

Overview of the clean energy legislative package and the steel transformation plan

- 2.1 On 10 July 2011, the Government announced that it would implement a carbon pricing mechanism (the mechanism) in *Securing a clean energy future: the Australian Government's climate change plan*.¹ At the same time, the Government announced assistance to the Australian steel industry, through the steel transformation plan.

The carbon pricing mechanism

- 2.2 The mechanism will place a price on each tonne of greenhouse gases emitted by a business or other entity covered by it (a 'carbon price'). It is a cap-and-trade emissions trading scheme which will commence on 1 July 2012. For the first three years, the carbon price will be fixed, and from 1 July 2015, the price will be determined by the market.
- 2.3 The mechanism is to be implemented by the clean energy legislative package, which is made up of 18 bills. These bills may be categorised as follows:

1 Australian Government, *Securing a clean energy future: The Australian Government's Climate Change Plan*, 2011.

Table 1.1 The Clean Energy Bill 2011 and related bills

Bill type	Provisions
Main bill	The Clean Energy Bill 2011 creates the mechanism. It sets out the structure of the mechanism and process for its introduction. These include: ■ entities and emissions that are covered by the mechanism; ■ entities' obligations to surrender eligible emissions units; ■ limits on the number of eligible emissions units that will be issued; ■ the nature of carbon units; ■ the allocation of carbon units, including by auction and the issue of free units; ■ mechanisms to contain costs, including the fixed charge period and price floors and ceilings; ■ linking to other emissions trading schemes; ■ assistance for emissions-intensive trade-exposed activities and coal-fired electricity generators; ■ monitoring, investigation, enforcement and penalties; ■ administrative review of decisions; and ■ reviews of aspects of the mechanism over time.
Statutory bodies	The Clean Energy Regulator Bill 2011 sets up the Clean Energy Regulator (the Regulator), which is a statutory authority that will administer the mechanism and enforce the law. The responsibilities of the Regulator include: ■ providing education on the mechanism, particularly about the administrative arrangements of the mechanism; ■ assessing emissions data to determine each entity's liability; ■ operating the Australian National Registry of Emissions Units (the Registry); ■ monitoring, facilitating and enforcing compliance with the mechanism; ■ allocating units including freely allocated units, fixed charge units and auctioned units; ■ applying legislative rules to determine if a particular entity is eligible for assistance in the form of units to be allocated administratively, and the number of other units to be allocated; ■ administering the National Greenhouse and Energy Reporting System (NGERS), the Renewable Energy Target (RET) and the Carbon Farming Initiative (CFI); and ■ accrediting auditors for the CFI and NGERS.
	The Climate Change Authority Bill 2011 sets up the Climate Change Authority (the Authority), which will be an independent body that provides the Government with expert advice on key aspects of the mechanism and the Government's climate change mitigation initiatives. The Government will remain responsible for carbon pricing policy decisions. This bill also sets up the Land Sector Carbon and Biodiversity Board which will advise on key initiatives in the land sector.

Source Clean Energy Bill 2011 – Explanatory Memorandum pages 24-26

Table 1.1 The Clean Energy Bill 2011 and related bills (cont'd)

Bill type	Provisions
Consequential amendments	The Clean Energy (Consequential Amendments) Bill 2011 makes consequential amendments to ensure: ■ NGERS supports the mechanism; ■ the Registry covers the mechanism and the CFI; ■ the Regulator covers the mechanism, CFI, the Renewable Energy Target and NGERS; ■ the Regulator and Authority are set up as statutory agencies and regulated by public accountability and financial management rules; ■ that emissions units and their trading are covered by laws on financial services; ■ that activities related to emissions trading are covered by laws on money laundering and fraud; ■ synthetic greenhouse gases are subject to an equivalent carbon price applied through existing regulation of those substances; ■ the Regulator can work with other regulatory bodies, including the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Transaction Reporting and Analysis Centre (Austrac); ■ the taxation treatment of emissions units for the purposes of GST and income tax is clear; and ■ the Conservation Tillage Refundable Tax Offset is established.
Procedural bills	Those elements of the mechanism which oblige a person to pay money are implemented through separate bills that comply with the requirements of section 55 of the <i>Constitution</i>. These bills are the Clean Energy (Unit Shortfall Charge—General) Bill 2011, the Clean Energy (Unit Issue Charge – Fixed Charge) Bill 2011, the Clean Energy (Unit Issue Charge – Auctions) Bill 2011, the Clean Energy (Charges—Excise) Bill 2011, the Clean Energy (Charges—Customs) Bill 2011, the Clean Energy (International Unit Surrender Charge) Bill 2011, the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011.
Related bills	Other elements of the Government's climate change plan are being implemented through other legislation. These are: ■ the Clean Energy (Excise Tariff Legislation Amendment) Bill 2011 and the Clean Energy (Customs Tariff Amendment) Bill 2011, which imposes an effective carbon price on aviation and non-transport gaseous fuels through excise and customs tariffs; ■ the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, which reduces the business fuel tax credit entitlement of non-exempted industries for their use of liquid and gaseous transport fuels, in order to provide an effective carbon price on business through the fuel tax system; and ■ the Clean Energy (Household Assistance Amendments) Bill 2011, Clean Energy (Tax Laws Amendments) Bill 2011 and the Clean Energy (Income Tax Rates Amendments) Bill 2011, which will implement the household assistance measures announced by the Government on 10 July 2011. These bills amend relevant legislation to provide payment increases for pensioners, allowees and family payment recipients and provide income tax cuts and establish new supplements for low- and middle-income households.

Description of the clean energy bills

Clean Energy Bill 2011

2.4 The Clean Energy Bill 2011 will create the mechanism and provides for the way in which it is set up and will work over time. It also provides for the obligations of entities covered by the mechanism and its administration by the Regulator.

The mechanism

2.5 The mechanism is to start on 1 July 2012, after which entities covered by it – including businesses, government agencies and other bodies – will pay for each tonne of carbon dioxide equivalent (CO₂-e) greenhouse gas pollution they emit each year.

2.6 The mechanism is to be implemented in two stages:

- for the first three years, the price for each tonne CO₂-e of greenhouse gas emissions will be fixed. The price will start at \$23 per tonne, rising by 2.5 per cent per year, allowing for inflation of 2.5 per cent per year; and
- from 1 July 2015, the mechanism will shift to a flexible cap and trade emissions trading scheme, where the price will be set by the market.

Pollution caps²

2.7 After 1 July 2015, the Government will set an annual cap on Australia's annual greenhouse gas emissions, which will have limits on individual sectors, firms or facilities. The cap will be set by issuing a fixed number of carbon units each year. This will be one of the main ways Australia meets its pollution targets.

Table 1.2 Timeline for setting pollution caps

Deadline	Pollution cap announced for financial year(s) beginning:
31 May 2014	2015, 2016, 2017, 2018 and 2019
30 June 2016	2020
30 June 2017	2021
Pollution caps will continue to be set annually	

Source Clean Energy Bill 2011 – Explanatory Memorandum, page 31

2 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 2.

- 2.8 If no caps are set by the minister, then the Clean Energy Bill 2011 provides that default caps will apply. These are designed to ensure that Australia meets its international obligation to reduce national emissions by at least five per cent below 2000 levels by 2020.
- 2.9 Some of the carbon units issued each year are to be sold by the Government at auction.³ Others are to be allocated as free carbon units to businesses under the jobs and competitiveness program or as assistance to energy generators.⁴ People will be able to buy and sell the carbon units they have acquired, creating market for carbon units. This is:
- designed to ensure the reductions in pollution under the carbon price are achieved at the lowest cost to the economy: firms will buy units if they cannot reduce their pollution for less than the cost of the units.⁵
- 2.10 The Clean Energy Bill 2011 requires the Authority to make recommendations to the Government on pollution caps and on any national emissions trajectory or 'carbon budget', with the first recommendations due by February 2014.

Price ceilings and floors⁶

- 2.11 Under the Clean Energy Bill 2011, price ceilings and floors, intended to avoid price spikes or plunges, are to apply from 1 July 2015 for three years (that is, the first three flexible charge years):
- a price ceiling will be set \$20 higher than the expected international carbon price at the start of the flexible price period (1 July 2015); and
 - price floor will mean that the carbon price cannot fall any lower than \$15 a tonne in 2015-16.

Both the price ceiling and the price floor will increase gradually each year. The Clean Energy Bill 2011 provides that the Authority is to review the role of the price ceiling and price floor in 2017.

3 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 3.

4 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapters 5 and 6.

5 Clean Energy Bill 2011 – Explanatory Memorandum, p. 30.

6 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 3.

Coverage of the carbon price⁷

2.12 The mechanism creates a liability for greenhouse gas pollution for entities that have:

- facilities that emit 25,000 tonnes CO₂-e or more of greenhouse gas pollution per annum;
- landfill facilities that emit 10,000 tonnes CO₂-e or more (provided that they are within a specified distance of landfills that emit 25,000 tonnes CO₂-e or more);

or are

- large users of natural gas, and
- natural gas suppliers (including retailers).

2.13 The measurement of greenhouse gas pollution is done through NGERS, which has been in place since 2007. The Clean Energy (Consequential Amendments) Bill 2011 makes some amendments to the *National Greenhouse and Energy Reporting Act 2007* to integrate NGERS with the mechanism.

2.14 The Clean Energy Bill 2011 provides for the specific treatment of greenhouse gas pollution embodied in natural gas. It provides that facilities that consume large volumes of natural gas are covered by the mechanism, and that liability for other emissions of natural gas from the use of natural gas supplied to small-to medium-sized customers is borne by the natural gas supplier, unless an obligation transfer number (OTN) is quoted.⁸

2.15 The Clean Energy Bill 2011 also recognises that businesses may structure their affairs in various ways. Provision is made for the reallocation of liability within joint ventures (through the provisions on mandatory and declared designated joint ventures) and within corporate groups (through liability transfer certificates).⁹

Greenhouse gas pollution covered by the mechanism¹⁰

2.16 The mechanism will cover four of the six greenhouse gases counted under the Kyoto Protocol – carbon dioxide, methane, nitrous oxide and

7 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 1.

8 See Clean Energy Bill 2011 – Explanatory Memorandum, paragraphs 1.124 -1.207.

9 See Clean Energy Bill 2011 – Explanatory Memorandum, paragraphs 1.60-1.113.

10 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 1.

perfluorocarbon emissions from the aluminium sector. The other greenhouse gases counted under the Kyoto Protocol (hydrofluorocarbons and sulphur hexafluoride) as well as other perfluorocarbon emissions will face an equivalent carbon price through the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*. Amendments to apply an equivalent carbon price to synthetic greenhouse gases are set out in the consequential amendments bill.

- 2.17 The mechanism covers greenhouse gas emissions from stationary energy, non-legacy waste, industrial processes and fugitive emissions (other than from decommissioned coal mines).
- 2.18 The mechanism does not cover emissions from fuels subject to excise or customs, combustion of biomass, biofuels or biogas, agriculture, emissions from land (other than covered landfills), fugitive emissions from decommissioned coal mines, legacy emissions from landfill facilities, closed landfill facilities, synthetic greenhouse gases and those emissions defined as 'scope 2' and 'scope 3' emissions under the *National Greenhouse and Energy Reporting Act 2007*.
- 2.19 Under the Package transport fuels are treated differently to other emissions. Coverage may be summarised as follows:

Table 1.3 Treatment of transport fuels

A carbon price will be applied to:	A carbon price will not apply to:
Domestic aviation	Fuel used by households for transport
Domestic shipping	Light on-road commercial vehicles
Rail transport	Ethanol, biodiesel and renewable diesel
Off-road transport use of liquid and gaseous fuels (except in agriculture, forestry, fisheries)	Gaseous fuels used for on-road transport
	Off-road fuel use by the agriculture, forestry and fishing industries
Non-transport use of liquid and gaseous fuels	Transport fuels when used as lubricants and solvents or in other ways that do not result in emissions

Source Clean Energy Bill 2011 – Explanatory Memorandum, page 35

- 2.20 Where an effective carbon price applies to transport fuels, it will be applied through changes in fuel tax credits or changes in excise. The changes will be calculated to have the same price effect as coverage by the mechanism and will be adjusted periodically to ensure the effective carbon price on transport fuels aligns with the price under the mechanism.

- 2.21 The Government has announced that it intends to apply an effective carbon price to heavy on-road transport from 1 July 2014, but this is not part of the bills being considered by the committee.
- 2.22 The Clean Energy Bill 2011 provides that large users of specified transport fuels may, in certain circumstances, opt into coverage by the mechanism through an Opt-in Scheme, which will start on 1 July 2013. The details of the Opt-in Scheme will be set out in regulations.

Carbon units¹¹

- 2.23 Each carbon unit will represent one tonne CO₂-e of pollution. A unit is an item of personal property which may be sold or otherwise transmitted to other persons. Ownership of units is determined by reference to the Registry, and the person in whose name the unit is registered is the legal owner of the account. The bill makes provision for correcting defects in title.
- 2.24 The mechanism also allows for the use of other forms of units in specified circumstances, including Australian carbon credit units (ACCUs) created under the Carbon Farming Initiative and eligible international units.

Assessing and meeting liabilities¹²

- 2.25 Under the Clean Energy Bill 2011, liable entities must either make a payment for emissions or surrender an equivalent number of units.
- 2.26 If a liable entity does not surrender any units or an insufficient number to meet its liability, then it will become liable for a shortfall charge. Those who choose to pay, or who are liable for, a shortfall charge will pay a premium above the value of the unit.
- 2.27 Generally, liability will be determined by reference to the previous year's NGERs report for the entity concerned. However, liable entities may choose to estimate their liability.
- 2.28 In the fixed charge period, there is a provisional payment and surrender in June of the relevant financial year, with the remaining liability being met in the following February. In the fixed charge period, units cannot be banked to meet future liabilities.

11 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 3.

12 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 4.

- 2.29 In the flexible charge period, payment and surrender must occur by February following the relevant financial year. Units can be banked to meet future liabilities.

Jobs and competitiveness program¹³

- 2.30 The jobs and competitiveness program is intended to provide transitional assistance to emissions-intensive, trade-exposed industries. The Clean Energy Bill 2011 - Explanatory Memorandum says:

Without appropriate assistance arrangements, applying constraints on carbon pollution in Australia before other countries could risk 'carbon leakage' – activities could be relocated from Australia to countries where those activities may not be subject to comparable carbon constraints. Carbon leakage is not in Australia's interests – either from an environmental or an economic point of view. The Jobs and Competitiveness Program is designed to reduce this risk.¹⁴

- 2.31 Assistance will be provided through allocations of free carbon units according to arrangements that are to be set out in regulations. The Government has announced that draft regulations are to be released for consultation by the end of September 2011.
- 2.32 The Productivity Commission will review assistance under the program.

Energy Security Fund and coal-fired electricity generation¹⁵

- 2.33 The Clean Energy Bill 2011 provides for the setting up of an Energy Security Fund, which will "smooth the transition and maintain energy security".¹⁶ This Fund will incorporate:
- transitional assistance to highly emissions-intensive coal-fired power stations, which will come with conditions to ensure security of supply and transparent information on emissions reduction efforts; and
 - the potential for payments for the closure of around 2,000 megawatts (MW) of very highly emissions-intensive coal fired generation capacity by 2020, which is intended to start the replacement of polluting electricity generation complexes.

13 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 5.

14 Clean Energy Bill 2011 – Explanatory Memorandum, p. 35.

15 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 6.

16 Clean Energy Bill 2011 – Explanatory Memorandum, p. 36.

- 2.34 The Government has announced that draft regulations on assistance to generators are to be released for consultation by the end of September 2011.
- 2.35 The Productivity Commission will review assistance under the energy security arrangements.

International linking¹⁷

- 2.36 The Clean Energy Bill 2011 provides that the mechanism will be linked to international carbon markets from 1 July 2015. The Clean Energy Bill 2011 - Explanatory Memorandum says:

Australian businesses will be able to buy international units from credible international carbon markets or emissions trading schemes in other countries. They will be allowed to use these units to meet some of their local obligations. When an Australian business buys an international unit, it means that a tonne of pollution cannot be released overseas. In addition, farmers will be able to sell credits generated from the CFI to international markets.¹⁸

- 2.37 The Clean Energy Bill 2011 provides safeguards concerning the credibility of international units and to ensure that they do not undermine the environmental integrity of the mechanism.

- 2.38 Until 2020, businesses may meet at least half of their annual obligations each year by buying carbon units or ACCUs. The Clean Energy Bill 2011 - Explanatory Memorandum says:

It will be more efficient and less costly to reduce Australia's carbon pollution by a mixture of domestic reductions and international unit purchases compared with relying on domestic action alone. International linking allows Australian businesses to pursue credible, cheaper carbon pollution reduction opportunities wherever they are available.¹⁹

Compliance and enforcement²⁰

- 2.39 The Clean Energy Bill 2011 gives the Regulator powers to encourage compliance and, when problems emerge, the ability to investigate and
-

17 See Clean Energy Bill 2011 - Explanatory Memorandum, Chapter 4.

18 Clean Energy Bill 2011 - Explanatory Memorandum, p. 36.

19 Clean Energy Bill 2011 - Explanatory Memorandum, p. 37.

20 See Clean Energy Bill 2011 - Explanatory Memorandum, Chapter 7.

take enforcement action. The Regulator's decisions are circumscribed and subject to merits and judicial review.²¹

2.40 Under the Clean Energy Bill 2011:

- liable entities are required to make and keep records and to provide information to the Regulator in specified circumstances, including disclosures about significant holdings;
- the Regulator has investigatory powers, including information-gathering powers and monitoring powers ;
- the Regulator may take action against liable entities and others concerned with compliance with the mechanism for failures to comply with the mechanism. This can include:
 - ⇒ issuing infringement notices or seeking the acceptance of court-enforceable undertakings;
 - ⇒ commencing court proceedings for the imposition of a civil penalty or a criminal sanction.

Reviews by the Authority²²

2.41 The Clean Energy Bill 2011 provides that the Authority must undertake specific reviews concerning aspects of the mechanism (see above). In addition, it may, at the request of either the minister or the Parliament, undertake broader reviews of the mechanism.

Clean Energy (Consequential Amendments) Bill 2011

2.42 The Clean Energy (Consequential Amendments) Bill 2011 sets out consequential amendments to existing Commonwealth laws on climate change and environmental regulation, economic and business regulation and taxation.²³

2.43 These changes are needed to implement the mechanism fully. The bill also provides for transitional arrangements concerning the way in which the mechanism will link with existing greenhouse gas management and reduction schemes.

2.44 The Clean Energy (Consequential Amendments) Bill 2011:

21 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 9.

22 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 10.

23 See Clean Energy (Consequential Amendments) Bill 2011 – Explanatory Memorandum.

- integrates responsibility for the mechanism, NGERs, the Carbon Farming Initiative, the Registry and the Renewable Energy Target under the Regulator;
- implements arrangements for enforcement cooperation between the Regulator and other national economic regulators, such as the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, and law enforcement agencies, such as the Commonwealth Director of Public Prosecutions and the Australian Transactions Reports and Analysis Centre (Austrac);
- provides for the application of an equivalent carbon price to emissions attributable to synthetic greenhouse gases²⁴;
- implements the Conservation Tillage Tax Offset, to encourage low-emissions farming practices; and
- deals with the taxation treatment of carbon units, such that tax treatment should not compromise the main objectives of the scheme: tax should not influence decisions between purchasing, trading and surrendering units or alternatively reducing emissions. The preferred tax treatment will help implement the scheme and reduce compliance and administration costs for taxpayers and the Australian government.

Household assistance bills

Clean Energy (Income Tax Rates Amendments) Bill 2011

- 2.45 The Clean Energy (Income Tax Rates Amendments) Bill 2011 makes changes to personal income tax rates and thresholds that will enact the tax cuts that form the household assistance package. Under this package, the Government has dedicated more than half of the revenue raised from pricing carbon pollution for assistance to households. This assistance is targeted to low- and middle-income households.²⁵
- 2.46 All taxpayers with taxable income up to \$80,000 will get a tax cut from 1 July 2012. Most are expected to get a cut of at least \$300. From 1 July 2015, all taxpayers with taxable income up to \$80,000 will get a further tax cut that brings the total tax cut to at least \$380 for most.
-

24 See also the section headed 'Synthetic greenhouse gas bills' below.

25 See Clean Energy (Income Tax Rates Amendments) Bill 2011 and Clean Energy (Tax Laws Amendments) Bill 2011 – Explanatory Memorandum.

- 2.47 In addition, the amendments triple the tax-free threshold from \$6,000 to \$18,200 on 1 July 2012, and to \$19,400 from 1 July 2015. Consequently, from 1 July 2012 workers will not start paying personal tax until their income exceeds \$20,542.
- 2.48 The Government expects these changes to also benefit part-time secondary earners. Regular wage and salary earners with income below the new tax-free thresholds will be able to keep every cent of their pay from their regular pay packets.

Clean Energy (Household Assistance Amendments) Bill 2011

- 2.49 The Clean Energy (Household Assistance Amendments) Bill 2011 provides for increased payments to pensioners, allowees, veterans, self-funded retirees and families. The payments provide assistance greater than the average expected price increase from putting a price on carbon.²⁶
- 2.50 An initial lump sum advance payment will be made to eligible households before the commencement of the carbon pricing scheme. The advance amount will vary by household type: it will be \$250 for single pensioners, and up to \$110 per child for those who receive family tax benefit part A.
- 2.51 A new ongoing clean energy supplement will also be provided. This supplement will be a new component of the rate of pensions, allowances and family tax benefit. It will constitute a 1.7 per cent increase in payments to age, disability and carer pensioners, allowees, veterans, self-funded retirees and Australian families. This 1.7 per cent comprises:
- the expected additional impact on the consumer price index from carbon pricing – 0.7 per cent; and
 - an additional increase of one per cent.
- 2.52 The annual amount of the clean energy supplement will be around \$338 for single pensioners, and up to \$110 per child for recipients of family tax benefit part A. The supplement will be indexed.
- 2.53 The Government estimates that eight million households will receive assistance either through payment increases or tax cuts, or both.

26 See Clean Energy (Household Assistance Amendments) Bill 2011 – Explanatory Memorandum.

Clean Energy (Tax Laws Amendments) Bill 2011

- 2.54 The Clean Energy (Tax Laws Amendments) Bill 2011 contains consequential amendments to offsets and levies in the personal tax system to ensure nobody pays more tax as a result of the changes in the Clean Energy (Income Tax Rates Amendments) Bill 2011.²⁷
- 2.55 From 1 July 2012, \$1,050 of assistance will be shifted from the low-income tax offset into the tax scales. A further \$145 will be delivered through the tax scales instead of the offset from 1 July 2015. This bill will roll the pensioner tax offset into the more generous senior Australians tax offset to create the new seniors and pensioners' tax offset.
- 2.56 The Clean Energy (Tax Laws Amendments) Bill 2011 will also increase the Medicare levy low-income thresholds and phase-in limits to ensure that people are not required to pay the Medicare levy before they have a tax liability. The low-income threshold for a single individual with no dependants will increase from \$18,839 to \$20,542.

Fuel tax bills²⁸

Clean Energy (Fuel Tax Legislation Amendment) Bill 2011

- 2.57 The Clean Energy (Fuel Tax Legislation Amendment) Bill 2011:
- amends the *Fuel Tax Act 2006* reducing businesses' fuel tax credit entitlements by an amount that reflects the equivalent carbon price on the emissions of the transport fuels they use;
 - imposes a cent-for-cent impact on businesses, equivalent to the price on the carbon content of the transport fuels they use;
 - exempts the agricultural, forestry and fishing industries from the carbon reduction to their fuel tax credit entitlements. These industries will not pay an effective carbon price on emissions from their off-road use of transport fuels, including fuels used in stationary plant and equipment. It also ensures that no effective carbon price will be payable in respect of emissions from heavy on-road transport; and

27 See Clean Energy (Income Tax Rates Amendments) Bill 2011 and Clean Energy (Tax Laws Amendments) Bill 2011 – Explanatory Memorandum.

28 See Clean Energy (Fuel Tax Legislation Amendment) Bill 2011; Clean Energy (Excise Tariff Legislation Amendment) Bill 2011 and Clean Energy (Customs Tariff Legislation Amendment) Bill 2011 – Explanatory Memorandum.

- gives effect to the government's intention that separate arrangements will be made after the next election so that heavy on-road transport will become liable for a carbon charge after 1 July 2014.

Clean Energy (Customs Tariff Amendment) Bill 2011

2.58 The Clean Energy (Customs Tariff Amendment) Bill 2011:

- establishes a cent-for-cent impact on aviation and non-transport compressed natural gas equivalent to the price on the carbon content of the transport fuels they use;
- amends the *Customs Tariff Act 1995* by increasing aviation fuel excise equivalent customs duty by an amount reflecting the price on the carbon emissions of the fuel had aviation fuel emissions been liable emissions under the mechanism; and
- apply excise equivalent customs duty for non-transport compressed natural gas on a cent-for-cent basis equivalent to the carbon emission price on the fuel had compressed natural gas emissions been liable emissions under the mechanism.

Clean Energy (Excise Tariff Legislation Amendment) Bill 2011

2.59 The Clean Energy (Excise Tariff Legislation Amendment) Bill 2011:

- establishes a cent-for-cent impact on fuels to the price on the carbon content of the transport fuels they use, this time on aviation and non-transport compressed natural gas equivalent; and
- amends the *Excise Tariff Act 1921* and related acts to increase aviation fuel excise by an amount reflecting the price on the carbon emissions of the fuel had aviation fuel emissions been liable emissions under the mechanism.

Synthetic greenhouse gas bills

2.60 The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011 ensure that the manufacture and importation of Kyoto protocol synthetic greenhouse gases (hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride) will be

subject to the carbon price by way of the existing levy structure under the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*, the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (together, the Levy Acts) and the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

- 2.61 The equivalent carbon price will be calculated based on the CO₂-e of the gas, multiplied by the applicable charge. The carbon price will be additional to the existing levy imposed by each Levy Act.
- 2.62 The Levy bills will allow the minister to determine whether or not a licensee is exempt from paying the levy in specific circumstances. These circumstances include the manufacture of medical equipment or such circumstances where it is simply impracticable to impose the levy.

The charges bills

Clean Energy (Unit Shortfall Charge—General) Bill 2011

- 2.63 If a person surrenders insufficient units to meet his or her liability for greenhouse gas emissions, then the difference between their liability and what they actually surrendered is a unit shortfall. If a person has a unit shortfall, then he or she has a choice between surrendering more units to meet the shortfall, or paying a unit shortfall charge.
- 2.64 The Clean Energy (Unit Shortfall Charge—General) Bill 2011 provides that the unit shortfall charge is set at a level which is higher than the value of the units:
- in fixed charge years this is 130 per cent of the fixed charge for that year; and
 - in flexible charge years this is 200 per cent of the benchmark average annual price for the previous year or an amount as specified in the regulations.

This is intended to provide an incentive to surrender units rather than incur a shortfall charge.²⁹

29 See Clean Energy (Unit Shortfall Charge) Bill 2011, Clean Energy (Unit Issue Charge – Fixed Charge) Bill 2011, Clean Energy (Unit Issue Charge – Auctions) Bill 2011, Clean Energy (Charges – Customs) Bill 2011, Clean Energy (Charges – Excise) Bill 2011, Clean Energy

- 2.65 The Clean Energy (Unit Shortfall Charge – General) Bill 2011 imposes a unit shortfall charge as a tax so far as it is not a duty of customs nor a duty of excise. A unit shortfall charge is designed to encourage liable entities under the mechanism to surrender units, rather than pay the charge. There is no compulsion to pay a unit shortfall charge, but it is payable if insufficient units are surrendered.³⁰

Clean Energy (Unit Issue Charge – Fixed Charge) Bill 2011 and the Clean Energy (Unit Issue Charge – Auctions) Bill 2011

- 2.66 Under the mechanism a person must pay a charge to for a unit to be issued by the Regulator. The Clean Energy (Unit Issue Charge – Fixed Charge) Bill 2011 and the Clean Energy (Unit Issue Charge – Auctions) Bill 2011 impose as a tax the charges for the issue of carbon units (whether a fixed fee or auctioned), so far as the charges are a tax, but not duties of customs or excise, within the meaning of section 55 of the Constitution.

- 2.67 The Explanatory Memorandum for the two bills says:

The Commonwealth does not consider that issue charges are taxation because taxation is necessarily compulsory and it is not compulsory to surrender units.

However, a separate bill imposes those charges so far as they are taxation to ensure there can be no argument that there has not been compliance with section 55 [of the Constitution]. So far as the issue charges are not taxation, they will be payable under clauses 110 and 111 of the main bill.

The Commonwealth does not consider that, if the issue charges are taxation, a law imposing both the fixed charge and the auction charge would deal with more than one subject of taxation.

However, separate bills impose the different charges to ensure that there can be no argument that there has not been compliance with section 55.³¹

(International Unit Surrender Charge) Bill 2011 – Explanatory Memorandum (Clean Energy Charges Bills - Explanatory Memorandum), paragraph 1.12.

³⁰ See Clean Energy Charges Bills - Explanatory Memorandum, paragraphs 1.3-1.4.

³¹ See Clean Energy Charges Bills – Explanatory Memorandum, paragraphs 1.6-1.9.

Clean Energy (Charges—Excise) Bill 2011 and the Clean Energy (Charges—Customs) Bill 2011

2.68 There may be circumstances in which unit shortfall charges and issue charges may be duties of customs or excise. The Clean Energy (Charges—Customs) Bill 2011 imposes these charges so far as they are duties of customs. The Clean Energy (Charges—Excise) Bill 2011 imposes the charges so far as they are duties of excise.

2.69 The Explanatory Memorandum for the two bills says:

It is not clear that the unit shortfall or issue charges would be duties of customs or duties of excise. Imposition of the charges by a separate bill so far as they are duties of customs or duties of excise ensures that there can be no argument that there has not been compliance with section 55 of the Constitution.³²

The Clean Energy (International Unit Surrender Charge) Bill 2011

2.70 The Clean Energy (International Unit Surrender Charge) Bill 2011 imposes as a tax the charge for surrender of an eligible international emissions unit during the eligible financial years beginning on 1 July 2015, 2016 and 2017.

2.71 Eligible international emissions units are defined in section 4 of the *Australian National Registry of Emissions Units Act 2011*. The initial list of eligible international emissions units includes currently traded Kyoto units which are likely to be traded through to 2015.³³

The Clean Energy Regulator 2011

2.72 The Clean Energy Regulator Bill 2011 sets up the Regulator, which will administer:

- the mechanism;³⁴
- the Renewable Energy Target;
- the Carbon Farming Initiative;
- the Registry;

32 See Clean Energy Charges Bills – Explanatory Memorandum, paragraph 1.10.

33 Clean Energy Bill 2011 – Explanatory Memorandum, paragraphs 3.99 and 3.100.

34 See Clean Energy Bill 2011 – Explanatory Memorandum, Chapter 7.

- the functions of the Office of the Renewable Energy Regulator (ORER); and
 - the functions of the Greenhouse and Energy Data Officer (GEDO).³⁵
- 2.73 The Clean Energy Regulator Bill 2011 sets up the Regulator as independent of Government and provides that it will carry out its functions within a limited and legislatively prescribed discretion. There is limited scope for Ministerial directions to the Regulator and the limited grounds on which a member of the Regulator may be removed from office.
- 2.74 The Regulator will be a body corporate comprising a Chair and between two and four other members. For the purposes of the *Public Service Act 1999*, the Chair of the Regulator is the head of a statutory agency and can employ Australian Public Service employees on behalf of the Commonwealth.
- 2.75 To ensure proper use and management of public money, public property and other Commonwealth resources, the Regulator will be bound by the *Financial Management and Accountability Act 1997*.
- 2.76 The Regulator will be required to produce a corporate plan setting out the Regulator's objectives and the strategies and policies that are to be used to achieve those objectives. The Regulator will also be required to produce an annual report, which will be tabled in Parliament.
- 2.77 The Clean Energy Regulator Bill 2011 contains provisions designed to ensure that information obtained by the Regulator in the course of its functions is only disclosed and used for legitimate purposes.

The Climate Change Authority 2011

- 2.78 The Climate Change Authority Bill 2011 sets up the Authority, which will:
- provide recommendations to the Government on future pollution caps;
 - in doing so, make recommendations on the indicative national trajectory and emissions budget, having regard to the long-term target set by the Government and estimates of the global emissions budget;

35 See the Clean Energy Regulator Bill 2011 – Explanatory Memorandum, pp. 7-9.

- provide independent advice to the Government on the progress that is being made to reduce Australia's emissions to meet national targets, any indicative national trajectory or budget;
- conduct regular reviews of, and make recommendations on, the carbon pricing mechanism (household assistance and the jobs and competitiveness program will be reviewed separately);
- conduct reviews of and make recommendations on the National Greenhouse and Energy Reporting System, the Renewable Energy Target and the Carbon Farming Initiative;
- make recommendations to the Government on whether a robust methodology could be developed to recognise additional voluntary action by households;
- provide advice to Government on the role of the price floor and price ceiling beyond the first three years of the flexible price phase;
- conduct reviews and make recommendations on other matters as requested by the Minister for Climate Change and Energy Efficiency or the Parliament; and
- conduct or commission its own independent research and analysis into climate change and other matters relevant to its functions.³⁶

2.79 The Authority will engage with representatives interested in climate change from across Australia in order to share research and information on climate change and gain input into its analysis. The Authority is required to undertake public consultation when completing its reviews and must publish all of its reports on its website.

2.80 The Climate Change Authority Bill 2011 - Explanatory Memorandum says that:

The Government's intention is to establish an independent Authority to conduct reviews and provide advice to Government. The Authority will be required to take a number of specified factors into account but is not subject to Government direction in relation to the contents of its review reports.³⁷

2.81 The Climate Change Authority Bill 2011 sets up the Authority as a body corporate comprising a Chair and eight other members, one of whom is the Chief Scientist, which will be supported by a secretariat.

36 See Climate Change Authority Bill 2011 – Explanatory Memorandum, pp. 7-9

37 Climate Change Authority Bill 2011 – Explanatory Memorandum, paragraph 1.8.

- 2.82 The primary functions of the Authority are to conduct reviews of the Clean Energy Act (as enacted), the Renewable Energy Target Scheme, the Carbon Farming Initiative, the National Greenhouse and Energy Reporting System, and other special reviews as requested by the Minister.
- 2.83 There is to be a Chief Executive Officer (CEO) of the Authority who is responsible for the day-to-day administration of the Authority. For the purposes of the *Public Service Act 1999*, the CEO is the head of a statutory agency and can employ Australian Public Service employees on behalf of the Commonwealth.
- 2.84 In order to ensure proper use and management of public money, public property and other Commonwealth resources, the Authority will be bound by the *Financial Management and Accountability Act 1997*.
- 2.85 The Authority will be required to produce:
- a corporate plan setting out the Authority's objectives and the strategies and policies that are to be used to achieve those objectives;
 - an annual report, which will be tabled in Parliament.
- 2.86 As with other bodies where a significant degree of independence is required, such as the Productivity Commission, the Authority is subject to Ministerial direction on general matters only.
- 2.87 The Minister may only terminate an appointment (other than the Chief Scientist) to the Authority on narrow grounds, including for misbehaviour, physical or mental incapacity or repeated absence from meetings of the Authority.
- 2.88 The Climate Change Authority Bill 2011 also sets up the Land Sector Carbon and Biodiversity Board, comprising a Chair and four other members.³⁸
- 2.89 The Board will:
- advise on performance indicators, implementation and funding guidelines for measures supported by the Government's Biodiversity Fund relating to biodiverse ecosystems and carbon sequestration in those ecosystems; and
 - provide advice to the Government on the implementation, performance indicators and priorities for research of other prescribed land sector

38 See Climate Change Authority Bill 2011 – Explanatory Memorandum, Chapter 2.

measures included as part of the Government's plan for a clean energy future.

- 2.90 The Climate Change Authority Bill 2011 - Explanatory Memorandum says that:

The Board's functions are intended to ensure that efforts are not duplicated and benefits for landholders and the environment are realised.³⁹

- 2.91 The Board will also be required to produce an annual report for the Environment Minister, which will be tabled in Parliament.

The steel transformation plan

- 2.92 The steel transformation plan (the plan) is implemented by the Steel Transformation Plan Bill 2011 and is related to the mechanism.
- 2.93 The plan is a \$300 million entitlement program over four years from the 2012-13 financial year. It is intended to encourage investment, innovation and competitiveness in the Australian steel manufacturing industry as it transforms into an efficient and economically sustainable industry in a low carbon economy.

Steel Transformation Plan Bill 2011

- 2.94 The Steel Transformation Plan Bill 2011 (STP Bill) provides assistance to the Australian steel industry by way of competitiveness assistance advances in 2011-2012 and entitlement payments under the plan.
- 2.95 Under the plan, assistance is limited to \$300 million and is guaranteed through a standing appropriation. The standing appropriation provides the steel manufacturing industry with certainty in respect of the amount of assistance it will be entitled to receive through the plan.
- 2.96 The Minister may approve up to \$164 million in competitiveness assistance advances in 2011-2012. This is limited to circumstances where the advances are necessary to assist eligible Australian steel manufacturers to undertake activities that will significantly enhance the competitiveness and economic sustainability of the steel manufacturing industry in Australia. The amount of an advance will be deducted from future entitlement payments under the plan.

39 Climate Change Authority Bill 2011 - Explanatory Memorandum, paragraph 2.4.

- 2.97 The administrative details of the plan are to be set out in a legislative instrument. This is to
- [reduce] the administrative complexity of the legislation and provides the flexibility required to deal with changing circumstances in the Australian steel manufacturing industry.⁴⁰
- 2.98 The STP Bill sets out the matters to be contained in the legislative instrument, including:
- the registration of eligible corporations;
 - the making of payments under the plan (including conditions that are to be complied with);
 - the recovery of amounts by the Commonwealth;
 - the payment of interest on overpaid amounts;
 - the inalienability of plan payments;
 - the review of decisions; and
 - other matters required or permitted to be included in the plan.
- 2.99 The STP Bill provides that debts under the plan may be recovered by the Commonwealth, including by offsetting against a participant's future payments. Monies recovered may then be redistributed within future plan years. Any unspent funds at the end of the plan will be returned to the Consolidated Revenue Fund.
- 2.100 The STP Bill includes a monitoring regime, to enable the Department of Innovation, Industry, Science and Research (DIISR) to ensure that the plan is complied with and payments are applied to proper purposes. This monitoring regime is required because:
- the plan is a self-assessment scheme for which payments are provided on trust, subject to later compliance and verification. These powers aim to ensure the integrity of the plan by deterring participants from over-claiming assistance.⁴¹
- 2.101 DIISR's monitoring powers include:
- powers to access premises by authorised departmental officers; and

⁴⁰ Steel Transformation Plan Bill 2011 – Explanatory Memorandum, p. 1.

⁴¹ Steel Transformation Plan Bill 2011 – Explanatory Memorandum, paragraph 39.

- information gathering powers, including powers to obtain information and documents.

2.102 The STP Bill provides that DIISR is required to provide an annual report on the plan to the Minister for Innovation, Industry, Science and Research.⁴²

42 Steel Transformation Plan Bill 2011 – Explanatory Memorandum, paragraph 70.