012-2013 financial year and all subsequent years.
- 1.26 The other related bills make minor and technical amendments to give effect to the substantive changes outlined above. These six related bills do

18 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 23.

19 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 9.

20 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 16.

not contain any substantive provisions of their own.²¹ These bills will be covered briefly below.

Clean Energy Charges Excise and Customs Bills

- 1.27 The Clean Energy (Charges – Excise) Amendment Bill 2012 and the Clean Energy (Charges – Customs) Amendment Bill 2012 amend the *Clean Energy (Charges–Excise) Act 2011* and *Clean Energy (Charges–Customs) Act 2012*, respectively, to facilitate the removal of the price floor.
- 1.28 These bills repeal the definition of ‘eligible international emissions unit’ and make changes to the ‘reserve charge amount’ in relation to auctions for emissions units, removing the requirement for a minimum auction reserve charge. The changes include providing that the Minister may determine, by legislative instrument, the reserve charge amount in relation to a specified auction.
- 1.29 The first schedule in both bills will take effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. The remainder of the bills take effect the day the Act receives the Royal Assent.

Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

- 1.30 The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Excise Tariff Act 1921* to introduce the new category of ‘per-tonne carbon price equivalent’ and set the parameters for its calculation. This provides that the per-tonne carbon price equivalent, instead of the average carbon unit auction price, is applied to liquid fuels.²²
- 1.31 Schedule 1 takes effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. All other sections of the bill take effect the day that Act receives the Royal Assent.

21 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 23.

22 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, p. 5.

Ozone Protection and Synthetic Greenhouse Gas Import and Manufacturing levy Bills

- 1.32 Synthetic greenhouse gases listed under the Kyoto Protocol have an equivalent carbon price applied through the Ozone Protection and Synthetic Greenhouse Gas Management legislation.
- 1.33 The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*. The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 amends the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.
- 1.34 The amendments in these bills repeal the definition of 'benchmark average auction charge' and introduce a 'per-tonne carbon price equivalent'. They provide that the per-tonne carbon equivalent is applied to the import and manufacture of synthetic greenhouse gas.²³
- 1.35 The effect of the amendments is to adjust the calculation of the equivalent carbon price to ensure that it remains clearly equivalent to the effective carbon price for liable entities under the scheme.²⁴
- 1.36 The first schedule in both bills will take effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. All other sections of the bills take effect the day that Act receives the Royal Assent.

Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012

- 1.37 The Clean Energy (Unit Issue Charge – Auctions) Amendment Bill 2012 amends the *Clean Energy (Unit Issue Charge – Auctions) Amendment Act 2011* to remove the requirement for a minimum auction reserve price.²⁵
- 1.38 Schedule 1 takes effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. The remainder of the bill takes effect the day that Act receives the Royal Assent.

23 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, pp. 5-6.

24 Explanatory Memorandum (Combined), *Clean Energy Amendment Bills*, p. 16.

25 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012, p. 6.

Consultation

- 1.39 On 31 August 2012, the Government released the document *Implementing links to overseas emissions trading schemes – Draft legislation*.²⁶ It included the draft legislation of the Clean Energy Legislation Amendment (International Emissions Trading and Other Measures) Bill 2012 and the six related bills. The purpose of this document was to inform stakeholders about the implementation of the Government's commitment to link Australia's scheme with the EU ETS, as announced on 28 August 2012, and to also provide a legislative framework to link to other overseas emissions trading schemes in future.
- 1.40 The Government indicated that the legislation would be introduced in the 2012 Spring Parliamentary sitting period, and provided stakeholders with the opportunity to comment on the draft legislation.
- 1.41 The Government held several public consultation sessions, including in Sydney, Melbourne and Canberra, and received 20 submissions on the draft legislation.

Objective and scope of the inquiry

- 1.42 The objective of the review is to scrutinise whether the bills in their current form will deliver their policy intent. In referring the bills, the Selection Committee stated:

REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR
CONSIDERATION:

The domestic economic implications of abolishing the floor price and linking the emissions trading scheme to the EU scheme.²⁷

- 1.43 The purpose of this report is to identify and address matters surrounding the provisions of the Clean Energy Amendment Bills 2012. This report does not canvass the broader policy questions around the merits of a carbon price, which have been the subject of widespread public debate, or the existing clean energy laws, which were scrutinised by the Joint Select

26 DCCEE website, <<http://www.climatechange.gov.au/government/clean-energy-future/legislation.aspx>>, viewed 21 September 2012.

27 House of Representatives Selection Committee, Report No. 66, 20 September 2012, p. 3.

Committee on Australia's Clean Energy Future Legislation.²⁸ The report focuses on the provisions of the amendment bills, and in particular, upon the four central outcomes proposed by the bills, namely:

- the linking of Australia's carbon trading scheme with international schemes, including the EU ETS;
- the removal of the price floor;
- the limits placed on the use of international carbon units to discharge an emitter's liability; and
- the treatment of natural gas supply and use.

Conduct of the inquiry

- 1.44 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Friday, 21 September 2012.
- 1.45 Twelve submissions and two exhibits were received. They are listed at Appendix A.
- 1.46 A roundtable public hearing was held in Canberra on Thursday, 27 September 2012. A list of the witnesses who appeared is in Appendix B. The submissions and transcript of evidence are available on the committee's website at:
<http://www.aph.gov.au/house/committee/economics/index.htm>.

28 Joint Select Committee on Australia's Clean Energy Future Legislation, *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, Parliament of Australia, Canberra, October 2011.

Issues in the bills

Overview

- 2.1 The purpose of this report is to identify and address matters surrounding the provisions of the Clean Energy Amendment Bills 2012.¹ The Government has flagged that these bills will help to build the framework to link Australia's carbon pricing mechanism with international emissions trading schemes.² During the inquiry, four central provisions emerged as areas worthy of analysis, namely:
- the implications of linking Australia's carbon trading scheme with international systems, including the European Union Emissions Trading System (EU ETS);
 - the removal of the floor price;
 - the limits placed on the use of eligible international carbon units to discharge an emitter's liability; and
 - the treatment of natural gas supply and use.

1 The key amendments are contained in the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 (the bill). The package of bills will be referred to as the 'Clean Energy Amendment Bills 2012' and covers all seven bills, including: Clean Energy (Charges-Excise) Amendment Bill 2012, Clean Energy (Charges-Customs) Amendment Bill 2012; Excise Tariff Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012; Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012; Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-Tonne Carbon Price Equivalent) Bill 2012; and Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012.

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

- 2.2 The Clean Energy Amendment Bills 2012 build on the Government's Clean Energy Legislative Package and will provide the framework for entities to purchase and surrender eligible international carbon units to discharge liabilities in the flexible price period of Australia's emissions trading scheme. This flexible price period will start in 2015 and the amendments in the bills facilitate a link between the Australian carbon pricing mechanism and the EU ETS from this time. The provisions also provide the flexibility for Australia to link with other emissions trading schemes in the future.
- 2.3 Witnesses generally supported the concept of linking emissions trading schemes. The committee heard that to the extent Australia wants to be part of a global carbon market, then the measures in the amendment bills are an important step towards that. However, some witnesses postulated that linking to the EU ETS could weaken Australia's control over scheme design.
- 2.4 To facilitate the link with the EU ETS, there will no longer be a 'floor price' in Australia's scheme. The floor price was to be implemented by imposing a minimum auction reserve price and a charge on the surrender of eligible international emissions units. Instead, it is proposed that the Minister may establish a 'reserve charge amount' for a specific auction.
- 2.5 During the inquiry, budget implications and price volatility resulting from the removal of the price floor were discussed. It was submitted that linking to a large carbon market like the one supporting the EU ETS would achieve commensurate price certainty for participants in Australia's carbon market. The Government's carbon price revenue estimates also remain as published in the 2012-13 Budget.
- 2.6 A designated limit of 12.5 per cent has been set for Kyoto units. The general limit – which allows for entities to meet 50 per cent of their liability through the purchase and surrender of international units – remains in place. Both limits will continue until 2020. It was submitted that the designated limit on Kyoto units will artificially increase costs for liable entities, undermining the intent of the scheme to provide least-cost abatement. The committee heard compelling evidence that the designated limit was necessary to ensure the integrity of Australia's emissions trading scheme.
- 2.7 Provisions are made in the bills that seek to ensure liability for carbon emissions is realised as high as possible in the natural gas supply chain and that the principle of universal coverage for all liable entities in this chain applies. Gas producers were concerned that the bills' provisions might have broader, unanticipated implications for the industry. The

Department of Climate Change and Energy Efficiency (DCCEE) assured the committee that the intent of the provisions was narrow and that ensuing regulations would be dependent on the outcome of consultation with stakeholders due to occur in the near future.

Linking carbon markets

Background

- 2.8 Carbon markets are a prime vehicle to meet carbon pollution reduction targets. There exist a number of carbon markets around the world. Individually, these markets work in a localised way to reduce pollution, but linked, they can create a global market place that fosters least-cost abatement and contributes to an international solution to climate change.
- 2.9 Linking the Australian emissions trading scheme has been a policy priority of the Government's for some time. Since 2007, it has variously said:

As an Australian scheme begins to take shape, the Australian Government will begin discussions with other nations which are developing or contemplating complementary emissions trading regimes, and which share Australia's broad approach to climate change ... The Australian scheme will be designed to maximise the prospect of linkages with other schemes, and with policy-based arrangements such as offsets, where offshore emissions reducing activities could be counted by Australian firms in determining their net emissions.³

As a supporter of the development of a global system, Australia has a direct interest in promoting links between comparable schemes. Any Australian domestic trading scheme should be designed to enhance the scope for links, both formal and informal, with as many different systems as possible.⁴

The Government acknowledges the overwhelming support of stakeholders for linking and recognises the benefits of linking in

3 Australian Government, *Australia's Climate Change Policy*, 2007, p. 11.

4 Australian Government, *Prime Ministerial Task Group on Emissions Trading*, 2007, p. 113.

providing low-cost compliance options for liable entities and in supporting an efficient global response to climate change.⁵

Australia's carbon price will be linked to carbon markets around the world from the start of the flexible price period. This will allow reductions in carbon pollution to be pursued globally at the lowest cost.⁶

... it is common sense to support international linking because it assists in providing emissions reduction at least cost and it contributes to knitting together different national and regional schemes. It develops a common carbon price across economies, a common incentive to cut emissions, and fairly shares the burden of doing so.⁷

- 2.10 The amendment bills provide the legislative framework for linking Australia's emissions trading scheme to other schemes, including in the first instance the EU ETS. The Explanatory Memorandum to the bills states:

The amendments are designed to enable the Government to make and implement arrangements to link with a variety of schemes, and are therefore designed to provide appropriate flexibility for the Government in implementing these technical arrangements.⁸

- 2.11 The EU ETS is a mandatory emissions trading scheme covering at least 30 countries in Europe. It has operated since 2005 and by 2011, it had delivered emissions reductions of 17.5 per cent below 1990 levels in the EU.⁹ The carbon market supporting the EU ETS is also the largest in the world. In 2011, trade in European carbon units represented at least three quarters of all trade in global carbon units, in both volume and value terms.¹⁰

Analysis

- 2.12 The concept of linking emissions trading schemes was generally supported by submitters and witnesses who appeared before the committee. The committee heard that to the extent Australia wants to be

5 Australian Government, *Carbon Pollution Reduction Scheme White Paper*, 2009, p. 11-3.

6 Australian Government, *Securing a Clean Energy Future*, 2011, p. 30.

7 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives*, 19 September 2012.

8 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 8.

9 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 7.

10 World Bank, *State and Trends of the Carbon Market*, 2012, p. 10.

part of a global carbon market, then the measures in the amendment bills are an important step towards that.¹¹ The committee also heard that broadly, the amendments were a positive thing that would better deliver the policy intent of the *Clean Energy Act 2011*.¹²

2.13 Evidence presented to the committee indicated there are multiple benefits to linking. These include expanding the scope of abatement opportunities available to Australian liable entities and providing them with access to well-established markets to assist with hedging risk.¹³

2.14 Linking Australia's emissions trading scheme to the EU ETS as the amendment bills facilitate will also simplify compliance for entities liable in both Australia and Europe. These entities will be able to use fungible carbon units – either European allowances or Australian carbon units – to acquit their liability under either scheme.¹⁴

2.15 The Australian Financial Markets Association submitted that:

Linking of the Clean Energy Scheme with sound international schemes has been consistently requested by AFMA as a mechanism to increase market depth, achieve least cost abatement and reduce overall risks for participants.¹⁵

2.16 Likewise, the Clean Energy Council stated that it:

... supports the linking of Australia's carbon pricing scheme with international emissions trading systems. International linking allows Australian businesses to access emissions reductions opportunities at least cost. With international linking, the carbon price in Australia will essentially be set by international supply and demand for abatement.¹⁶

2.17 Beyond the broader economic and commercial benefits, witnesses before the committee suggested that linking carbon markets also generates momentum towards a global carbon market to reduce carbon pollution. The IETA stated:

11 Mr Martijn Wilder, Baker & McKenzie, *Committee Hansard*, 27 September 2012, p. 1.

12 Mr Seb Henbest, Bloomberg New Energy Finance, *Committee Hansard*, 27 September 2012, p. 3.

13 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 7.

14 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 7.

15 Australian Financial Markets Association, *Submission 5*, p. 1.

16 Clean Energy Council, *Submission 1*, p. 2.

We think that Australia's concrete steps towards creating a real link between two different carbon markets on different sides of the planet encourages those other countries to see that their own domestic efforts to create carbon markets can have a further step where they can link to other countries. It is not just theory; it is becoming practice.¹⁷

2.18 While support for the general concept of linking was widespread, the committee is aware that views vary on this and that some believe that linking Australia's scheme to the EU ETS may not be as beneficial.¹⁸

2.19 The committee heard the view that jurisdictions, including Europe, will design their emissions trading schemes specific to their national circumstances, and changes in foreign schemes to which we are linked may not be consistent with our national interest. The Australian Coal Association stated:

... the EU will design a scheme to meet its purposes and Australia will have no say really in that design ... there is a significant risk that what is in the best interests of the European Union is not in the best interests of Australia.¹⁹

2.20 The Cement Industry Federation also said:

... it appears that Australia has very little say over any major scheme changes that are contemplated by the European Union ... Australia should not be willing to hand over 'sovereignty' on scheme design unless the scheme becomes a truly international scheme.²⁰

2.21 Witnesses discussed with the committee that linking by its very nature subjects participants to a degree of loss of sovereignty. Just as global markets for other commodities are influenced by exogenous factors which participants must manage, so too will global carbon markets. Baker & McKenzie stated:

The truth of the matter is that ... these are global markets. If OPEC makes a decision on oil, the oil price changes. What you are seeing

17 Mr Rob Fowler, IETA *Committee Hansard*, 27 September 2012, p. 4.

18 Mr Steven Ciobo MP, *Committee Hansard*, 27 September 2012, p. 12.

19 Mr Peter Morris, Australian Coal Association, *Committee Hansard*, 27 September 2012, p. 5.

20 Cement Industry Federation, *Submission 3*, p. 5.

is that, in a global marketplace, you have to manage the carbon price.²¹

- 2.22 Bloomberg New Energy Finance also pointed out that the market that operates under the auspices of the United Nations and which generates Kyoto units already involves an inherent loss of sovereignty for Australia:

Any time a link is forged between an Australian carbon market and any other market – whether it is the international offset market, the European market or the New Zealand market – there will be an element of policy-taking from Australia. In the CER [a form of Kyoto unit] market – where, in the current legislation, we are linked to the value of 50 per cent of companies' liabilities, potentially – that market price is determined by a melting pot of demand and supply across the entire world, driven by the UN policy negotiations and subject to a significantly larger number of forces than the EU ETS price.²²

- 2.23 Bloomberg further argued that treaty negotiations with Europe in the context of the two-way link between Australia's scheme and the EU ETS provides the opportunity for Australia to mitigate any potential loss of sovereignty:

So while it is very true that there is a risk of Australia having to accept policy decisions from other markets, I think this is actually a lower-risk move, because at least Australia can have a bilateral discussion with the EU and negotiate its position up-front rather than essentially accepting what comes out of a UNFCCC slightly messy international negotiation.²³

Conclusion

- 2.24 The committee considers that linking the Australian emissions trading scheme to other emissions trading schemes, including to the EU ETS, will provide clear benefits to Australian entities. The combined EU ETS and Australian emissions trading schemes will allow the inter-continental pursuit of low cost abatement and is an important step to achieving a global carbon market and, ultimately, a global solution to climate change. The committee supports the provisions in the bills that facilitate linking.

21 Mr Martijn Wilder AM, Partner, Baker and McKenzie, *Committee Hansard*, 27 September 2012, p. 6.

22 Mr Seb Henbest, Bloomberg New Energy Finance, *Committee Hansard*, 27 September 2012, p. 6.

23 Mr Seb Henbest, Bloomberg New Energy Finance, *Committee Hansard*, 27 September 2012, p. 6.

- 2.25 The committee notes views that linking schemes could involve a loss of autonomy over the design of Australia's emissions trading system. However, it is also the committee's view that in the process of formally linking with international emissions trading schemes, the Government will be able to participate in treaty negotiations to ensure Australia's interests are safeguarded.

Removal of the floor price

Background

- 2.26 The price floor in Australia's emissions trading scheme represented 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.²⁴ While enabling legislation existed to implement these features, the Government had not made regulations pursuant to this legislation, pending consultation with stakeholders.
- 2.27 The price floor was intended to provide a degree of carbon price certainty, but it is also not the only way to achieve this. Access to large and liquid carbon markets, like the EU ETS, can provide commensurate carbon price certainty.²⁵
- 2.28 To remove the surrender charge on eligible international emissions units, the current amendments will repeal section 124 of the *Clean Energy Act 2011*, which introduced the surrender charge, and the entire *Clean Energy (International Unit Surrender Charge) Act 2011*. Under current law, if an eligible international emissions unit is surrendered in the 2015–16, 2016–17 or 2017–18 financial years, a charge would be imposed. However under the amended law, no charge will be imposed on the surrender of eligible international emissions units.²⁶
- 2.29 Reference to a minimum auction reserve price will also no longer be provided in subsection 111(5) of the *Clean Energy Act 2011*. Under current law, provision is made for minimum auction reserve charges of \$15 for 2015–16, \$16 for 2016–17 and \$17.05 for 2017–18. There will be no

24 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 42.

25 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, pp. 9–10.

26 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 42.

minimum auction reserve charge automatically applied under the amended law.²⁷

- 2.30 The Minister may establish a 'reserve charge amount' for a specific auction in a legislative instrument. According to the Explanatory Memorandum:

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.²⁸

Analysis

- 2.31 There has been both support for, and argument against, the removal of the floor price in evidence presented to the committee.

- 2.32 In its submission to DCCEE, the Business Council of Australia indicated its support for the removal of the floor price:

The BCA supports the removal of the floor price and a surrender charge. Both these elements of the legislation distorted the market that is intended by the legislation and will bring additional costs to the economy and consumers at a time when all efforts should be directed at maintaining a strong and growing economy.²⁹

- 2.33 Similarly in its submission, COZero approved of the removal of the floor price and linking as a way to promote least cost abatement in Australia and to reduce uncertainty for liable parties:

Prior to the amendment of the legislation, COZero's market experience showed that the floor price and proposed surrender charge for international units would significantly diminish the demand for these permits. Subsequently, it is our stance that the removal of the price floor and 12.5% import cap (very close to European levels) will promote demand for these units and allow for affordable abatement.³⁰

27 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 43.

28 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 43.

29 Business Council of Australia, Submission regarding the Draft Clean Energy Legislation Amendment (International Emissions Trading and Other Measures) Bill 2012 and Related Bills, September 2012, p. 3.

30 COZero, *Submission 7*, p. 1.

- 2.34 The Australian Financial Markets Association also supported the removal of the floor price, arguing that it would improve the design of the Australian carbon market, reduce costs and simplify administration.³¹
- 2.35 On the other hand, the Climate Institute argued its preference for an extended floor price ‘because of the predictability it provides investors and the economic efficiencies it could deliver’. The Climate Institute noted three benefits from a gradually rising floor price:
- It helps deter investment in highly emission intensive technologies that would become stranded under the stronger policies needed in the future.
 - It reduces downside financial risk premiums associated with low carbon investments thereby reducing the costs of investments.
 - It encourages investment in low emissions technologies through more predictable price signals. This brings down their costs through ‘learning by doing’ and economies of scale.³²
- 2.36 The Climate Institute noted that ‘without a carbon price or strong limits on the import of international offset credits from developing countries, Australian carbon prices would likely fall to single digits in 2015’. This would allow an Australian company to ‘buy a credit from a country like China for a renewable energy project that they had built for less than \$5 per tonne’. The result of this would be that Australia would be locked into ‘the polluting technology of the past’ and would not be prepared for ‘the emerging and inevitable low-carbon economy’.³³
- 2.37 The Climate Institute did concede, however, the viability of ‘linking with the world’s biggest carbon market with a limit on international permits’, provided ‘it is combined with strong policies for domestic clean energy and energy efficiency’.³⁴
- 2.38 In evidence before the committee, DCCEE noted that the floor price was only ever intended as an interim measure, for the first three years of the flexible price period, while domestic markets develop.³⁵ DCCEE also noted that the link to the EU ETS operated as an alternative to the floor price in providing price stability by granting access to a mature carbon market:
-

31 Australian Financial Markets Association, *Submission 5*, p. 1.

32 The Climate Institute, *Submission 9*, p. 2.

33 The Climate Institute, *Submission 9*, p. 3.

34 The Climate Institute, *Submission 9*, p. 2.

35 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012 p. 9.

They have well-established futures markets. They provide an alternative way in which domestic liable parties can actually lock in the future liabilities under the scheme ... The link to the European scheme is a different way of providing long-term price security, because you can already, today, bank on the price which is trading in futures markets within the European Union.³⁶

- 2.39 The evidence received by the committee at its public hearing indicated widespread support for the removal of the floor price.³⁷

Conclusion

- 2.40 The committee considers that removing the floor price and repealing the legislative mechanisms which would have given effect to it will make linking the Australian emissions trading scheme with the EU ETS administratively simpler, facilitating the overall policy outcome. The link to the EU ETS and access to associated derivative markets should offer the Australian carbon market commensurate carbon price stability in absence of the floor price.

Surrender limits on Kyoto units

Background

- 2.41 A key part of the linking arrangement with the EU ETS and to which the amendment bills give effect is the introduction of a surrender limit on Kyoto units (referred in the bills as a 'designated limit') of 12.5 per cent of an entity's annual liability. The limit will be in place until 2020, after which regulations may change the percentage. The amendment bills provide a new power at section 123A of the *Clean Energy Act 2011* to enact this limit.

36 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 9.

37 Mr Damien Dwyer, Director, Economic, APPEA, *Committee Hansard*, 27 September 2012, p. 2; Mr Alex Gosman, CEO, Australian Industry Greenhouse Network, *Committee Hansard*, 27 September 2012, p. 2; Mr Rob Fowler, Australia and New Zealand Representative, International Emissions Trading Association, *Committee Hansard*, 27 September 2012, p. 4; Mr Martijn Wilder AM, Partner, Baker and McKenzie, *Committee Hansard*, 27 September 2012, p. 31.

- 2.42 The designated limit on Kyoto units is in addition to an existing 'general limit' on other international units. The general limit for international units is set at 50 per cent of an entity's annual liability.
- 2.43 DCCEE advised the committee that the surrender limit on Kyoto units was part of the negotiated deal struck with the European Commission to link emissions trading schemes.³⁸
- 2.44 The amendment bills provide the Government with the regulation-making power to introduce additional designated limits on eligible international units in future. The Explanatory Memorandum says:
- The setting of designated limits through regulations reflects the requirement for flexibility in both setting and changing limits over time, reflecting the maturation of Australia's emissions trading arrangements, the enhancement of existing links with overseas emissions trading schemes and the development of new links and international emissions trading systems.³⁹
- 2.45 To provide sufficient notice to liable entities of new limits, designated limits will come into effect one to three financial years after the regulation is registered.⁴⁰ 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.

Analysis

- 2.46 The Explanatory Memorandum to the bills states that the purpose of limiting units is to safeguard the environmental integrity of Australia's pollution reduction efforts. The designated limit on Kyoto units will also assist with the convergence of the price of European units and Australian carbon units.⁴¹
- 2.47 However several submitters and witnesses were concerned about the limit, arguing that because it will restrict access to comparatively cheap Kyoto units, it is inconsistent with the broader objective of linking to achieve pollution reduction at least-cost.

38 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 9.

39 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 26.

40 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 27.

41 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 26.

2.48 During the hearing APPEA asked:

If we are about reducing emissions and meeting the targets that we have domestically and as part of our international obligations at lowest cost, why introduce constraints that frustrate that goal?⁴²

2.49 Similarly the Cement Industry Federation submitted:

It is not clear that Australia has gained any specific advantage by agreeing to put sub thresholds in place. By definition, the sub threshold does not encourage access to lowest cost abatement.⁴³

2.50 Conversely, some submitters supported the surrender limit on Kyoto units, recognising that it would still allow access to relatively cheap units. COZero stated:

... it is our stance that the removal of the price floor and 12.5% import cap (very close to European levels) will promote demand for these units and allow affordable abatement.⁴⁴

2.51 The committee also heard that Kyoto units would unlikely effectively realise the transition to a low-carbon economy that the *Clean Energy Act 2011* sought to achieve. In particular, the supply of Kyoto units is not capped which contributes to a low price for them, currently around \$2.50 per unit. Bloomberg argued:

... I think that we need to be careful of buying carbon for the sake of buying carbon. While the carbon price mechanism is a least-cost mechanism, having the cheapest carbon – that is, a \$2 carbon price – is not going to achieve the objectives that it has been put in place to achieve. Look at the power sector and the coal-gas fuel-switching price. Just turning off coal and turning on gas as an abatement measure is at least \$30 today and, depending on the gas prices as we move to more LNG exports, is probably moving up towards \$60 and beyond. That is just for the power sector. So, if we are serious about reducing emissions inside Australia, we need a higher carbon price than \$2.50. That will increase costs for carbon-intensive businesses, but that is the nature of reducing emissions: it does cost something.⁴⁵

42 Mr Damien Dwyer, Director, Economic, APPEA, *Committee Hansard*, 27 September 2012, p. 15.

43 Cement Industry Federation, *Submission 3*, p. 6.

44 COZero, *Submission 7*, p. 1

45 Mr Seb Henbest, Bloomberg New Energy Finance, *Committee Hansard*, 27 September 2012, p. 16.

- 2.52 Due to a lack of global legal agreement around the future form of the United Nation's mechanisms which govern Kyoto units, Baker & McKenzie further pointed out that there is currently no certainty around the prospects for Kyoto units beyond this year:

CERs are produced under the international rules of the Kyoto Protocol. There is absolutely no guarantee at this point in time that you are going to be able to use those post-2012. There needs to be a negotiation under the Kyoto Protocol about facilitating the extension of Kyoto and how those units are used ... I think people have forgotten that that is not yet a done deal – the use of those international permits.⁴⁶

- 2.53 Similarly, the committee also heard that much greater business certainty is provided by allowing Australian liable entities to use European units to acquit their pollution liabilities. Unlike the market for Kyoto units, the European market is much larger, more established and presents more of a going concern.⁴⁷ These features are important as it provides a better basis on which to make investment decisions around long-lived, low carbon technologies.

- 2.54 The committee further heard that the limit would still allow for significant access to Kyoto units in the Australian scheme. While estimates vary, around 230 million Kyoto units could be used in the Australian scheme between now and 2020.⁴⁸

Conclusion

- 2.55 The committee acknowledges the concerns expressed in relation to the limit placed on the use of Kyoto units in Australia's scheme.
- 2.56 The limit was a condition of the linking arrangement agreed between the Government and the European Commission. For the link to the EU ETS to work effectively and for this to help foster a transition to a low-carbon economy in Australia, consistent with the broader objectives of the *Clean Energy Act 2011*, some limitation on Kyoto units is necessary. The committee supports the provisions in the bills which facilitate surrender limits on eligible international units.

46 Mr Martijn Wilder AM, Partner, Baker and McKenzie, *Committee Hansard*, 27 September 2012, p. 19.

47 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 17.

48 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 17.

Natural Gas

Background

- 2.57 The amendments relating to the treatment of natural gas aim to ensure that liability for carbon pollution is realised as high as possible in the natural gas supply chain and that the principle of universal coverage for all liable entities applies.⁴⁹ The Explanatory Memorandum notes that:

Currently, there is the potential for certain commercial arrangements to lead to situations which may not be captured by the current provisions of the CE Act concerning emissions embodied in natural gas. Regulations may set out the circumstances in which liability applies to a supplier or end user in specific circumstances, enabling the Government to maintain competitive neutrality across the industry by supporting the complete coverage of natural gas under the carbon pricing mechanism. The specific provisions would be consistent with the current natural gas provisions in that liability would arise where the use of the natural gas results in greenhouse gas emissions.⁵⁰

- 2.58 The Explanatory Memorandum also notes that these provisions would not come into effect unless and until the necessary regulations are made, and that the Government would consult on the development of these regulations prior to their implementation.⁵¹

Analysis

- 2.59 In its submission to DCCEE, AGL rejected the proposed amendments relating to natural gas. AGL stated:

These changes to the already complex gas supplier provisions of the *Clean Energy Act 2011* (the Act) will introduce significant new obligations for natural gas suppliers, including the development of new systems, processes and capabilities, and as they are currently drafted, may prove impossible to comply with.⁵²

49 Mr Simon Writer, Assistant Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 26.

50 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 43.

51 Explanatory Memorandum (Combined), Clean Energy Amendment Bills, p. 43.

52 AGL, submission to the Clean Energy Future Consultation of the Department of Climate Change and Energy Efficiency, *Exhibit A*, p. 2.

2.60 AGL considered that the existing coverage of natural gas supply under the carbon pricing mechanism is very near complete, and that the amendments are not required at this time.⁵³

2.61 APPEA also raised concerns about how the amendments relating to the treatment of natural gas would operate and called for their removal from the bills.⁵⁴ In evidence before the committee, APPEA argued that the proposed amendments were ‘a very complicated part of the scheme’, and that they had ‘some reasonably significant commercial implications for gas suppliers in terms of negotiating their commercial arrangements with their customers and with others in the gas supply chain’. APPEA urged further consultations before these provisions were dealt with by Parliament.⁵⁵

2.62 In response, DCCEE emphasised that it was important to understand the context and overarching principles of the proposed amendments :

The underpinning principle for natural gas liability is that it should be at the point highest upstream that it can be, and that has been what has driven the question of the point of liability in natural gas from the outset – that was a recommendation from the Shergold review and there have been some iterations in the way in which that has been applied. The carbon pollution reduction scheme had a particular approach and, after that approach no longer proceeded, the issue was revisited and the approach that was set out in the *Clean Energy Act 2011* was adopted. What that does is reinforce the principle of liability as high as possible in the supply chain but then provide flexibility about where that point of liability might be moved to reflect the commercial arrangements in the gas sector.⁵⁶

2.63 DCCEE also noted that the proposed amendments were designed to ensure the original intent of the legislation was not subverted:

These provisions are there to address what we consider to be a potential gap in liability that may emerge around specific arrangements that exist in the gas supply chain. The overarching objective here is to ensure that emissions embodied in natural gas are all covered, regardless of where their point of liability might

53 AGL, submission to the Clean Energy Future Consultation of the Department of Climate Change and Energy Efficiency, *Exhibit A*, p. 3.

54 APPEA, *Submission 2*, p. 5.

55 Mr Damien Dwyer, Director, Economic, APPEA, *Committee Hansard*, 27 September 2012, p. 23.

56 Mr Simon Writer, Assistant Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 24.

be. The objective of the legislation and these amendments is to ensure that that gap cannot be opened and that arrangements can be made through regulations in a flexible way in consultation with industry to ensure that the point of liability is put at the appropriate point reflecting the commercial arrangements which exist in the industry and which may evolve over time. Those commercial arrangements in this sector, partly reflecting the dynamism and growth in the sector over recent years, change fairly rapidly, so the objective with these amendments is to provide that liability to put the point of liability at the appropriate point and to do so in a way that does not allow potential gaps in liability to emerge in this area.⁵⁷

2.64 DCCEE highlighted that the proposed amendments are targeted to the particular issue in question and narrow in scope.⁵⁸ DCCEE also emphasised that without the regulations, nothing in the amendments would be given effect and that there would be extensive consultation in conjunction with drafting of the regulations. DCCEE noted that these ‘amendments are really largely providing for a regulation-making power to make sure that people operating in this industry understand that emissions embodying gas will be covered one way or the other’. This would provide ‘a degree of certainty to the industry about the rules of the game’.⁵⁹

2.65 DCCEE outlined the proposed consultation process, stating that:

There will be a paper setting out the options around the precise regulations that are proposed. The indication has been, really, that that should be done probably by the end of October. Then by the end of the year the department would release draft regulations for consideration by the industry. Those regulations would be made by March of next year, giving people a lead period before 1 July 2013 to understand the implications of any compliance changes that may arise.⁶⁰

2.66 APPEA acknowledged that the intention of the proposed amendments was limited in nature and that the rationale behind them was not

57 Mr Simon Writer, Assistant Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 24.

58 Mr Simon Writer, Assistant Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 26.

59 Ms Jenny Wilkinson, Acting Deputy Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 25.

60 Mr Simon Writer, Assistant Secretary, DCCEE, *Committee Hansard*, 27 September 2012, p. 26.

controversial.⁶¹ It also acknowledged the Government's stated intention to consult with industry over the regulations.⁶²

Conclusion

- 2.67 The committee is satisfied that the provisions in the bills dealing with the treatment of natural gas supply and use are necessary to give effect to the policy intent of the original legislation.
- 2.68 Moreover, the committee is satisfied that the proposed method of implementing these changes, by providing a framework in legislation which will then be detailed in regulation, is consistent with current legislative practice, and will allow sufficient consultation to address the concerns of industry. The committee therefore supports these provisions of the bills.
- 2.69 The committee also notes and supports the Government's stated intention to carry out detailed consultation over the provisions of the regulations.

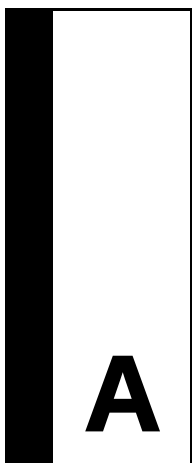
Recommendation 1

- 2.70 **The House pass the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 and associated bills as proposed.**

Julie Owens MP
Chair
9 October 2012

61 Mr Damien Dwyer, Director, Economic, APPEA, *Committee Hansard*, 27 September 2012, p. 24.

62 Mr Damien Dwyer, Director, Economic, APPEA, *Committee Hansard*, 27 September 2012, pp. 24–5.



Appendix A – Submissions and Exhibits

Submissions

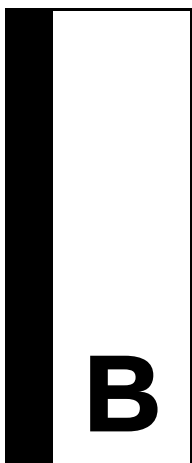
No.

1. Clean Energy Council
2. Australian Petroleum Production & Exploration Association Limited
3. Cement Industry Federation
4. Greenfleet Australia
5. Australian Financial Markets Association
6. Climate Bridge
7. COzero
8. World Wildlife Fund Australia
9. The Climate Institute
10. AGL Energy
11. Australian Industry Greenhouse Network
12. TRUenergy
13. Department of the Treasury

List of Exhibits

No.

1. Policy Development-Energy and Climate Change-Climate change 2012, *Submission to the Department of Climate Change and Energy Efficiency*, regarding the Draft Clean Business Council of Australia.
2. Australian Industry Greenhouse Network – Clean Energy Legislation Amendment (International Emissions Trading and Other Measures) Bill 2012, *Submission to the Department of Climate Change and Energy Efficiency*, Presented by Mr Alex Gosman.



Appendix B – Hearing and Witnesses

Thursday, 27 September 2012—Canberra

Department of Climate Change and Energy Efficiency

Ms Jenny Wilkinson, Acting Deputy Secretary

Mr Simon Writer, Assistant Secretary, Design, Coverage and Regulatory Branch

Mr James White, Assistant Secretary, Market Linkages Branch

Dr Andrew Pankowski, Director, Coverage Section

Mr Conrad Buffier, Assistant Director, Architecture Section

Department of the Treasury

Ms Luise McCulloch, General Manager, Industry Environment and Defence Division

Mr Ben Dolman, Acting General Manager, Macroeconomic Modelling Division

Mr Robb Preston, Executive Officer, Fiscal Group

Australian Petroleum Production & Exploration Association

Mr Damian Dwyer, Director, Economics

Baker & McKenzie

Mr Martijn Wilder AM, Partner

International Emissions Trading Association

Mr Rob Fowler, Australia & New Zealand Representative

Bloomberg New Energy Finance

Mr Seb Henbest, Manager and Head of Clean Energy & Carbon Markets Research,
Australia

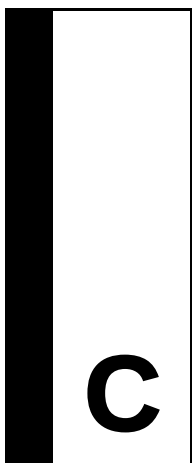
Australian Coal Association

Mr Peter Morris, Director, Economic Policy

Dr Matthew Steen, Manager, Research and Policy

Australian Industry Greenhouse Network

Mr Alex Gosman, Chief Executive Officer



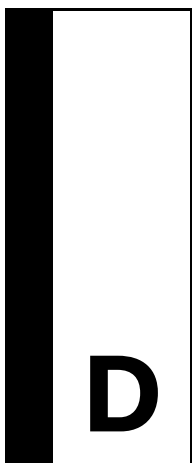
Appendix C – List of advisory reports

Below is a list of advisory reports tabled by the House of Representatives Standing Committee on Economics in the 43rd Parliament.

No.

1. Inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011
2. Inquiry into Indigenous economic development in Queensland and advisory report on the Wild Rivers (Environmental Management) Bill 2010
3. Advisory report on the Taxation of Alternative Fuels Bills 2011
4. Advisory report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011
5. Advisory report on the Competition and Consumer (Price Signalling) Amendment Bill 2010 and the Competition and Consumer Amendment Bill (No. 1) 2011
6. Advisory report on the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011
7. Advisory report on the Corporations (Fees) Amendment Bill 2011
8. Advisory report on the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011
9. Advisory report on the Minerals Resource Rent Tax Bill 2011 and related bills

10. Review of the Tax Laws Amendment (2011 No. 9 Measures) Bill 2011
11. Review of the Insurance Contracts Amendment Bill 2011
12. Advisory report on the Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012
13. Advisory report on the Clean Energy Finance Corporation, Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012 and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012
14. Advisory Report on the Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012; Passenger Movement Charge Amendment Bill 2012
15. Advisory Report on the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012
16. Advisory Report on the Tax Laws Amendment (2012 Measures No. 4) Bill 2012
17. Report on the Exposure Draft of the Australian Charities and Not-for-profits Commission Bills 2012



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.

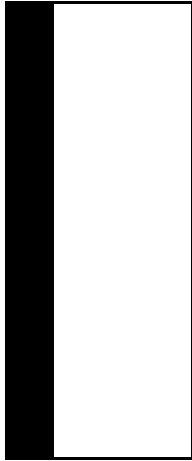
48 DCCCE website, <<http://www.climatechange.gov.au/government/clean-energy-future/legislation.aspx>>, viewed 23 September 2012.

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.



**Dissenting Report – Mr Steven Ciobo MP,
Deputy Chair, Ms Kelly O'Dwyer MP and
Mr Scott Buchholz MP:
Liberal Party of Australia**

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 and related bills

Dissenting Report from Liberal Members of the Committee

Introduction

The Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 (Clean Energy Bills) and other related bills were referred to the House of Representatives Standing Committee on Economics (the committee) on 20 September 2012.

The referral to the committee followed a joint announcement by the Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP, and the European Commissioner for Climate Change, Ms Connie Hedegaard on 28 August 2012 that Australia's 'carbon price mechanism' would be linked to the European Union emissions trading schemes.

That announcement was the latest change to the Labor Government's carbon tax scheme that has been amended eight times since the implementation of the tax.

Despite this latest announced change only occurring on 28 August, the Government sought for the committee to report to the Parliament by 9 October 2012.

The committee had only one hearing day and nearly all witnesses remarked on their dissatisfaction that such a tight timeframe was enforced. Witnesses remarked on their inability to prepare comprehensive submissions and to truly ascertain the potential impact of the latest change.

Stakeholder concerns are understandable, in the view of Liberal Members of the committee, given the Labor Government affirmed its commitment to the 'floor price' as a crucial component of the Carbon Tax legislation on eleven occasions.

For example, the Prime Minister remarked in the House of Representatives on 13 September 2011:

"The bill also provides for a price cap and a price floor to apply for the first three years of the floating price period."

This will limit market volatility and reduce risk for businesses as they gain experience in having the market set the carbon tax."

Indeed, the Minister himself affirmed the Government's commitment to the legislated arrangements only a week prior to announcing the 'floor price' was being dumped.

In an interview with David Speers on Sky News Agenda on 21 August 2012, Minister Combet remarked:

We have legislated the floor price, that's quite well-known. I am discussing with the European Union the linkage of our schemes, it is an issue that's in those discussions but we are committed to the arrangements we have legislated.

David Speers: At \$15?

That's the floor price.

Liberal Members of the Committee remain highly concerned about the unrealistically tight reporting timeframe provided to the committee and recognise many stakeholders harbor genuine concerns about not being able to determine the impact of the change to Labor's carbon tax and the consequent inability to meaningfully outline these impacts in submissions to the committee.

Linking of the Australian and European Union Schemes and removal of the 'floor price'

Liberal Members of the committee have specific concerns that the decision to abandon the 'floor price' of Labor's carbon tax is yet another unpredictable policy change which adds to negative perceptions of Australia's sovereign risk.

Further, removing the 'floor price' of the carbon tax and linking it to the European carbon tax leaves the Australian economy in the hands of European bureaucrats who will make policy decisions impacting on the EU price which will directly impact on the linked Australian price.

Furthermore, Liberal Members of the committee are concerned the Government is moving ahead with the adoption of this policy despite negotiations to formalise the agreement being ongoing.

Mr Damian Dwyer, Director of Economics at the Australian Petroleum Production and Exploration Association Ltd also raised serious concerns regarding the competitive impact of tying Australia's scheme to the European scheme.

Mr Dwyer: *I just wanted to make a quick comment on part of the conversation that we have been having. It comes back to the part of the conversation around the link to other emissions trading schemes. We find ourselves talking at cross-purposes sometimes. I think we had an example of it just before. The EU is a very important trading partner – it is a very large trading partner for Australia; I do not think there is any question about that. The issue on the competitiveness angle is not necessarily that; it is: who are our trade competitors? If I look at LNG – and I think my colleagues in the Coal Association have a similar story – the EU does not form our competitors for LNG exports. They are countries in Asia and the Middle East. So, while a link to the EU opens up the sorts of compliance opportunities that we spoke about earlier, it does little for the competitiveness balance between Australian LNG exporters and LNG exporters in other parts of the world. That goes to other parts of the act and the other parts of the design that we have. That is where I think we find ourselves talking at cross-purposes sometimes. What matters to us quite clearly in how the Clean Energy Act impacts on the competitiveness of the industry is: what are the actions of our competitors? In the case of LNG, that is not the EU. That is one of the points that we made in our submission.*

Surrender limits on Kyoto units

There was discussion at hearing regarding the Government's decision to alter surrender limits on Kyoto units and the consequent impact of that decision.

For example, Mr Martijn Wilder AM, a partner of Baker & McKenzie indicated:

Mr CIOBO: *Are you talking about carbon abatement?*

Mr Wilder: *Yes, I am talking about carbon abatement as opposed to unit –*

Mr CIOBO: *So are you saying that there are projects happening in developing countries where it is not always but generally cheaper to abate carbon, and those projects are now ceasing because there is not a commercial marketplace to sell those abatement permits into? I am not trying to verbal you, I am trying to clarify.*

Mr Wilder: *Yes.*

Mr CIOBO: *The reason that is happening is because, for example, in Australia domestic policy dictates that we will not allow – to use your words – 'cheap foreign abatement permits' to flood the market.*

Mr Wilder: *Yes. This is a point in time issue. At the moment, CERs are a lot cheaper,*

€90, compared to 18 months ago when they were selling at €20. It is a big difference. Depending how the price dynamic goes, that could go up again. So, right at this very point in time, if you wanted to offset 100 per cent of your units from abatement projects, the CER price is a lot cheaper. So, yes, that is the case. Coming back to the point before on what is supplementarity, it was always agreed under Kyoto that the policy objective would be to drive abatement at home, not overseas. With supplementarity, everyone wanted to make sure we would be reducing emissions in our own country rather than doing it in other countries.

Mr CIOBO: *So the cost abatement in Australia, because of the quota –*

Mr Wilder: *No, the cost of abatement in Australia is generally not because of the quota.*

Mr CIOBO: *The cost of abatement in Australia is higher than purchasing equivalent abatement from offshore?*

Mr Wilder: *At the moment, at today's prices.*

Mr CIOBO: *That is what I am talking about. Currently, the cost of abatement in Australia is more expensive than abatement offshore.*

Mr Wilder: *Yes it is.*

Mr CIOBO: *You were talking about philosophical policy decisions. The policy of the government is deliberately to drive abatement domestically and not internationally.*

Mr Wilder: *I do not know if that is the policy of the government. I am saying that is potentially an outcome.*

The above testimony indicates a direct consequence of this policy is that Australian businesses will be required to abate carbon emissions through the increased use of more expensive domestic units.

For all Australians, this means higher costs that will be passed onto consumers.

Small businesses for example, will be required to pay more for electricity and pass those costs on because abatement will be more expensive than need otherwise be the case.

Budgetary Impacts

The impact of removing the 'floor price' and linking the Australian scheme to the European scheme will have significant budgetary impacts. Regrettably, the Government is unwilling to be transparent on this impact and refused to provide that information to the committee.

For example, questioning Ms Luise McCulloch of Treasury about this impact:

Ms McCulloch: *The 2012-13 budget, which was the latest estimates update, was based on the modeling of \$29.*

Mr CIOBO: *And that represents revenue to the government of how much?*

Ms McCulloch: *The budget had a figure of, off the top of my head, 24-point-something billion. It was \$24.4 billion in total over the four years to 2015-16.*

Mr CIOBO: *If that is still the projected figure in the government's budget papers, why is there a need to remove the floor price of \$15?*

Ms McCulloch: *The issue of the floor price and EU linking is not a budget issue; it is actually an issue of efficiency of the scheme and compliance costs and so forth. So it is more a question for climate change as to why we have removed the price floor. It was not a budget related decision.*

.....

Mr CIOBO: *Treasury, based on the floor price, if the price trader was at the floor price, what was the total quantum of revenue to government?*

Ms McCulloch: *Treasury has not published those estimates.*

Mr CIOBO: *Are you willing to provide them to the committee?*

Ms McCulloch: *The government has not published those estimates. The published estimates are the ones in the 2012-13 budget. In the 2012-13 budget, the government stated that, even if the price had fallen to the floor, the budget would still be in surplus.*

Mr CIOBO: *Okay, so Treasury has modeled, I take it, the impact on revenue of the floor price being hit?*

Ms McCulloch: *Modeling is not quite the right phrase – I think you mean: have we*

estimated the impact?

Mr CIOBO: *Correct.*

Ms McCulloch: *We provide advice to government all the time on different price scenarios, but our current price assumptions –*

Mr CIOBO: *I understand but, working backwards, you must have, because otherwise how could the government be confident the budget was still going to be in surplus? Based on the government's own statements, you have clearly provided that advice to government.*

Ms McCulloch: *We have provided a number of different price assumptions and scenarios to government as part of our advice over a long period of time.*

The Government is attempting to maintain a position that with a forecast \$29 price and a consequent revenue benefit of \$24.4 billion, even if the carbon price drops below the \$15 'floor price', the impact on the budget is of no real consequence.

Despite claims of being transparent, the Government would not provide through the Department of Treasury the budgetary impact of a lower carbon price.

Liberal Members believe such claims by the Government are unsustainable.

Recommendation

The House not pass the Clean Energy Amendments (International Emissions Trading and Others Measures) Bill 2012 and associated bills; and further, repeal the Clean Energy legislative package.

Steven Ciobo MP

Deputy Chairman

Kelly O'Dwyer MP

Scott Buchholz MP