

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (10/03/2009)

Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009

No. , 2009

(Climate Change and Water)

**A Bill for an Act to deal with consequential matters
arising from the enactment of the *Carbon Pollution
Reduction Scheme Act 2009*, and for other purposes**

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—General amendments		3
Part 1—Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences		3
Division 1—Amendments		3
<i>Australian Securities and Investments Commission Act 2001</i>		3
<i>Corporations Act 2001</i>		3
<i>Criminal Code Act 1995</i>		4
<i>Financial Management and Accountability Regulations 1997</i>		4
<i>National Greenhouse and Energy Reporting Act 2007</i>		5
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		10
<i>Renewable Energy (Electricity) Act 2000</i>		10
<i>Trade Practices Act 1974</i>		13
Division 2—Transitional provisions		14
Part 2—Amendments commencing on 1 July 2010		20
Division 1—Amendments		20
<i>National Greenhouse and Energy Reporting Act 2007</i>		20
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		46
Division 2—Application and transitional provisions		52
Schedule 2—Taxation amendments		53
<i>A New Tax System (Goods and Services Tax) Act 1999</i>		53
<i>Income Tax Assessment Act 1936</i>		54
<i>Income Tax Assessment Act 1997</i>		54
<i>Taxation Administration Act 1953</i>		77

EXPOSURE DRAFT

1 **A Bill for an Act to deal with consequential matters**
2 **arising from the enactment of the *Carbon Pollution***
3 ***Reduction Scheme Act 2009*, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Carbon Pollution Reduction Scheme*
7 (*Consequential Amendments*) Act 2009.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	At the same time as section 3 of the <i>Carbon Pollution Reduction Scheme Act 2009</i> commences.	
3. Schedule 1, Part 2	1 July 2010.	1 July 2010
4. Schedule 2	At the same time as section 3 of the <i>Carbon Pollution Reduction Scheme Act 2009</i> commences.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

3 Schedule(s)

8 (1) Each Act, and each set of regulations, that is specified in a
9 Schedule to this Act is amended or repealed as set out in the
10 applicable items in the Schedule concerned, and any other item in a
11 Schedule to this Act has effect according to its terms.

12 (2) The amendment of any regulation under subsection (1) does not
13 prevent the regulation, as so amended, from being amended or
14 repealed by the Governor-General.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1
2 **Schedule 1—General amendments**

3 **Part 1—Amendments commencing at the same time**
4 **as section 3 of the Carbon Pollution**
5 **Reduction Scheme Act 2009 commences**

6 **Division 1—Amendments**

7 *Australian Securities and Investments Commission Act 2001*

8 **1 After paragraph 12BAA(7)(k)**

9 Insert:

10 (l) an Australian emissions unit;

11 (la) an eligible international emissions unit;

12 **2 Paragraph 12BAB(1)(g)**

13 After “financial product”, insert “(other than an Australian emissions
14 unit or an eligible international emissions unit)”.

15 **3 At the end of subsection 127(2A)**

16 Add:

17 ; (e) the Australian Climate Change Regulatory Authority.

18 *Corporations Act 2001*

19 **4 Section 9**

20 Insert:

21 *Australian emissions unit* has the same meaning as in the *Carbon*
22 *Pollution Reduction Scheme Act 2009*.

23 **5 Section 9**

24 Insert:

25 *eligible international emissions unit* has the same meaning as in
26 the *Carbon Pollution Reduction Scheme Act 2009*.

27 **6 After paragraph 764A(1)(k)**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1 Insert:

2 (1) an Australian emissions unit;

3 (la) an eligible international emissions unit;

4 ***Criminal Code Act 1995***

5 **7 Subparagraph 136.1(1)(c)(iv) of the *Criminal Code***

6 Omit “and”, substitute “or”.

7 **8 At the end of paragraph 136.1(1)(c) of the *Criminal Code***

8 Add:

9 (v) an application under the *Carbon Pollution Reduction*
10 *Scheme Act 2009* or regulations under that Act; and

11 **9 Subparagraph 136.1(4)(c)(iv) of the *Criminal Code***

12 Omit “and”, substitute “or”.

13 **10 At the end of paragraph 136.1(4)(c) of the *Criminal Code***

14 Add:

15 (v) an application under the *Carbon Pollution Reduction*
16 *Scheme Act 2009* or regulations under that Act; and

17 ***Financial Management and Accountability Regulations 1997***

18 **11 Part 1 of Schedule 1 (after table item 104)**

19 Insert:

104A Australian Climate Change Regulatory Authority, Chair
 comprising:

(a) the Chair and the other members of the
 Australian Climate Change Regulatory
 Authority; and

(b) the staff mentioned in section 36 of the
 Australian Climate Change Regulatory
 Authority Act 2009; and

(c) the persons whose services are made available
 to the Australian Climate Change Regulatory
 Authority under section 37 of that Act; and

(d) the consultants engaged under subsection
 38(1) of that Act.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

See Note B

1 **12 Part 1 of Schedule 1 (table item 173)**

2 Repeal the item.

3 ***National Greenhouse and Energy Reporting Act 2007***

4 **13 Section 7**

5 Insert:

6 *Authority* means the Australian Climate Change Regulatory
7 Authority.

8 **14 Section 7 (definition of *Greenhouse and Energy Data***
9 ***Officer*)**

10 Repeal the definition.

11 **15 Section 7 (definition of *greenhouse and energy***
12 ***information*)**

13 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

14 **16 Paragraph 9(1)(b)**

15 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

16 **17 Paragraph 11(1)(b)**

17 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

18 **18 Paragraph 15(1)(a)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

20 **19 Subsections 16(1), (3) and (4)**

21 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
22 substitute “Authority”.

23 **20 Subsections 17(1), (2), (3) and (4)**

24 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
25 substitute “Authority”.

26 **21 Subsections 18(1) and (3)**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
2 substitute “Authority”.

3 **22 Subsection 18(4)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

5 **23 Subsection 18(4)**

6 Omit “his or her”, substitute “the Authority’s”.

7 **24 Subsection 18(5)**

8 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

9 **25 Subsection 19(1)**

10 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
11 substitute “Authority”.

12 Note: The heading to section 19 is altered by omitting “**Greenhouse and Energy Data**
13 **Officer**” and substituting “**the Authority**”.

14 **26 Subsections 19(6) and (9)**

15 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
16 substitute “Authority”.

17 **27 Subsection 20(1)**

18 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

19 **28 Subsections 20(2) and (3)**

20 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

21 **29 Paragraph 20(3)(a)**

22 After “section 19”, insert “for a financial year ending on or before
23 30 June 2010”.

24 **30 Subsections 20(4) and (5)**

25 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
26 substitute “Authority”.

27 **31 Subsections 21(1), (4) and (6)**

28 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
29 substitute “Authority”.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1 **32 Subsections 21A(1), (2) and (3)**

2 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
3 substitute “Authority”.

4 **33 Paragraphs 22(1)(b) and (2)(b)**

5 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

6 **34 Section 23**

7 Repeal the section.

8 **35 Subsections 24(1), (1A), (1B) and (1C)**

9 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

10 *[Note: subsections 24(1A), (1B) and (1C) are inserted by the National*
11 *Greenhouse and Energy Reporting Amendment Act 2008]*

12 **36 Subsection 24(1C)**

13 Omit “he or she”, substitute “the Authority”.

14 **37 Subsections 24(2), (3), (5) and (6)**

15 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

16 **38 Subsection 25(1)**

17 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

18 **39 Subsections 25(2), (3) and (4)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

20 **40 Subsections 26(1), (2), (3), (4) and (5)**

21 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
22 substitute “Authority”.

23 **41 Subsections 27(1), (1A) and (2)**

24 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
25 substitute “Authority”.

26 **42 Subsections 28(1), (2) and (3)**

27 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1 **43 Subsection 31(1)**

2 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

3 **44 Subsection 39(1)**

4 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
5 substitute “Authority”.

6 **45 Paragraph 40(1)(c)**

7 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
8 substitute “Authority”.

9 **46 Subsection 42(2)**

10 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

11 **47 Subsections 45(1), (3) and (4)**

12 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

13 **48 Subsections 46(1) and (2)**

14 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
15 substitute “Authority”.

16 **49 Division 1 of Part 6**

17 Repeal the Division.

18 **50 Division 2 of Part 6 (heading)**

19 Repeal the heading, substitute:

20 **Division 2—Decisions by the Authority**

21 **51 Subsection 54(1)**

22 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

23 Note: The heading to section 54 is altered by omitting “**Greenhouse and Energy Data**
24 **Officer**” and substituting “**Authority**”.

25 **52 Paragraph 54(1)(b)**

26 Omit “his or her”, substitute “the Authority’s”.

27 **53 Subsections 54(2), (3), (4) and (5)**

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

2 **54 Subsection 54(5)**

3 Omit “he or she” (wherever occurring), substitute “the Authority”.

4 **55 Subsection 55(1)**

5 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

6 Note: The heading to section 55 is altered by omitting “Greenhouse and Energy Data
7 Officer” and substituting “Authority”.

8 **56 Paragraph 55(1)(b)**

9 Omit “his or her”, substitute “the Authority’s”.

10 **57 Subsections 55(2) and (3)**

11 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

12 **58 Subsections 55(4) and (5)**

13 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

14 **59 Subsection 55(5)**

15 Omit “he or she” (wherever occurring), substitute “the Authority”.

16 **60 Section 56**

17 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

18 **61 Subsections 57(1) and (2)**

19 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

20 **62 Subsections 58(1) and (2)**

21 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

22 **63 Subsections 71(1), (2) and (4)**

23 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
24 substitute “Authority”.

25 **64 Subsections 73(1), (2) and (5)**

26 Omit “Greenhouse and Energy Data Officer” (wherever occurring),
27 substitute “Authority”.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1 Note: The heading to section 73 is altered by inserting “of registered corporations” after
2 “audits”.

3 **65 Subsections 74(1) and (2)**

4 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

5 Note: The heading to section 74 is altered by inserting “of registered corporations” after
6 “audits”.

7 **66 Subsections 75(1) and (2)**

8 Omit “Greenhouse and Energy Data Officer”, substitute “Authority”.

9 *Ozone Protection and Synthetic Greenhouse Gas* 10 *Management Act 1989*

11 **67 After section 67A**

12 Insert:

13 **67B Disclosure of information to the Australian Climate Change** 14 **Regulatory Authority**

15 *Scope*

16 (1) This section applies to information obtained under this Act or the
17 regulations.

18 *Disclosure*

19 (2) The Minister may disclose the information to the Australian
20 Climate Change Regulatory Authority for the purposes of, or in
21 connection with, the performance of the functions, or the exercise
22 of the powers, of the Australian Climate Change Regulatory
23 Authority.

24 *Other powers of disclosure not limited*

25 (3) This section does not, by implication, limit the Minister’s powers
26 to disclose the information to a person other than the Australian
27 Climate Change Regulatory Authority.

28 *Renewable Energy (Electricity) Act 2000*

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1 **68 Subsection 5(1)**

2 Insert:

3 *Authority* means the Australian Climate Change Regulatory
4 Authority.

5 **69 Subsection 5(1) (definition of *Office of the Renewable***
6 ***Energy Regulator*)**

7 Repeal the definition.

8 **70 Subsection 5(1)**

9 Insert:

10 *official of the Authority* has the same meaning as in the *Australian*
11 *Climate Change Regulatory Authority Act 2009*.

12 **71 Subsection 5(1) (definition of *protected document*)**

13 Repeal the definition.

14 **72 Subsection 5(1) (definition of *protected information*)**

15 Repeal the definition.

16 **73 Subsection 5(1) (definition of *Regulator*)**

17 Repeal the definition.

18 **74 Subsection 5(1) (definition of *senior employee*)**

19 Omit “Office of the Renewable Energy Regulator”, substitute
20 “Authority”.

21 **75 Subsection 5(1) (definition of *senior officer*)**

22 Repeal the definition, substitute:

23 *senior officer* of the Authority means a person who:

24 (a) is a member of the staff of the Authority; and

25 (b) either:

26 (i) is an SES employee or acting SES employee; or

27 (ii) holds or performs the duties of an Executive Officer
28 (Level 2) position.

29 **76 Subsection 5(1)**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1 Insert:

2 *staff of the Authority* has the same meaning as in the *Australian*
3 *Climate Change Regulatory Authority Act 2009*.

4 **77 Subsection 30D(5)**

5 Omit “he or she”, substitute “the Authority”.

6 **78 Subsection 107(1)**

7 Omit “an officer or employee of the Office of the Renewable Energy
8 Regulator”, substitute “a member of the staff of the Authority”.

9 **79 Part 12 (heading)**

10 Repeal the heading, substitute:

11 **Part 12—Publication of information**

12 **80 Sections 126 to 133**

13 Repeal the sections.

14 **81 Part 14**

15 Repeal the Part.

16 **82 Subsection 156(1)**

17 Omit “Office of the Renewable Energy Regulator”, substitute
18 “Authority”.

19 Note: The heading to subsection 156(1) is altered by omitting “*Office of the Renewable*
20 *Energy Regulator*” and substituting “*Authority*”.

21 **83 Bulk amendments—references to the Regulator etc.**

22 The *Renewable Energy (Electricity) Act 2000* other than the following
23 provisions:

24 (a) sections 126, 129, 130, 131 and 132;

25 (b) Part 14;

26 is amended as follows:

27 (c) by omitting “the Regulator” (wherever occurring) and
28 substituting “the Authority”;

29 (d) by omitting “The Regulator” (wherever occurring) and
30 substituting “The Authority”;

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1 (e) by omitting “the Regulator’s” (wherever occurring) and
2 substituting “the Authority’s”.

3 Note: The headings to sections and subsections of the *Renewable Energy (Electricity) Act*
4 2000 other than the following provisions:

5 (a) Part 14;

6 (b) subsection 156(1);

7 are altered as follows:

8 (c) by omitting “**Regulator**” (wherever occurring) and substituting
9 “**Authority**”;

10 (d) by omitting “*Regulator*” (wherever occurring) and substituting
11 “*Authority*”;

12 (e) by omitting “**Regulator’s**” (wherever occurring) and substituting
13 “**Authority’s**”;

14 (f) by omitting “*Regulator’s*” (wherever occurring) and substituting
15 “*Authority’s*”.

16 ***Trade Practices Act 1974***

17 **84 After paragraph 44AAF(3)(c)**

18 Insert:

19 (ca) the Australian Climate Change Regulatory Authority;

20 **85 Paragraph 44AAF(3)(d)**

21 Omit “(b) or (c)”, substitute “(b), (c) or (ca)”.

22 **86 After paragraph 155AAA(12)(I)**

23 Insert:

24 (Ia) the Australian Climate Change Regulatory Authority;

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

1

2 **Division 2—Transitional provisions**

3 **87 Transitional—acts of the Greenhouse and Energy Data** 4 **Officer to be attributed to the Australian Climate** 5 **Change Regulatory Authority**

6 (1) This item applies to anything done by, or in relation to, the Greenhouse
7 and Energy Data Officer under the *National Greenhouse and Energy*
8 *Reporting Act 2007* before the commencement of this item.

9 (2) The *National Greenhouse and Energy Reporting Act 2007* has effect,
10 after that commencement, as if the thing had been done by, or in
11 relation to, the Australian Climate Change Regulatory Authority.

12 **88 Transitional—acts of the Renewable Energy Regulator to** 13 **be attributed to the Australian Climate Change** 14 **Regulatory Authority**

15 (1) This item applies to anything done by, or in relation to, the Renewable
16 Energy Regulator under the *Renewable Energy (Electricity) Act 2000*
17 before the commencement of this item.

18 (2) The *Renewable Energy (Electricity) Act 2000* has effect, after that
19 commencement, as if the thing had been done by, or in relation to, the
20 Australian Climate Change Regulatory Authority.

21 **89 Transitional—substitution of the Australian Climate** 22 **Change Regulatory Authority as a party in certain** 23 **proceedings**

24 (1) This item applies to proceedings to which the Greenhouse and Energy
25 Data Officer or the Renewable Energy Regulator was a party and that
26 were pending in any court or tribunal immediately before the
27 commencement of this item.

28 (2) The Australian Climate Change Regulatory Authority is substituted for
29 the Greenhouse and Energy Data Officer or the Renewable Energy
30 Regulator, as the case requires, from that commencement, as a party to
31 those proceedings.

32 **90 Transitional—transfer of records to the Australian Climate** 33 **Change Regulatory Authority**

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

- 1 (1) This item applies to any records or documents that:
2 (a) were in the possession of the Greenhouse and Energy Data
3 Officer or the Renewable Energy Regulator immediately
4 before the commencement of this item; and
5 (b) relate to the Greenhouse and Energy Data Officer, the
6 Renewable Energy Regulator or the Office of the Renewable
7 Energy Regulator.
- 8 (2) The records and documents are to be transferred to the Australian
9 Climate Change Regulatory Authority after the commencement of this
10 item.

11 **91 Transitional—transfer of Ombudsman investigations**

- 12 If:
13 (a) before the commencement of this item, a complaint was
14 made to the Ombudsman, or the Ombudsman began an
15 investigation, under the *Ombudsman Act 1976* in relation to
16 action taken by the Greenhouse and Energy Data Officer or
17 the Renewable Energy Regulator; and
18 (b) immediately before the commencement of this item, the
19 Ombudsman had not finally disposed of the matter in
20 accordance with the *Ombudsman Act 1976*;
- 21 the *Ombudsman Act 1976* applies after the commencement of this item
22 as if that action had been taken by the Australian Climate Change
23 Regulatory Authority.

24 **92 Transitional—secrecy of information obtained under the** 25 ***National Greenhouse and Energy Reporting Act 2007***

26 Despite the repeal of section 23 of the *National Greenhouse and Energy*
27 *Reporting Act 2007* by this Part, that section continues to apply, in
28 relation to greenhouse and energy information obtained before the
29 commencement of this item, as if that repeal had not happened.

30 **93 Transitional—secrecy of information obtained under the** 31 ***Renewable Energy (Electricity) Act 2000***

- 32 Despite the repeal of the following provisions of the *Renewable Energy*
33 *(Electricity) Act 2000* by this Part:
34 (a) the definition of *Office of the Renewable Energy Regulator*
35 in subsection 5(1);
36 (b) the definition of *protected document* in subsection 5(1);
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EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

- 1 (c) the definition of *protected information* in subsection 5(1);
2 (d) the definition of *Regulator* in subsection 5(1);
3 (e) subsection 126(1);
4 (f) sections 127 to 133;
- 5 those provisions continue to apply, in relation to:
6 (g) a protected document obtained or made by a person before
7 the commencement of this item; or
8 (h) protected information disclosed to, or obtained by, a person
9 before the commencement of this item;
- 10 as if:
11 (i) each reference in sections 129, 130, 131 and 132 of that Act
12 to the Regulator were a reference to the Australian Climate
13 Change Regulatory Authority; and
14 (j) the reference in section 129 to a person to whom Part 12 of
15 that Act applies were a reference to an official of the
16 Authority; and
17 (k) those repeals had not happened.

94 Transitional—references in instruments to the Greenhouse and Energy Data Officer or the Renewable Energy Regulator

- 21 (1) For the purposes of this item, an *eligible instrument* is an instrument
22 that:
23 (a) was in force immediately before the commencement of this
24 item; and
25 (b) contains a reference to the Greenhouse and Energy Data
26 Officer or the Renewable Energy Regulator.
- 27 (2) The Minister may, by legislative instrument, declare that a specified
28 eligible instrument has effect as if each reference in the instrument to
29 the Greenhouse and Energy Data Officer or the Renewable Energy
30 Regulator, as the case may be, were a reference to the Australian
31 Climate Change Regulatory Authority.

95 Transitional—Registry accounts

33 *Scope*

- 34 (1) This item applies to an account held by a person within the register:
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EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

- 1 (a) known as the National Registry of Emissions Units; and
2 (b) that was in existence under the executive power of the
3 Commonwealth immediately before the commencement of
4 this item.

5 *Continuation of account*

- 6 (2) The account continues in existence as a Registry account under the
7 *Carbon Pollution Reduction Scheme Act 2009*.

8 **96 Transitional—Commonwealth Registry accounts**

9 *Scope*

- 10 (1) This item applies to an account held by the Commonwealth within the
11 register:
12 (a) known as the National Registry of Emissions Units; and
13 (b) that was in existence under the executive power of the
14 Commonwealth immediately before the commencement of
15 this item.

16 *Designation of account*

- 17 (2) If, immediately before the commencement of this item, the account was
18 described as a Commonwealth holding account, the *Carbon Pollution*
19 *Reduction Scheme Act 2009* has effect as if the account had been
20 designated by the Australian Climate Change Regulatory Authority as a
21 Commonwealth holding account.
- 22 (3) If, immediately before the commencement of this item, the account was
23 described as the retirement account for the first commitment period, the
24 *Carbon Pollution Reduction Scheme Act 2009* has effect as if the
25 account had been designated by the Australian Climate Change
26 Regulatory Authority as the retirement account for the first commitment
27 period.
- 28 (4) If, immediately before the commencement of this item, the account was
29 described as the net source cancellation account for the first
30 commitment period, the *Carbon Pollution Reduction Scheme Act 2009*
31 has effect as if the account had been designated by the Australian
32 Climate Change Regulatory Authority as the net source cancellation
33 account for the first commitment period.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 1 Amendments commencing at the same time as section 3 of the Carbon Pollution Reduction Scheme Act 2009 commences

-
- 1 (5) If, immediately before the commencement of this item, a
2 Commonwealth Registry account was described as the non-compliance
3 cancellation account for the first commitment period, the *Carbon*
4 *Pollution Reduction Scheme Act 2009* has effect as if the account had
5 been designated by the Australian Climate Change Regulatory
6 Authority as the non-compliance cancellation account for the first
7 commitment period.
- 8 (6) If, immediately before the commencement of this item, the account was
9 described as the voluntary cancellation account for the first commitment
10 period, the *Carbon Pollution Reduction Scheme Act 2009* has effect as
11 if the account had been designated by the Australian Climate Change
12 Regulatory Authority as the voluntary cancellation account for the first
13 commitment period.
- 14 (7) If, immediately before the commencement of this item, the account was
15 described as the mandatory cancellation account for the first
16 commitment period, the *Carbon Pollution Reduction Scheme Act 2009*
17 has effect as if the account had been designated by the Australian
18 Climate Change Regulatory Authority as the mandatory cancellation
19 account for the first commitment period.
- 20 (8) If, immediately before the commencement of this item, a
21 Commonwealth Registry account was described as the tCER
22 replacement (expiry) cancellation account for the first commitment
23 period, the *Carbon Pollution Reduction Scheme Act 2009* has effect as
24 if the account had been designated by the Australian Climate Change
25 Regulatory Authority as the tCER replacement (expiry) cancellation
26 account for the first commitment period.
- 27 (9) If, immediately before the commencement of this item, the account was
28 described as the ICER replacement (expiry) cancellation account for the
29 first commitment period, the *Carbon Pollution Reduction Scheme Act*
30 *2009* has effect as if the account had been designated by the Australian
31 Climate Change Regulatory Authority as the ICER replacement (expiry)
32 cancellation account for the first commitment period.
- 33 (10) If, immediately before the commencement of this item, the account was
34 described as the ICER replacement (storage reversal) cancellation
35 account for the first commitment period, the *Carbon Pollution*
36 *Reduction Scheme Act 2009* has effect as if the account had been
37 designated by the Australian Climate Change Regulatory Authority as

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing at the same time as section 3 of the Carbon Pollution
Reduction Scheme Act 2009 commences **Part 1**

1 the ICER replacement (storage reversal) cancellation account for the
2 first commitment period.

3 (11) If, immediately before the commencement of this item, the account was
4 described as the ICER replacement (non-certification) cancellation
5 account for the first commitment period, the *Carbon Pollution*
6 *Reduction Scheme Act 2009* has effect as if the account had been
7 designated by the Australian Climate Change Regulatory Authority as
8 the ICER replacement (non-certification) cancellation account for the
9 first commitment period.

10 **97 Transitional—regulations**

11 The Governor-General may make regulations in relation to transitional
12 matters arising out of the amendments made by this Part.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1

2 **Part 2—Amendments commencing on 1 July 2010**

3 **Division 1—Amendments**

4 *National Greenhouse and Energy Reporting Act 2007*

5 **98 Section 3**

6 Before “The”, insert “(1)”.

7 Note: The heading to section 3 is replaced by the heading “Objects”.

8 **99 Section 3**

9 Before “object”, insert “first”.

10 **100 Paragraph 3(a)**

11 Repeal the paragraph.

12 **101 At the end of section 3**

13 Add:

14 (2) The second object of this Act is to underpin the *Carbon Pollution*
15 *Reduction Scheme Act 2009* by imposing reporting and
16 record-keeping requirements on persons who are liable entities
17 under that Act.

18 **102 Section 4**

19 Before “This Act”, insert “(1)”.

20 **103 Section 4**

21 After “This Act”, insert “(except to the extent to which it underpins the
22 *Carbon Pollution Reduction Scheme Act 2009* by imposing reporting
23 and record-keeping requirements on persons who are liable entities
24 under that Act)”.

25 **104 At the end of section 4**

26 Add:

27 (2) To the extent to which this Act underpins the *Carbon Pollution*
28 *Reduction Scheme Act 2009* by imposing reporting and

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 record-keeping requirements on persons who are liable entities
2 under the *Carbon Pollution Reduction Scheme Act 2009*, this Act
3 relies on the same legislative powers that support the *Carbon*
4 *Pollution Reduction Scheme Act 2009*.

5 **105 Section 5**

6 Before “This Act”, insert “(1)”.

7 **106 Subparagraph 5(a)(i)**

8 Repeal the subparagraph.

9 **106A Paragraph 5(b)**

10 Omit “this section”, substitute “this subsection”.

11 **107 At the end of section 5**

12 Add:

13 (2) This Act is intended to apply to the exclusion of a law of a State or
14 Territory, or a part of such a law:

15 (a) that provides for the reporting or disclosure of information
16 related to greenhouse gas emissions; and

17 (b) that the regulations provide is a law, or part of a law, to
18 which this subsection applies;

19 so far as the law, or part of the law, would otherwise apply in
20 relation to a person other than:

21 (c) a local governing body; or

22 (d) a statutory authority (within the meaning of the *Carbon*
23 *Pollution Reduction Scheme Act 2009*) of a State or Territory.

24 **108 After section 5**

25 Insert:

26 **5A Crown to be bound**

27 (1) This Act binds the Crown in each of its capacities.

28 (2) This Act does not make the Crown liable to a pecuniary penalty or
29 to be prosecuted for an offence.

30 (3) The protection in subsection (2) does not apply to an authority of
31 the Crown.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **109 Section 6**

2 Repeal the section, substitute:

3 **6 Extension to exclusive economic zone and continental shelf**

4 This Act extends to a matter relating to the exercise of Australia's
5 sovereign rights in the exclusive economic zone or the continental
6 shelf.

7 **6A Innocent passage of foreign ships etc.**

8 This Act does not apply to the extent that its application would be
9 inconsistent with the exercise of rights of foreign ships in:

- 10 (a) the territorial sea; or
11 (b) the exclusive economic zone; or
12 (c) waters of the continental shelf;

13 in accordance with the United Nations Convention on the Law of
14 the Sea.

15 **110 Section 7**

16 Insert:

17 *activity* includes:

- 18 (a) a condition; or
19 (b) a circumstance; or
20 (c) a state of affairs;

21 relating to:

- 22 (d) solid waste; or
23 (e) carbon capture and storage.

24 **110A Section 7**

25 Insert:

26 *approved* means approved by the Authority, in writing, for the
27 purposes of the provision in which the term occurs.

28 Note: For variation and revocation, see subsection 33(3) of the *Acts*
29 *Interpretation Act 1901*.

30 **111 Section 7**

31 Insert:

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 *carbon capture and storage* means:

- 2 (a) the storage of a greenhouse gas substance in a part of a
3 geological formation; or
4 (b) the injection of a greenhouse gas substance into a part of a
5 geological formation for the purposes of such storage; or
6 (c) the capture, compression, processing, offloading,
7 transportation or piped conveyance of a greenhouse gas
8 substance, where the compression, processing, offloading,
9 transportation or piped conveyance is for the purposes of
10 such storage.

11 An expression used in this definition has the same meaning as in
12 the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
13 For this purpose, assume that each reference in the definition of
14 *greenhouse gas substance* in section 7 of that Act to a prescribed
15 greenhouse gas were a reference to a greenhouse gas (within the
16 meaning of this Act).

17 **112 Section 7 (definition of *carbon dioxide equivalence*)**

18 Repeal the definition, substitute:

19 *carbon dioxide equivalence*:

- 20 (a) of an amount of greenhouse gas—means the amount of the
21 gas multiplied by a value specified in the regulations in
22 relation to that kind of greenhouse gas; or
23 (b) of an amount of potential greenhouse gas emissions
24 embodied in an amount of an eligible upstream fuel—has the
25 meaning given by section 7D.

26 **112A Section 7**

27 Insert:

28 *carbon pollution reduction scheme* has the same meaning as in the
29 *Carbon Pollution Reduction Scheme Act 2009*.

30 **113 Section 7**

31 Insert:

32 *continental shelf* has the same meaning as in the *Seas and*
33 *Submerged Lands Act 1973*.

34 **114 Section 7**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 Insert:

2 *eligible financial year* has the same meaning as in the *Carbon*
3 *Pollution Reduction Scheme Act 2009*.

4 **115 Section 7**

5 Insert:

6 *eligible upstream fuel* has the same meaning as in the *Carbon*
7 *Pollution Reduction Scheme Act 2009*.

8 **116 Section 7 (definition of *emission*)**

9 Repeal the definition, substitute:

10 *emission* of greenhouse gas means:
11 (a) a scope 1 emission of greenhouse gas; or
12 (b) a scope 2 emission of greenhouse gas.

13 **117 Section 7**

14 Insert:

15 *emissions number* has the same meaning as in the *Carbon*
16 *Pollution Reduction Scheme Act 2009*.

17 **119 Section 7 (paragraph (a) of the definition of *external*** 18 ***auditor*)**

19 Repeal the paragraph, substitute:

20 (a) for the purposes of the application of this definition to a
21 registered corporation—is not an officer, employee or agent
22 of the corporation or of one of the members of the
23 corporation’s group; and
24 (aa) for the purposes of the application of this definition to a
25 non-group entity—is not an officer, employee or agent of the
26 non-group entity; and

27 **120 Section 7 (definition of *greenhouse gas*)**

28 Repeal the definition, substitute:

29 *greenhouse gas* has the meaning given by section 7A.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 **121 Section 7 (paragraph (b) of the definition of *greenhouse***
2 ***gas project*)**

3 Omit “regulations;”, substitute “regulations.”.

4 **122 Section 7 (definition of *greenhouse gas project*)**

5 Omit all the words from and including “but” to the end of the definition.

6 **122A Section 7 (definition of *group*)**

7 Omit “subsection 8(1)”, substitute “section 8”.

8 **123 Section 7**

9 Insert:

10 *import* has the same meaning as in the *Carbon Pollution Reduction*
11 *Scheme Act 2009*.

12 **124 Section 7 (definition of *innocent passage*)**

13 Repeal the definition.

14 **126 Section 7**

15 Insert:

16 *liable entity* has the same meaning as in the *Carbon Pollution*
17 *Reduction Scheme Act 2009*.

18 **127 Section 7**

19 Insert:

20 *local governing body* means a local governing body established by
21 or under a law of a State or Territory.

22 **128 Section 7 (definition of *member*)**

23 Before “has”, insert “, in relation to a group,”.

24 **129 Section 7**

25 Insert:

26 *non-group entity* means a person who is not a member of a
27 controlling corporation’s group.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **130 Section 7 (definition of *oil or gas extraction activity*)**

2 Repeal the definition.

3 **131 Section 7**

4 Insert:

5 *operation*, in relation to a facility, includes the subsistence of the
6 facility.

7 **132 Section 7 (definition of *operational control*)**

8 Omit “11”, substitute “11, 11A, 11B or 11C”.

9 **134 Section 7**

10 Insert:

11 *person* means any of the following:

- 12 (a) an individual;
- 13 (b) a body corporate;
- 14 (c) a trust;
- 15 (d) a corporation sole;
- 16 (e) a body politic;
- 17 (f) a local governing body.

18 **135 Section 7**

19 Insert:

20 *potential greenhouse gas emissions* embodied in an amount of an
21 eligible upstream fuel has the meaning given by section 7C.

22 **136 Section 7**

23 Insert:

24 *provisional emissions number* has the same meaning as in the
25 *Carbon Pollution Reduction Scheme Act 2009*.

26 **137 Section 7**

27 Insert:

28 *scope 1 emission* of greenhouse gas has the meaning given by
29 section 10.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 **138 Section 7**

2 Insert:

3 *scope 2 emission* of greenhouse gas has the meaning given by
4 section 10.

5 **139 Section 7**

6 Insert:

7 *supply* has the same meaning as in the *Carbon Pollution Reduction*
8 *Scheme Act 2009*.

9 **140 Section 7**

10 Insert:

11 *synthetic greenhouse gas* has the meaning given by section 7B.

12 **141 Section 7**

13 Insert:

14 *territorial sea* has the same meaning as in the *Seas and Submerged*
15 *Lands Act 1973*.

16 **142 Section 7**

17 Insert:

18 *trust* means a person in the capacity of trustee or, as the case
19 requires, a trust estate.

20 **143 Section 7**

21 Insert:

22 *trustee* has the same meaning as in the *Income Tax Assessment Act*
23 *1997*.

24 **144 Section 7**

25 Insert:

26 *trust estate* has the same meaning as in the *Income Tax Assessment*
27 *Act 1997*.

28 **145 Section 7**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 Insert:

2 ***United Nations Convention on the Law of the Sea*** means the
3 United Nations Convention on the Law of the Sea done at Montego
4 Bay on 10 December 1982.

5 Note: The text of the Convention is set out in Australian Treaty Series 1994
6 No. 31 ([1994] ATS 31). In 2009, the text of an international
7 agreement in the Australian Treaty Series was accessible through the
8 Australian Treaties Library on the AustLII website
9 (www.austlii.edu.au).

10 **146 After section 7**

11 Insert:

12 **7A Greenhouse gas**

13 For the purposes of this Act and the *Carbon Pollution Reduction*
14 *Scheme Act 2009*, each of the following is a **greenhouse gas**:

- 15 (a) carbon dioxide;
- 16 (b) methane;
- 17 (c) nitrous oxide;
- 18 (d) a synthetic greenhouse gas;
- 19 (e) a prescribed gas.

20 **7B Synthetic greenhouse gas**

21 (1) For the purposes of this Act and the *Carbon Pollution Reduction*
22 *Scheme Act 2009*, each of the following is a **synthetic greenhouse**
23 **gas**:

- 24 (a) sulphur hexafluoride;
- 25 (b) a hydrofluorocarbon of a kind specified in the table in
26 subsection (2);
- 27 (c) a perfluorocarbon of a kind specified in the table in
28 subsection (3).

29 ***Table 1—Hydrofluorocarbons***

30 (2) Table 1 is as follows:

31

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

Hydrofluorocarbons

Item	Hydrofluorocarbon	Chemical formula
1	HFC-23	CHF_3
2	HFC-32	CH_2F_2
3	HFC-41	CH_3F
4	HFC-43-10mee	$\text{C}_5\text{H}_2\text{F}_{10}$
5	HFC-125	C_2HF_5
6	HFC-134	$\text{C}_2\text{H}_2\text{F}_4$ (CHF_2CHF_2)
7	HFC-134a	$\text{C}_2\text{H}_2\text{F}_4$ (CH_2FCF_3)
8	HFC-143	$\text{C}_2\text{H}_3\text{F}_3$ ($\text{CHF}_2\text{CH}_2\text{F}$)
9	HFC-143a	$\text{C}_2\text{H}_3\text{F}_3$ (CF_3CH_3)
10	HFC-152a	$\text{C}_2\text{H}_4\text{F}_2$ (CH_3CHF_2)
11	HFC-227ea	C_3HF_7
12	HFC-236fa	$\text{C}_3\text{H}_2\text{F}_6$
13	HFC-245ca	$\text{C}_3\text{H}_3\text{F}_5$

1

2

Table 2—Perfluorocarbons

3

(3) Table 2 is as follows:

4

Perfluorocarbons

Item	Perfluorocarbon	Chemical formula
1	Perfluoromethane (tetrafluoromethane)	CF_4
2	Perfluoroethane (hexafluoroethane)	C_2F_6
3	Perfluoropropane	C_3F_8
4	Perfluorobutane	C_4F_{10}
5	Perfluorocyclobutane	c- C_4F_8
6	Perfluoropentane	C_5F_{12}
7	Perfluorohexane	C_6F_{14}

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **7C Potential greenhouse gas emissions embodied in an amount of**
2 **eligible upstream fuel**

- 3 (1) For the purposes of this Act and the *Carbon Pollution Reduction*
4 *Scheme Act 2009*, the **potential greenhouse gas emissions**
5 embodied in an amount of eligible upstream fuel is:
6 (a) the amount of the greenhouse gas; or
7 (b) the amounts of the greenhouse gases;
8 that would be released into the atmosphere as a result of the
9 combustion of the amount of the fuel.

10 *Default method*

- 11 (2) The Minister may determine that the amount of a particular
12 greenhouse gas that would be released into the atmosphere as a
13 result of the combustion of an amount of eligible upstream fuel is
14 taken, for the purposes of:
15 (a) this Act (other than subsections (3) and (4)); and
16 (b) the *Carbon Pollution Reduction Scheme Act 2009*;
17 to be the amount of the fuel multiplied by a value specified in the
18 determination in relation to that kind of fuel.

19 *Prescribed alternative method*

- 20 (3) However, if:
21 (a) a report relating to an eligible financial year was given by a
22 person under section 22A; and
23 (b) the report was given before the end of 4 months after the end
24 of the eligible financial year; and
25 (c) ascertaining the potential greenhouse emissions embodied in
26 an amount of eligible upstream fuel is relevant to working
27 out a provisional emissions number of the person for the
28 eligible financial year; and
29 (d) the report contained a statement to the effect that the person
30 has made a choice to use the prescribed alternative method to
31 ascertain the potential greenhouse gas emissions; and
32 (e) the prescribed alternative method was complied with in
33 ascertaining the potential greenhouse gas emissions;
34 then, for the purposes of this Act and the *Carbon Pollution*
35 *Reduction Scheme Act 2009*:
-

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (f) the potential greenhouse gas emissions are to be ascertained
2 in accordance with the prescribed alternative method; and
3 (g) a determination under subsection (2) does not apply in
4 ascertaining the potential greenhouse gas emissions.

- 5 (4) For the purposes of this section, the *prescribed alternative method*
6 is a method that:
7 (a) is for ascertaining the potential greenhouse gas emissions
8 embodied in an amount of eligible upstream fuel; and
9 (b) is specified in a determination made by the Minister; and
10 (c) involves testing one or more samples of the fuel.

11 *Combustion*

- 12 (5) The Minister may determine that, for the purposes of this section, it
13 is to be assumed that the *combustion* of an amount of eligible
14 upstream fuel takes place in the circumstances specified in the
15 determination in relation to that kind of fuel.

16 *Determination*

- 17 (6) A determination made under subsection (2), (4) or (5) is a
18 legislative instrument.

19 **7D Carbon dioxide equivalence of potential greenhouse gas** 20 **emissions embodied in an amount of eligible upstream** 21 **fuel**

22 *Scope*

- 23 (1) This section applies if the potential greenhouse gas emissions
24 embodied in an amount of eligible upstream fuel consists of:
25 (a) an amount of a greenhouse gas; or
26 (b) amounts of one or more greenhouse gases.

27 *Carbon dioxide equivalence*

- 28 (2) For the purposes of this Act and the *Carbon Pollution Reduction*
29 *Scheme Act 2009*, the *carbon dioxide equivalence* of the potential
30 greenhouse gas emissions is the total of the carbon dioxide
31 equivalence of that amount of greenhouse gas or those amounts of
32 greenhouse gases.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **147 Subsection 8(1)**

2 Omit “A controlling”, substitute “For the purposes of this Act and the
3 *Carbon Pollution Reduction Scheme Act 2009*, a controlling”.

4 **148 Paragraph 8(1)(b)**

5 Omit “(if any);”, substitute “(if any).”.

6 **149 Paragraphs 8(1)(c) and (d)**

7 Repeal the paragraphs.

8 **150 Subsections 8(4), (5) and (6)**

9 Repeal the subsections, substitute:

10 (4) To avoid doubt, a controlling corporation’s *group* may consist of
11 the controlling corporation alone.

12 **151 Subsection 9(1)**

13 Omit “A *facility* is”, substitute “For the purposes of this Act and the
14 *Carbon Pollution Reduction Scheme Act 2009*, a *facility* is”.

15 **152 Subsection 9(1)**

16 Omit “the production of” (first occurring).

17 **153 Paragraph 9(1)(b)**

18 Omit “54;”, substitute “54 or 54A.”.

19 **154 Subsection 9(1)**

20 Omit all the words from and including “but” to the end of the
21 subsection.

22 **155 Subsection 9(3)**

23 Repeal the subsection.

24 **156 Subsection 10(1)**

25 After “References”, insert “in this Act or the *Carbon Pollution*
26 *Reduction Scheme Act 2009*”.

27 **157 Paragraph 10(1)(a)**

28 Repeal the paragraph, substitute:

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (a) *scope 1 emission* of greenhouse gas;
2 (aa) *scope 2 emission* of greenhouse gas;

3 **158 Subsection 10(2)**

4 Omit “paragraph (1)(a) may specify a meaning of emissions”, substitute
5 “paragraph (1)(aa) may specify a meaning of scope 2 emission”.

6 **159 After subsection 10(2)**

7 Insert:

8 (2A) The regulations must:

- 9 (a) declare that specified scope 1 emissions of greenhouse gas
10 are covered by the carbon pollution reduction scheme; and
11 (b) declare that the remaining scope 1 emissions of greenhouse
12 gas are not covered by the carbon pollution reduction
13 scheme.

14 Note: For specification by class, see subsection 13(3) of the *Legislative*
15 *Instruments Act 2003*.

16 **160 Subsection 10(3)**

17 Omit “emissions”, substitute “scope 1 emissions, scope 2 emissions”.

18 **161 Subsection 10(3)**

19 After “this Act”, insert “and the *Carbon Pollution Reduction Scheme*
20 *Act 2009*”.

21 **162 Paragraph 10(3)(a)**

22 Repeal the paragraph, substitute:

- 23 (a) in the case of scope 1 emissions—different methods or
24 criteria for emissions from different sources; and

25 **163 Subsection 11(1)**

26 Omit “A controlling corporation or another member of the corporation’s
27 group”, substitute “For the purposes of this Act and the *Carbon*
28 *Pollution Reduction Scheme Act 2009*, a person”.

29 Note: The heading to section 11 is altered by adding at the end “—**basic rule**”.

30 **164 Paragraph 11(1)(a)**

31 Omit “it”, substitute “the person”.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **165 Paragraph 11(1)(b)**

2 Omit “corporation or member”, substitute “person”.

3 **166 At the end of paragraph 11(1)(b)**

4 Add “or 55A”.

5 **167 Subsection 11(2)**

6 After “apply”, insert “in relation to a facility”.

7 **168 At the end of subsection 11(2)**

8 Add “in relation to the facility”.

9 **169 Subsection 11(3)**

10 After “this Act”, insert “and the *Carbon Pollution Reduction Scheme*
11 *Act 2009*”.

12 **170 Subsection 11(3)**

13 Omit “such corporation or member”, substitute “person”.

14 **171 Subsection 11(4)**

15 Repeal the subsection, substitute:

16 (4) This section has effect subject to sections 11A, 11B and 11C.

17 **172 At the end of Part 1**

18 Add:

19 **11A Operational control—person with greatest authority**

20 *Scope*

21 (1) This section applies if the following conditions are satisfied in
22 relation to a period that is included in, or consists of, an eligible
23 financial year:

24 (a) 2 or more persons could satisfy paragraph 11(1)(a) in relation
25 to a facility throughout the period;

26 (b) a particular person has the greatest authority to introduce and
27 implement the policies mentioned in subparagraphs
28 11(1)(a)(i) and (iii) in relation to the facility throughout the
29 period;

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 (c) no declaration under section 55 or 55A applies in relation to
2 the facility at any time during the period.

3 *Operational control*

4 (2) The person mentioned in paragraph (1)(b) is taken, for the
5 purposes of this Act and the *Carbon Pollution Reduction Scheme*
6 *Act 2009*, to have **operational control** over the facility throughout
7 the period.

8 **11B Operational control—nominated person**

9 *Scope*

- 10 (1) This section applies if the following conditions are satisfied in
11 relation to a period that is included in, or consists of, an eligible
12 financial year:
- 13 (a) 2 or more persons could satisfy paragraph 11(1)(a) in relation
14 to a facility throughout the period;
 - 15 (b) no particular person has the greatest authority to introduce
16 and implement the policies mentioned in subparagraphs
17 11(1)(a)(i) and (iii) in relation to the facility throughout the
18 period;
 - 19 (c) no declaration under section 55 or 55A applies in relation to
20 the facility at any time during the period.

21 *Nomination*

22 (2) Those persons must, before the end of 31 August next following
23 the eligible financial year, jointly nominate one of them to be the
24 nominated person in relation to the facility for the period.

25 Civil penalty: 1,000 penalty units.

- 26 (3) The nomination must:
- 27 (a) be in writing; and
 - 28 (b) be in a form approved by the Authority; and
 - 29 (c) be accompanied by such information as is specified in the
30 regulations.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1

Operational control

2

- (4) If a nomination is made, the nominated person is taken, for the purposes of this Act and the *Carbon Pollution Reduction Scheme Act 2009*, to have **operational control** over the facility throughout the period.

3

4

5

6

- (5) If no nomination is made, each of the persons mentioned in paragraph (1)(a) is taken, for the purposes of this Act and the *Carbon Pollution Reduction Scheme Act 2009*, to have **operational control** over the facility throughout the period.

7

8

9

10

Exception

11

- (6) A person is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:

12

13

14

(a) this Act; or

15

(b) the *Carbon Pollution Reduction Scheme Act 2009*.

16

11C Operational control—trust with multiple trustees

17

Scope

18

- (1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, an eligible financial year:

19

20

21

(a) because of section 11, 11A or 11B, a trust has operational control over a facility throughout the period;

22

23

(b) throughout the period, there are 2 or more trustees of the trust;

24

25

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period.

26

27

Nomination

28

- (2) Those trustees must, before the end of 31 August next following the eligible financial year, jointly nominate one of them to be the nominated trustee in relation to the facility for the period.

29

30

31

Civil penalty: 1,000 penalty units.

32

- (3) The nomination must:
-

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (a) be in writing; and
2 (b) be in a form approved by the Authority; and
3 (c) be accompanied by such information as is specified in the
4 regulations.

5 *Operational control*

- 6 (4) If a nomination is made, the nominated trustee is taken, for the
7 purposes of this Act and the *Carbon Pollution Reduction Scheme*
8 *Act 2009*, to have **operational control** over the facility throughout
9 the period.
- 10 (5) If no nomination is made, each of those trustees is taken, for the
11 purposes of this Act and the *Carbon Pollution Reduction Scheme*
12 *Act 2009*, to have **operational control** over the facility throughout
13 the period.

14 *Exception*

- 15 (6) A trustee is not required to comply with subsection (2) if the
16 question of who has operational control of the facility is not
17 relevant (whether directly or indirectly) to a requirement under:
18 (a) this Act; or
19 (b) the *Carbon Pollution Reduction Scheme Act 2009*.

20 **173 Part 2 (heading)**

21 Repeal the heading, substitute:

22 **Part 2—Registration of corporations**

23 **174 Subsection 16(3)**

24 Repeal the subsection, substitute:

- 25 (3) The Authority must cause the contents of the Register to be made
26 available on the Authority's website.
- 27 (3A) Subsection (3) does not apply to information ascertained in
28 accordance with the regulations.

29 **175 Part 3 (heading)**

30 Repeal the heading, substitute:

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **Part 3—Reporting obligations of registered**
2 **corporations etc.**

3 **176 At the end of subsection 19(1)**

4 Add:

5 Note 4: Reports under this section and section 22A may be set out in the same
6 document—see subsection 22A(4).

7 **177 Subsections 19(4) and (5)**

8 Repeal the subsections.

9 **178 Paragraph 19(6)(c)**

10 Omit “include any”, substitute “set out the”.

11 **179 Paragraphs 22(1)(a) and (b)**

12 After “this Act”, insert “(other than Part 3A)”.

13 **180 Paragraphs 22(2)(a) and (b)**

14 After “this Act”, insert “(other than Part 3A)”.

15 **181 After Part 3**

16 Insert:

17 **Part 3A—Reporting obligations of liable entities**
18 **etc.**
19

20 **22A Report to be given to Authority**

21 (1) If a person was a liable entity for an eligible financial year, the
22 person must, in accordance with this section, provide a report to
23 the Authority relating to:

24 (a) the calculation of the person’s provisional emissions numbers
25 for the eligible financial year; and

26 (b) if a provisional emissions number of the person for the
27 eligible financial year is attributable to scope 1 emissions of
28 greenhouse gas—those emissions; and

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (c) if a provisional emissions number of the person for the
2 eligible financial year is attributable to the import,
3 manufacture or supply of synthetic greenhouse gas—the
4 import, manufacture or supply concerned; and
5 (d) if a provisional emissions number of the person for the
6 eligible financial year is attributable to potential greenhouse
7 gas emissions embodied in an amount of eligible upstream
8 fuel—those potential greenhouse gas emissions; and
9 (e) the calculation of the person's emissions number for the
10 eligible financial year.

11 Civil penalty:

- 12 (f) for an individual—400 penalty units; or
13 (g) otherwise—2,000 penalty units.

14 Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to
15 provide false or misleading information or documents to the Authority
16 in purported compliance with this Act.

17 Note 2: Under section 30, a person may be liable for an additional civil
18 penalty for each day after the end of the period mentioned in
19 paragraph (2)(c) for which the person fails to provide a report in
20 accordance with this section.

- 21 (2) A report under this section must:
22 (a) be given in a manner and form approved by the Authority;
23 and
24 (b) set out the information specified by the regulations for the
25 purposes of this paragraph; and
26 (c) be given to the Authority before the end of 4 months after the
27 end of the eligible financial year.
- 28 (3) Regulations made for the purposes of paragraph (2)(b) may specify
29 different requirements for different circumstances.
- 30 (4) Reports under this section and section 19 may be set out in the
31 same document.

32 **22B Records to be kept**

- 33 (1) A person who is or was a liable entity for an eligible financial year
34 must keep records of the person's activities that:
35 (a) allow the person to report accurately under this Part; and

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

- 1 (b) enable the Authority to ascertain whether the person has
2 complied with the person's obligations under this Part; and
3 (c) comply with the requirements of subsection (2) and the
4 regulations made for the purposes of subsection (3).
- 5 Civil penalty:
6 (d) for an individual—200 penalty units; or
7 (e) otherwise—1,000 penalty units.
- 8 (2) The person must retain the records for 7 years from the end of the
9 financial year in which the activities take place.
- 10 (3) The regulations may specify requirements relating to:
11 (a) the kinds of records; and
12 (b) the form of records;
13 that must be kept under subsection (1).

14 **182 Paragraphs 24(1)(a) and (b)**

15 Omit “(within the meaning of the regulations)”.

16 *[Note: subsection 24(1) is substituted by the National Greenhouse and*
17 *Energy Reporting Amendment Act 2008]*

18 **183 Subsection 24(1)**

19 After “reported”, insert “under Part 3”.

20 *[Note: subsection 24(1) is substituted by the National Greenhouse and*
21 *Energy Reporting Amendment Act 2008]*

22 **184 After subsection 24(1A)**

23 Insert:

- 24 (1AA) If a person gives the Authority a report under section 22A in
25 relation to an eligible financial year, the Authority must publish on
26 its website, by 28 February next following the eligible financial
27 year:
28 (a) the total of the numbers specified in the report as the person's
29 provisional emissions numbers for the eligible financial year;
30 and

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (b) if any of those provisional emissions numbers are attributable
2 to scope 1 emissions of greenhouse gas—the total of those
3 provisional emissions numbers; and
4 (c) if any of those provisional emissions numbers are attributable
5 to the import, manufacture or supply of synthetic greenhouse
6 gas—the total of those provisional emissions numbers; and
7 (d) if any of those provisional emissions numbers are attributable
8 to potential greenhouse gas emissions embodied in an
9 amount of eligible upstream fuel—the total of those
10 provisional emissions numbers.

11 *[Note: subsection 24(1A) is inserted by the National Greenhouse and*
12 *Energy Reporting Amendment Act 2008]*

13 **185 After paragraph 24(6)(b)**

14 Insert:
15 (ba) non-corporate entity; or

16 **186 Subsection 25(1)**

17 Omit “or” (first occurring).

18 **187 Subsection 25(1)**

19 After “section 20,” insert “or a person required to provide a report
20 under section 22A,”.

21 **188 After subsection 30(2)**

22 Insert:
23 (2A) If, under section 22A or 74B, an act or thing is required to be done
24 within a particular period, or before a particular time, and a person
25 fails to comply with that requirement, the person is liable for a civil
26 penalty for each day that the person fails to comply.

27 Civil penalty:

- 28 (a) for failure to meet a requirement under section 22A:
29 (i) for an individual—20 penalty units per day; or
30 (ii) otherwise—100 penalty units per day; or
31 (b) for failure to meet a requirement under section 74B:
32 (i) for an individual—2 penalty units per day; or
33 (ii) otherwise—10 penalty units per day.
-

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 **188A Subsection 54(5)**

2 Omit “corporation, joint venture or partnership”, substitute “person”.

3 Note: The heading to section 54 is altered by adding at the end “—group”.

4 **189 After section 54**

5 Insert:

6 **54A Authority may declare facility—non-group entity**

7 (1) The Authority may declare that an activity or series of activities
8 (including ancillary activities) are a facility:

- 9 (a) on application by a non-group entity; or
10 (b) on the Authority’s own initiative.

11 (2) An application must:

- 12 (a) identify the facility for which a declaration is sought; and
13 (b) include any other information required by the regulations;
14 and
15 (c) be given in a manner and form approved by the Authority.

16 (3) In considering making a declaration that an activity or series of
17 activities are a facility, the Authority must have regard to:

- 18 (a) the matters dealt with in regulations made for the purposes of
19 paragraph 9(1)(a); and
20 (b) the need for each facility to be distinct from, and not overlap
21 with, activities that constitute other facilities.

22 (4) The Authority must notify, in writing, an applicant under
23 paragraph (1)(a) of a decision under subsection (1) to declare a
24 facility or to refuse the application.

25 (5) If the Authority makes a declaration under paragraph (1)(b), the
26 Authority must notify, in writing, the person that has, or that the
27 Authority reasonably believes has, operational control of the
28 facility to which the declaration relates.

29 **190 After subsection 55(3)**

30 Insert:

31 (3A) The Authority must not declare that a controlling corporation or
32 another member of the corporation’s group has operational control

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 of a facility unless the Authority is satisfied that the corporation or
2 member has substantial authority to introduce and implement any
3 or all of the following for the facility:

- 4 (a) operating policies;
- 5 (b) health and safety policies;
- 6 (c) environmental policies.

7 (3B) The Authority must not declare that a member of a controlling
8 corporation's group (other than the controlling corporation) has
9 operational control of a facility on application made by the member
10 unless the controlling corporation has given written consent to the
11 making of the declaration.

12 **191 At the end of Division 2 of Part 6**

13 Add:

14 **55A Authority may declare non-group entity has operational control**

15 (1) The Authority may declare that a non-group entity has operational
16 control of a facility:

- 17 (a) on application by the non-group entity; or
- 18 (b) on the Authority's own initiative.

19 (2) An application must:

- 20 (a) identify the facility for which a declaration of operational
21 control is sought; and
- 22 (b) include any other information required by the regulations;
23 and
- 24 (c) be given in a manner and form approved by the Authority.

25 (3) In considering making a declaration that a non-group entity has
26 operational control of a facility, the Authority must have regard to
27 the matters dealt with in paragraph 11(1)(a) and regulations made
28 for the purposes of that paragraph.

29 (4) The Authority must not declare that a non-group entity has
30 operational control of a facility unless the Authority is satisfied that
31 the non-group entity has substantial authority to introduce and
32 implement any or all of the following for the facility:

- 33 (a) operating policies;
- 34 (b) health and safety policies;

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

- 1 (c) environmental policies.
- 2 (5) The Authority must notify, in writing, an applicant under
3 paragraph (1)(a) of a decision under subsection (1) to declare the
4 non-group entity to have operational control of the facility or to
5 refuse the application.
- 6 (6) If the Authority makes a declaration under paragraph (1)(b), the
7 Authority must notify, in writing, the non-group entity which the
8 Authority has declared to have operational control of the facility to
9 which the declaration relates.

10 **192 After paragraph 56(g)**

- 11 Insert:
- 12 (ga) refuse an application under section 54A; and
13 (gb) declare a facility under paragraph 54A(1)(b); and

14 **193 At the end of section 56**

- 15 Add:
- 16 ; and (j) refuse an application under section 55A; and
17 (k) declare that a non-group entity has operational control of a
18 facility under paragraph 55A(1)(b).

19 **194 Before section 75**

- 20 Insert:

21 **74B External audits of non-group entities—compliance**

- 22 (1) This section applies if the Authority has reasonable grounds to
23 suspect that a non-group entity has contravened, is contravening, or
24 is proposing to contravene, this Act or the regulations.
- 25 (2) The Authority may, by written notice given to the non-group
26 entity, require the non-group entity to:
- 27 (a) appoint:
- 28 (i) an external auditor of the non-group entity's choice; or
29 (ii) if the Authority specifies an external auditor in the
30 notice—that external auditor; and
- 31 (b) arrange for the external auditor to carry out an external audit
32 on one or more aspects of the non-group entity's compliance
33 with this Act or the regulations; and
-

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

- 1 (c) arrange for the external auditor to give the non-group entity a
2 written report setting out the results of the audit; and
3 (d) give the Authority a copy of the audit report on or before the
4 day specified in the notice.

- 5 (3) The notice must specify:
6 (a) the matters to be covered by the audit; and
7 (b) the form of the audit report and the kinds of details it is to
8 contain.

- 9 (4) A non-group entity must provide an external auditor with all
10 reasonable facilities and assistance necessary for the effective
11 exercise of the external auditor's duties under this Act.

- 12 Civil penalty:
13 (a) for an individual—50 penalty units; or
14 (b) otherwise—250 penalty units.

- 15 (5) If the Authority gives a non-group entity written notice under
16 subsection (2), the non-group entity must comply with the
17 requirements of the notice.

- 18 Civil penalty:
19 (a) for an individual—200 penalty units; or
20 (b) otherwise—1,000 penalty units.

- 21 Note: Under section 30, a non-group entity may be liable for an additional
22 civil penalty for each day after the day mentioned in paragraph (2)(d)
23 for which the non-group entity fails to provide an audit report in
24 accordance with this section.

25 **74C External audits of non-group entities—other**

- 26 (1) The Authority may appoint an external auditor to carry out an
27 external audit of a non-group entity's compliance with one or more
28 aspects of this Act or the regulations.
- 29 (2) The Authority must give written notice to the non-group entity of a
30 decision to appoint an auditor under subsection (1). The notice
31 must:
32 (a) specify the external auditor; and
33 (b) specify the period within which the audit is to be undertaken;
34 and
-

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

- 1 (c) specify the matters to be covered by the audit; and
2 (d) be given to the non-group entity at a reasonable time before
3 the audit is to be undertaken.
- 4 (3) The non-group entity must provide the external auditor with all
5 reasonable facilities and assistance necessary for the effective
6 exercise of the external auditor's duties under this Act.
- 7 Civil penalty:
8 (a) for an individual—50 penalty units; or
9 (b) otherwise—250 penalty units.
- 10 (4) If a non-group entity is given a notice under subsection (2), the
11 non-group entity must arrange for the external auditor to carry out
12 the external audit.
- 13 Civil penalty:
14 (a) for an individual—200 penalty units; or
15 (b) otherwise—1,000 penalty units.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

195 Section 7 (definition of *licence period*)

Repeal the definition, substitute:

licence period:

- 20 (a) in relation to an SGG licence—means a period referred to in
21 section 8AA; or
22 (b) in relation to any other licence—means a period referred to in
23 section 8A.
24

196 Section 7 (definition of *pre-charged equipment*)

Repeal the definition.

197 Section 7 (definition of *pre-charged equipment licence*)

Repeal the definition.

198 Section 7 (definition of *SGG* or *synthetic greenhouse gas*)

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 Omit “or a PFC”, substitute “, a PFC or sulphur hexafluoride”.

2 **199 Section 7**

3 Insert:

4 *sulphur hexafluoride* means the substance referred to in Part XI of
5 Schedule 1, whether existing alone or in a mixture.

6 **200 After section 8**

7 Insert:

8 **8AA Licence periods—SGG licences**

9 *Scope*

10 (1) This section applies in relation to an SGG licence.

11 *Licence period*

12 (2) For the purposes of this Act, each of the following is a *licence*
13 *period*:

- 14 (a) the 2-year period beginning on 1 January 2002;
15 (b) the 2-year period beginning on 1 January 2004;
16 (c) the 2-year period beginning on 1 January 2006;
17 (d) the 2-year period beginning on 1 January 2008;
18 (e) the 30-month period beginning on 1 January 2010;
19 (f) the 2-year period beginning on 1 July 2012;
20 (g) each later 2-year period.

21 **201 Before subsection 8A(1)**

22 Insert:

23 *Scope*

24 (1A) This section applies in relation to a licence (other than an SGG
25 licence).

26 Note 1: The heading to section 8A is altered by adding at the end “—**other licences**”.

27 Note 2: The following heading to subsection 8A(1) is inserted “*Licence period*”.

28 **202 Subsection 9(1)**

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1 After “Schedule 1”, insert “(other than a substance referred to in
2 Part IX, X or XI of that Schedule)”.

3 Note: The heading to section 9 is altered by inserting “(other than SGGs)” after
4 “substances”.

5 **203 After section 9**

6 Insert:

7 **9A SGGs in manufactured products**

8 For the purposes of Parts III, IV and VII, a substance referred to in
9 Part IX, X or XI of Schedule 1 is to be treated as not being referred
10 to in that Schedule if the substance is in a manufactured product
11 that consists in part of that substance only because the substance
12 was used in the manufacturing process.

13 **204 Subsection 13(6A)**

14 Repeal the subsection.

15 **205 Paragraph 13A(1)(c)**

16 Omit “licence;”, substitute “licence.”.

17 **206 Paragraph 13A(1)(d)**

18 Repeal the paragraph.

19 **207 Subsection 13A(5)**

20 Repeal the subsection.

21 **208 Subsection 16(3)**

22 Omit “licence, an SGG licence or a pre-charged equipment licence”,
23 substitute “licence or an SGG licence”.

24 **209 Subsection 19A(2)**

25 Omit “or a pre-charged equipment licence”.

26 **210 Subsection 46(1A)**

27 Repeal the subsection, substitute:

28 (1A) Subsection (1) does not apply to an SGG.

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 Note: The heading to section 46 is altered by omitting “**and pre-charged equipment**” and
2 substituting “(other than SGGs)”.

3 **211 Subsection 46(1B)**

4 Repeal the subsection.

5 **212 Subsection 46(1BA)**

6 Repeal the subsection.

7 **213 Subsection 46(1C)**

8 Repeal the subsection.

9 **214 Subsection 46(2AA)**

10 Repeal the subsection.

11 **215 Subsection 46(2A)**

12 Omit “or (2AA)”.

13 **216 Subsection 46(2B)**

14 Omit “or (2AA)”.

15 **217 After section 46**

16 Insert:

17 **46A Annual reports by manufacturers, importers and exporters of**
18 **SGGs**

- 19 (1) If a person imports or exports an SGG in:
20 (a) the financial year beginning on 1 July 2010; or
21 (b) a later financial year;
22 the person must, within 4 months after the end of the financial
23 year, give the Minister a report in accordance with the regulations.
- 24 (2) If a person manufactures an SGG in:
25 (a) the financial year beginning on 1 July 2010; or
26 (b) a later financial year;
27 the person must, within 4 months after the end of the financial
28 year, give the Minister a report in accordance with the regulations.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1

Offence

2

(3) A person commits an offence if:

3

(a) the person is subject to a requirement under subsection (1) or (2); and

4

5

(b) the person omits to do an act; and

6

(c) the omission breaches the requirement.

7

Penalty: 10 penalty units.

8

(4) An offence under subsection (3) is an offence of strict liability.

9

Note: For strict liability, see section 6.1 of the *Criminal Code*.

10

Copy of report to be given to the Australian Climate Change Regulatory Authority

11

12

(5) If a report under subsection (1) or (2) is given to the Minister, the Minister must:

13

14

(a) make a copy of the report; and

15

(b) give the copy to the Australian Climate Change Regulatory Authority.

16

17

218 At the end of paragraph 65D(b)

18

Add:

19

(iii) recovery and destruction programs for ODSs and SGGs;

20

220 At the end of Schedule 1

21

Add:

22

Part XI—Sulphur hexafluoride

23

Substance

Sulphur hexafluoride (SF₆)

24

25

221 Paragraph 10(1)(a) of Schedule 4

26

After “CFC refrigerant”, insert “or an HCFC refrigerant”.

27

222 Paragraph 10(1)(b) of Schedule 4

28

Repeal the paragraph, substitute:

EXPOSURE DRAFT

General amendments **Schedule 1**
Amendments commencing on 1 July 2010 **Part 2**

1 (b) the equipment is designed to operate by using a CFC
2 refrigerant or an HCFC refrigerant (whether or not it also is
3 designed to operate using another substance); or

4 **223 At the end of paragraph 10(1)(c) of Schedule 4**

5 Add “or an HCFC”.

EXPOSURE DRAFT

Schedule 1 General amendments

Part 2 Amendments commencing on 1 July 2010

1

2 **Division 2—Application and transitional provisions**

3 **224 Application—registration and reports under the *National***
4 ***Greenhouse and Energy Reporting Act 2007***

5 (1) The amendments of the *National Greenhouse and Energy Reporting Act*
6 *2007* made by this Part, in so far as they are relevant to determining
7 whether a controlling corporation's group meets a threshold under
8 section 13 of that Act for a financial year, apply in relation to a
9 threshold for:

- 10 (a) the financial year beginning on 1 July 2010; or
11 (b) a later financial year.

12 (2) The amendments of the *National Greenhouse and Energy Reporting Act*
13 *2007* made by this Part, in so far as they relate to reports under
14 section 19 of that Act, apply in relation to reports for:

- 15 (a) the financial year beginning on 1 July 2010; or
16 (b) a later financial year.

17 **225 Transitional—reports under the *Ozone Protection and***
18 ***Synthetic Greenhouse Gas Management Act 1989* for**
19 **pre-commencement quarters**

20 Despite the amendments of section 46 of the *Ozone Protection and*
21 *Synthetic Greenhouse Gas Management Act 1989* made by this Part,
22 that section continues to apply, in relation to a quarter ending before the
23 commencement of this item, as if those amendments had not been
24 made.

25 **226 Transitional—regulations**

26 The Governor-General may make regulations in relation to transitional
27 matters arising out of the amendments made by this Part.

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1
2
3
Schedule 2—Taxation amendments

4 ***A New Tax System (Goods and Services Tax) Act 1999***

5 **1 After subsection 9-10(3A)**

6 Insert:

7 (3B) For the avoidance of doubt, a supply of:

8 (a) an *eligible emissions unit; or

9 (b) a *Kyoto unit;

10 is a supply of a personal property right or personal property rights.

11 **2 At the end of section 38-190**

12 Add:

13 (5) A supply of:

14 (a) an *eligible emissions unit; or

15 (b) a *Kyoto unit;

16 is taken, for the purposes of the table in subsection (1), not to be a
17 supply that is directly connected with *real property.

18 **3 Section 195-1**

19 Insert:

20 *eligible emissions unit* has the same meaning as in the *Carbon*
21 *Pollution Reduction Scheme Act 2009*.

22 **4 Section 195-1**

23 Insert:

24 *Kyoto unit* has the same meaning as in the *Carbon Pollution*
25 *Reduction Scheme Act 2009*.

26 **5 Section 195-1 (paragraph (c) of the definition of *real***
27 ***property*)**

28 Omit “to land.”, substitute “to land;”.

29 **6 Section 195-1 (at the end of the definition of *real property*,**
30 **after paragraph (c))**

EXPOSURE DRAFT

Schedule 2 Taxation amendments

- 1 Add:
2 but does not include:
3 (d) an *eligible emissions unit; or
4 (e) a *Kyoto unit.

5 *Income Tax Assessment Act 1936*

6 **7 Subsection 136AB(2)**

7 Omit “section 70-20”, substitute “sections 70-20 and 420-20”.

8 *Income Tax Assessment Act 1997*

9 **8 Section 10-5 (after the table item headed “recoupment”)**

10 Insert:
registered emissions units
disposal of 420-25
disposal for a non-commercial purpose..... 420-40
difference between opening and closing value of..... 420-45

11 **9 Section 12-5 (after the table item headed “regional 12 headquarters (RHQs)”)**

13 Insert:
registered emissions units
expenditure incurred in becoming the holder of..... 420-15
excess of opening over closing value of..... 420-45

14 **10 At the end of Subdivision 70-A**

15 Add:

16 **70-12 Registered emissions units**

17 A *registered emissions unit is not *trading stock.

18 **11 At the end of section 70-30 (before the note)**

19 Add:
20 (6) Subsection (1) does not apply if:
21 (a) you start holding an item as *trading stock; and

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 (b) immediately before you started holding the item as trading
2 stock, you *held the item as a *registered emissions unit.

3 **12 Section 70-110**

4 Before “If you stop”, insert “(1)”.

5 **13 At the end of section 70-110 (after example 2, before the**
6 **note)**

7 Add:

8 (2) This section does not apply if:

- 9 (a) you stop holding an item as *trading stock; and
10 (b) immediately after you stopped holding the item as trading
11 stock, you start to *hold the item as a *registered emissions
12 unit.

13 **14 Section 104-5 (before table item relating to CGT event K2)**

14 Insert:

K1 You become the holder of a registered emissions unit as the result of an incoming international transfer of an emissions unit	when you become the holder of the registered emissions unit	market value of unit <i>less</i> its cost base	reduced cost base of unit <i>less</i> its market value
--	--	--	--

[See
section 104-205]

15 **15 Before section 104-210**

16 Insert:

17 **104-205 Incoming international transfer of emissions unit: CGT**
18 **event K1**

19 (1) *CGT event K1* happens if:

- 20 (a) an *international emissions unit is transferred from your
21 foreign account (within the meaning of the *Carbon Pollution*
22 *Reduction Scheme Act 2009*) to your Registry account
23 (within the meaning of that Act); and
-

EXPOSURE DRAFT

Schedule 2 Taxation amendments

- 1 (b) as a result of the transfer, you become the *holder of a
2 *registered emissions unit.
- 3 (2) The time of the event is when you become the *holder of the
4 *registered emissions unit.
- 5 (3) You make a *capital gain* if the unit's *market value (just before
6 you became the *holder of the *registered emissions unit) is *more*
7 than its *cost base. You make a *capital loss* if that market value is
8 *less* than its *reduced cost base.

9 **16 Section 112-97 (after table item 18)**

10 Insert:

18A	You cease to hold a registered emissions unit as the result of an outgoing international transfer of an emissions unit	First element of cost base and reduced cost base	Section 420-35
-----	--	--	----------------

11 **17 After section 118-13**

12 Insert:

13 **118-15 Registered emissions units**

- 14 (1) A *capital gain or *capital loss you make from a *registered
15 emissions unit is disregarded.
- 16 (2) A *capital gain or *capital loss you make from a right to receive a
17 *free Australian emissions unit is disregarded.

18 **18 At the end of Subdivision 230-H**

19 Add:

20 **230-481 Registered emissions units**

21 This Division does not apply to a gain or loss that you make from a
22 *registered emissions unit.

23 *[Note: Subdivision 230-H is being inserted by the Tax Laws Amendment*
24 *(Taxation of Financial Arrangements) Bill 2008, which was*
25 *introduced into the House of Representatives on 4 December 2008.]*

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 **19 After Part 3-45**

2 Insert:

3 **Part 3-50—Carbon pollution reduction scheme**

4 **Division 420—Registered emissions units**

5 **Table of Subdivisions**

6 Guide to Division 420

7 420-A Registered emissions units

8 420-B Acquiring registered emissions units

9 420-C Disposing of registered emissions units etc.

10 420-D Accounting for registered emissions units you hold at the start
11 or end of the income year

12 420-E Exclusivity of Division

13 **Guide to Division 420**

14 **420-1 What this Division is about**

15 This Division deals with amounts you can deduct, and amounts
16 included in your assessable income, because of these situations:

- 17
- you acquire a registered emissions unit;
 - you hold a registered emissions unit at the start or the end of
18 the income year;
 - you dispose of a registered emissions unit.
- 19
- 20

21 **Table of sections**

22 420-5 The 4 key features of tax accounting for registered emissions units

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1 **420-5 The 4 key features of tax accounting for registered emissions** 2 **units**

3 The purpose of income tax accounting for registered emissions
4 units is to produce the same tax treatment, irrespective of your
5 purpose in acquiring or holding the registered emissions units.

6 There are 4 key features:

- 7 (1) You bring your gross expenditure and gross proceeds to account,
8 not your net profits and losses on disposal of a registered emissions
9 unit.
- 10 (2) The gross expenditure is deductible.
- 11 (3) The gross proceeds are assessable income.
- 12 (4) You must bring to account any difference between the value of
13 your registered emissions units held at the start and at the end of
14 the income year. This is done in such a way that:
 - 15 (a) any increase in value is included in assessable income;
16 and
 - 17 (b) any decrease in value is a deduction.

18 **Subdivision 420-A—Registered emissions units**

19 **Table of sections**

20	420-10	Meaning of <i>registered emissions unit</i>
21	420-12	Meaning of <i>hold</i> a registered emissions unit

22 **420-10 Meaning of *registered emissions unit***

23 *A registered emissions unit is:*

- 24 (a) an eligible emissions unit (within the meaning of the *Carbon*
25 *Pollution Reduction Scheme Act 2009*); or
- 26 (b) a Kyoto unit (within the meaning of that Act);
27 for which there is an entry in a Registry account (within the
28 meaning of that Act).

29 Note 1: Eligible emissions units are units that can be surrendered to meet an
30 obligation under the *Carbon Pollution Reduction Scheme Act 2009*.

31 Note 2: Kyoto units can be entered in Registry accounts under the *Carbon*
32 *Pollution Reduction Scheme Act 2009*. Certain types of Kyoto units

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 are eligible emissions units. Other types of Kyoto units are not eligible
2 emissions units.

3 **420-12 Meaning of *hold* a registered emissions unit**

4 (1) You *hold* a *registered emissions unit if you are the registered
5 holder (within the meaning of the *Carbon Pollution Reduction*
6 *Scheme Act 2009*) of the unit.

7 (2) However, if the registered holder (within the meaning of the
8 *Carbon Pollution Reduction Scheme Act 2009*) of a *registered
9 emissions unit holds the unit as nominee for another entity:

- 10 (a) the other entity is taken to *hold* the unit; and
11 (b) the registered holder is taken not to hold the unit.

12 **Subdivision 420-B—Acquiring registered emissions units**

13 **Table of sections**

14	420-15	What you can deduct
15	420-20	Non-arm's length transactions and transactions with associates

16 **420-15 What you can deduct**

17 (1) You can deduct expenditure to the extent that you incur it in
18 becoming the *holder of a *registered emissions unit.

19 Note: An Australian emissions unit is an example of a registered emissions
20 unit. You can become the holder of an Australian emissions unit as a
21 result of the unit being issued to you under the *Carbon Pollution*
22 *Reduction Scheme Act 2009* or as a result of your acquisition of the
23 unit from another entity.

24 *Timing*

25 (2) You deduct the expenditure in the income year in which you start
26 to *hold the *registered emissions unit.

27 *Free Australian emissions units*

28 (3) You cannot deduct under this section expenditure you incur in
29 becoming the *holder of an *Australian emissions unit issued to
30 you in accordance with:

EXPOSURE DRAFT

Schedule 2 Taxation amendments

- 1 (a) the emissions-intensive trade-exposed assistance program
2 (within the meaning of the *Carbon Pollution Reduction*
3 *Scheme Act 2009*); or
4 (b) Part 9 (coal-fired electricity generation) of that Act.
- 5 (4) You cannot deduct under this section expenditure you incur in
6 becoming the *holder of an *Australian emissions unit issued to
7 you in accordance with Part 10 (reforestation) of the *Carbon*
8 *Pollution Reduction Scheme Act 2009* unless you incur the
9 expenditure in preparing or lodging:
10 (a) an application for a certificate of reforestation (within the
11 meaning of the *Carbon Pollution Reduction Scheme Act*
12 *2009*); or
13 (b) a reforestation report (within the meaning of that Act).
- 14 (5) You cannot deduct under this section expenditure you incur in
15 becoming the *holder of an *Australian emissions unit issued to
16 you in accordance with Part 11 (destruction of synthetic
17 greenhouse gases) of the *Carbon Pollution Reduction Scheme Act*
18 *2009* unless you incur the expenditure in preparing or lodging an
19 application for a certificate of eligible synthetic greenhouse gas
20 destruction (within the meaning of that Act).

21 *No deduction if sale proceeds would not be assessable*

- 22 (6) You cannot deduct under this section expenditure you incur in
23 becoming the *holder of a *registered emissions unit if, assuming
24 that you had sold the unit to someone else immediately after you
25 started to *hold the unit, the proceeds of the sale would not have
26 been included in your assessable income under section 420-25.

27 Note: Under the *International Tax Agreements Act 1953*, for some foreign
28 residents, the proceeds of the sale of a registered emissions unit are
29 not assessable income in Australia.

30 **420-20 Non-arm's length transactions and transactions with** 31 **associates**

- 32 (1) If:
33 (a) you become the *holder of a *registered emissions unit; and
34 (b) either:
35 (i) you and the previous holder of the unit did not deal with
36 each other at arm's length; or
-

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

- 1 (ii) the previous holder is your *associate; and
2 (c) you did not pay or give consideration equal to the *market
3 value of the unit for becoming the holder of the unit;
4 then:
5 (d) you are treated as if:
6 (i) you had incurred expenditure in becoming the holder of
7 the unit; and
8 (ii) the amount of the expenditure were equal to that market
9 value; and
10 (e) the previous holder is treated as if the previous holder were
11 entitled to receive an amount equal to that market value
12 because the previous holder ceased to be the holder of the
13 unit.
- 14 (2) This section does not apply if a *registered emissions unit *held by
15 an individual just before the individual's death:
16 (a) devolves to the individual's *legal personal representative; or
17 (b) *passes to a beneficiary in the individual's estate.
- 18 (3) This section does not apply to the issue of an *Australian emissions
19 unit under the *Carbon Pollution Reduction Scheme Act 2009*.
- 20 Note: In the application of Division 13 of Part III of the *Income Tax*
21 *Assessment Act 1936* (about international transfer-pricing
22 arrangements), this section is disregarded—see subsection 136AB(2)
23 of the *Income Tax Assessment Act 1936*.

24 **Subdivision 420-C—Disposing of registered emissions units etc.**

25 **Table of sections**

26	420-25	Assessable income on disposal of registered emissions units
27	420-30	Incoming international transfers of emissions units
28	420-35	Outgoing international transfers of emissions units
29	420-40	Disposal of registered emissions units for a purpose other than gaining
30		assessable income

31 **420-25 Assessable income on disposal of registered emissions units**

- 32 (1) Your assessable income includes an amount that you are entitled to
33 receive because you ceased to *hold a *registered emissions unit.

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1

Timing

2

- (2) The amount is included in your assessable income for the income year in which you cease to *hold the unit.

3

4

Source

5

- (3) An amount included in your assessable income under subsection (1) is taken to have a source in Australia.

6

7

420-30 Incoming international transfers of emissions units

8

If:

9

- (a) an *international emissions unit is transferred from your foreign account (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*) to your Registry account (within the meaning of that Act); and

10

11

12

13

14

- (b) as a result of the transfer, you become the *holder of a *registered emissions unit;

15

you are treated as if:

16

- (c) just before the transfer, you had sold the unit to someone else for its *market value just before the transfer; and

17

18

- (d) you had, immediately after the sale, bought it back as a registered emissions unit for the same amount.

19

20

Example: An Australian resident company carries on a business of trading in emissions units. The company owns 10,000 emission reduction units (a type of international emissions unit) that are registered in New Zealand. 5,000 of those emission reduction units are transferred from the New Zealand registry to the Australian registry.

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The company is treated as having sold each unit to someone else at its market value just before it became a registered emissions unit. As the unit was previously held as trading stock, the unit ceases to be trading stock (section 70-12). The market value of the unit just before it became a registered emissions unit is included in the company's assessable income.

31

32

33

The company is also treated as having bought 5,000 registered emissions units for the same amount. The company is entitled to a deduction for that amount (section 420-15).

34

420-35 Outgoing international transfers of emissions units

35

If:

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

- 1 (a) you stop *holding as a *registered emissions unit an
2 *international emissions unit; and
3 (b) you do so as a result of the transfer of the unit to your foreign
4 account (within the meaning of the *Carbon Pollution*
5 *Reduction Scheme Act 2009*);
6 you are treated as if:
7 (c) just before the transfer, you had sold the unit to someone else
8 for its *market value just before the transfer; and
9 (d) you had, immediately after the sale, bought it back for the
10 same amount.

11 Example: An Australian resident company carries on a business of trading in
12 emission units. The company owns 10,000 emission reduction units (a
13 type of international emissions unit) that are registered in Australia.
14 5,000 of those units are transferred from the Australian registry to the
15 New Zealand registry.

16 The company is treated as having sold each unit to someone else at its
17 market value just before it stopped being a registered emissions unit.
18 As the unit was a registered emissions unit, the market value is
19 included in the company's assessable income (section 420-25).

20 The company is also treated as having bought 5,000 emission
21 reduction units for the same amount. As those units are trading stock,
22 the company may be able to deduct that amount under section 8-1.

23 **420-40 Disposal of registered emissions units for a purpose other** 24 **than gaining assessable income**

- 25 (1) If:
26 (a) you incur expenditure in becoming the *holder of a
27 *registered emissions unit; and
28 (b) you have deducted or can deduct the expenditure under
29 section 420-15; and
30 (c) you cease to hold the unit in a particular income year; and
31 (d) the cessation is neither:
32 (i) in gaining or producing your assessable income; nor
33 (ii) in carrying on a *business for the purpose of gaining or
34 producing your assessable income; and
35 (e) paragraph 420-20(1)(e) did not apply to you ceasing to hold
36 the unit;
37 your assessable income of that income year includes an amount
38 equal to the amount you have deducted or can deduct.

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1

Death

2

(2) If:

3

(a) the cessation is because of your death; and

4

(b) the *registered emissions unit devolves to your *legal personal representative;

5

then:

6

7

(c) your legal personal representative is treated as having bought the unit for the amount included in your assessable income under subsection (1); and

8

9

10

(d) if the unit *passes to a beneficiary in your estate:

11

(i) your legal personal representative is treated as having disposed of the unit for the amount included in your assessable income under subsection (1); and

12

13

14

(ii) the beneficiary is treated as having bought the unit for the amount included in your assessable income under subsection (1).

15

16

17

(3) If:

18

(a) the cessation is because of your death; and

19

(b) the *registered emissions unit *passes to a beneficiary in your estate without devolving to your *legal personal representative;

20

21

22

the beneficiary is treated as having bought the unit for the amount included in your assessable income under subsection (1).

23

24

Transfer during life—treatment of acquirer

25

(4) If:

26

(a) the cessation is because of the transfer of the unit to another entity; and

27

28

(b) neither subsection (2) nor (3) applies;

29

the other entity is treated as having bought the unit for the amount included in your assessable income under subsection (1).

30

31

Source

32

(5) An amount included in your assessable income under subsection (1) is taken to have a source in Australia.

33

EXPOSURE DRAFT

Taxation amendments Schedule 2

Subdivision 420-D—Accounting for registered emissions units you hold at the start or end of the income year

Table of sections

General rules

420-45	You include the value of your registered emissions units in working out your assessable income and deductions
420-50	Value of registered emissions units at start of income year
420-55	Value of registered emissions units at end of income year—basic rule
420-56	Single change of valuation method before the 2015-16 income year
420-57	Value of registered emissions units at end of income year—emissions-intensive trade-exposed assistance program
420-60	Cost of free Australian emissions units

General rules

420-45 You include the value of your registered emissions units in working out your assessable income and deductions

- (1) You compare:
- (a) the *value of all *registered emissions units you *held at the start of the income year; and
 - (b) the value of all registered emissions units you held at the end of the income year.

Increase in value is included in assessable income

- (2) Your assessable income includes any excess of the *value at the end of the income year over the value at the start of the income year.

Decrease in value is a deduction

- (3) On the other hand, you can deduct any excess of the *value at the start of the income year over the value at the end of the income year.

Source

- (4) An amount included in your assessable income under subsection (2) is taken to have a source in Australia.

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1 *Disregard value of unit if sale proceeds would not be assessable*

- 2 (5) For the purposes of this Subdivision, disregard the value of a
3 *registered emissions unit you held at the start or end of the income
4 year if, assuming that you had sold the unit to someone else
5 immediately after you started to *hold the unit, the proceeds of the
6 sale would not have been included in your assessable income under
7 section 420-25.

8 Note: Under the *International Tax Agreements Act 1953*, for some foreign
9 residents, the proceeds of the sale of a registered emissions unit are
10 not assessable income in Australia.

11 **420-50 Value of registered emissions units at start of income year**

- 12 (1) The *value* of a *registered emissions unit you held at the start of an
13 income year is the same amount at which it was taken into account
14 under this Subdivision at the end of the last income year.
- 15 (2) The *value* of the unit is a nil amount if the unit was not taken into
16 account under this Subdivision at the end of the last income year.

17 **420-55 Value of registered emissions units at end of income year—** 18 **basic rule**

19 *Valuation of units at cost—default method*

- 20 (1) The *value* of the *registered emissions units you *held at the end of
21 an income year is the *cost of the units.
- 22 (2) Subsection (1) has effect subject to:
- 23 (a) subsections (3) and (4) (choice to value units at market
24 value); and
- 25 (b) section 420-56 (single change of valuation method before the
26 2015-16 income year); and
- 27 (c) section 420-57 (emissions-intensive trade-exposed assistance
28 program).

29 *Choice to value units at market value*

- 30 (3) You may choose that the *value* of the *registered emissions units
31 you *held at the end of an income year is the *market value of the
32 units at the end of the income year, so long as the income year is

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 the first income year at the end of which you held one or more
2 registered emissions units.

3 (4) If you make a choice under subsection (3):

4 (a) the choice cannot be revoked; and

5 (b) the *value* of the *registered emissions units you *held at the
6 end of the income year is the *market value of the units at the
7 end of the income year; and

8 (c) the *value* of the registered emissions units you held at the end
9 of each later income year is the market value of the units at
10 the end of the later income year.

11 (5) Subsection (4) has effect subject to:

12 (a) section 420-56 (single change of valuation method before the
13 2015-16 income year); and

14 (b) section 420-57 (emissions-intensive trade-exposed assistance
15 program).

16 *When choice is made*

17 (6) You must make a choice under subsection (3) before you lodge
18 your *income tax return for the income year for which you make
19 the choice.

20 *Cost method—first-in first-out method*

21 (7) If, as the result of subsection (1), the value of the *registered
22 emissions units you *held at the end of an income year is the *cost
23 of the units, then, for the purposes of the application of this
24 Subdivision to you for the income year, you must account for any
25 registered emissions units that have the same *vintage year on a
26 first-in first-out basis.

27 **420-56 Single change of valuation method before the 2015-16 income** 28 **year**

29 *Change from cost method to market value method*

30 (1) If:

31 (a) a particular income year is the first income year at the end of
32 which you *held one or more *registered emissions units; and

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1 (b) as the result of subsection 420-55(1), the value of the
2 registered emissions units you held at the end of the income
3 year is the *cost of the units;
4 you may choose that the *value* of the registered emissions units
5 you held at the end of a later income year is the *market value of
6 the units, so long as the later income year is before the 2015-16
7 income year.

- 8 (2) If you make a choice under subsection (1):
9 (a) the choice cannot be revoked; and
10 (b) the *value* of the *registered emissions units you *held at the
11 end of the later income year is the *market value of the units;
12 and
13 (c) the *value* of the registered emissions units you held at the end
14 of each income year that is subsequent to the later income
15 year is the *market value of the units.
- 16 (3) Subsection (2) has effect subject to section 420-57
17 (emissions-intensive trade-exposed assistance program).

18 *Change from market value method to cost method*

- 19 (4) If:
20 (a) a particular income year is the first income year at the end of
21 which you *held one or more *registered emissions units; and
22 (b) as the result of subsection 420-55(4), the value of the
23 registered emissions units you held at the end of the income
24 year is the *market value of the units;
25 you may choose that the *value* of the registered emissions units
26 you held at the end of a later income year is the *cost of the units,
27 so long as the later income year is before the 2015-16 income year.

- 28 (5) If you make a choice under subsection (4):
29 (a) the choice cannot be revoked; and
30 (b) the *value* of the *registered emissions units you *held at the
31 end of the later income year is the *cost of the units; and
32 (c) the *value* of the registered emissions units you held at the end
33 of each income year that is subsequent to the later income
34 year is the cost of the units.
- 35 (6) Subsection (5) has effect subject to section 420-57
36 (emissions-intensive trade-exposed assistance program).
-

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 *When choice is made*

2 (7) You must make a choice under subsection (1) or (4) before you
3 lodge your *income tax return for the income year for which you
4 make the choice.

5 *Cost method—first-in first-out method*

6 (8) If, as the result of subsection (5), the value of the *registered
7 emissions units you *held at the end of an income year is the *cost
8 of the units, then, for the purposes of the application of this
9 Subdivision to you for the income year, you must account for any
10 registered emissions units that have the same *vintage year on a
11 first-in first-out basis.

12 **420-57 Value of registered emissions units at end of income year—** 13 **emissions-intensive trade-exposed assistance program**

14 *Scope*

- 15 (1) This section applies to an *Australian emissions unit with a
16 particular *vintage year if:
- 17 (a) it was issued to you in accordance with the
18 emissions-intensive trade-exposed assistance program
19 (within the meaning of the *Carbon Pollution Reduction*
20 *Scheme Act 2009*); and
 - 21 (b) you *held it throughout the period:
 - 22 (i) beginning when it was issued to you; and
 - 23 (ii) ending at the end of an income year that ended before
24 15 December in the financial year next following the
25 vintage year.

26 *Value*

- 27 (2) The **value** of the unit you held at the end of an income year that
28 ended during that period is a nil amount.
- 29 (3) For the purposes of paragraphs 420-56(1)(b) and (4)(b), assume
30 that this section had not been enacted.

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1 **420-60 Cost of free Australian emissions units**

- 2 (1) If an *Australian emissions unit was issued to you free of charge
3 under the *Carbon Pollution Reduction Scheme Act 2009*, the *cost*
4 of the unit is its *market value immediately after you began to
5 *hold the unit.
- 6 (2) Subsection (1) does not affect the operation of section 420-57.

7 **Subdivision 420-E—Exclusivity of Division**

8 **Table of sections**

9 420-65 Exclusivity of deductions etc.
10 420-70 Exclusivity of assessable income etc.

11 **420-65 Exclusivity of deductions etc.**

- 12 (1) You cannot deduct under any provision of this Act outside this
13 Division any expenditure to the extent that you incur it in
14 becoming the *holder of a *registered emissions unit.
- 15 (2) To the extent you incur expenditure in becoming the *holder of a
16 *registered emissions unit, the expenditure is not to be taken into
17 account in working out:
- 18 (a) an amount you can deduct; or
19 (b) an amount included in your assessable income;
20 under any provision of this Act outside this Division.

21 *Free Australian emissions units*

- 22 (3) Subsections (1) and (2) do not affect the application of a provision
23 of this Act outside this Division to expenditure you incur in
24 becoming the *holder of an *Australian emissions unit issued to
25 you in accordance with:
- 26 (a) the emissions-intensive trade-exposed assistance program
27 (within the meaning of the *Carbon Pollution Reduction*
28 *Scheme Act 2009*); or
29 (b) Part 9 (coal-fired electricity generation) of that Act.
- 30 (4) Subsections (1) and (2) do not affect the application of a provision
31 of this Act outside this Division to expenditure you incur in
32 becoming the *holder of an *Australian emissions unit issued to
-

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 you in accordance with Part 10 (reforestation) of the *Carbon*
2 *Pollution Reduction Scheme Act 2009* if you do not incur the
3 expenditure in preparing or lodging:

- 4 (a) an application for a certificate of reforestation (within the
5 meaning of the *Carbon Pollution Reduction Scheme Act*
6 *2009*); or
7 (b) a reforestation report (within the meaning of that Act).

- 8 (5) Subsections (1) and (2) do not affect the application of a provision
9 of this Act outside this Division to expenditure you incur in
10 becoming the *holder of an *Australian emissions unit issued to
11 you in accordance with Part 11 (destruction of synthetic
12 greenhouse gases) of the *Carbon Pollution Reduction Scheme Act*
13 *2009* if you do not incur the expenditure in preparing or lodging an
14 application for a certificate of eligible synthetic greenhouse gas
15 destruction (within the meaning of that Act).

16 *Gifts and deductions*

- 17 (6) Subsections (1) and (2) do not affect the operation of Division 30
18 (deductions for gifts and contributions).

19 **420-70 Exclusivity of assessable income etc.**

- 20 (1) An amount that you are entitled to receive because you ceased to
21 *hold a *registered emissions unit is not to be:
22 (a) included in your assessable income; or
23 (b) taken into account in working out your assessable income; or
24 (c) taken into account in working out an amount you can deduct;
25 under any provision of this Act outside this Division.
- 26 (2) Subsection (1) does not affect the operation of the provisions of
27 Division 6 so far as that Division provides for the significance of
28 residence or source for the assessability of ordinary and statutory
29 income.

30 Note: An amount included in your assessable income under this Division
31 may be ordinary or statutory income for the purposes of Division 6.

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1

Free Australian emissions units

2

(3) An amount is not to be included in your assessable income under any provision of this Act outside this Division because an

3

*Australian emissions unit was issued to you in accordance with:

4

5

(a) the emissions-intensive trade-exposed assistance program (within the meaning of the *Carbon Pollution Reduction Scheme Act 2009*); or

6

7

8

(b) Part 9 (coal-fired electricity generation) of that Act; or

9

10

(c) Part 10 (reforestation) of that Act; or

11

(d) Part 11 (destruction of synthetic greenhouse gases) of that Act.

12

20 Paragraph 701-10(5)(a)

13

After “*trading stock”, insert “or a *registered emissions unit”.

14

Note: The heading to subsection 701-10(5) is altered by adding at the end “*or registered emissions unit*”.

15

16

21 Paragraph 701-25(2)(a)

17

Repeal the paragraph, substitute:

18

(a) either:

19

(i) the asset is *trading stock of the *head company; or

20

(ii) the asset is a *registered emissions unit and an asset of the head company; and

21

22

22 Subsection 701-25(3) (note)

23

After “trading stock”, insert “or registered emissions units”.

24

23 Subsection 701-25(4)

25

Omit “The asset is taken”, substitute “If subparagraph (2)(a)(i) applies, the asset is taken”.

26

27

24 At the end of section 701-25 (after the note)

28

Add:

29

Setting value of registered emissions unit at tax-neutral amount

30

(5) If subparagraph (2)(a)(ii) applies, the asset is taken to be an asset of the *head company at the end of the income year (but not at the

31

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 start of the next income year) and the head company's *value for
2 the asset at that time is taken to be equal to:

3 (a) if the asset was *held by the joining entity at the start of the
4 income year—the *value of the asset at the start of the
5 income year; or

6 (b) otherwise—the expenditure incurred by the joining entity in
7 becoming the *holder of the asset.

8 **25 Subsection 701-35(2)**

9 Repeal the subsection, substitute:

10 *Assets to which section applies*

11 (2) This section applies in relation to an asset if:

12 (a) the asset is *trading stock of the entity just before it becomes
13 a *subsidiary member of the group; or

14 (b) the asset is:

15 (i) a *registered emissions unit; and

16 (ii) an asset of the entity;

17 just before it becomes a subsidiary member of the group.

18 **26 Subsection 701-35(3) (note)**

19 After “trading stock”, insert “or registered emissions units”.

20 **27 Subsection 701-35(4)**

21 Omit “The *value of the”, substitute “If paragraph (2)(a) applies, the
22 *value of the”.

23 **28 At the end of section 701-35 (after the note)**

24 Add:

25 *Setting value of registered emissions unit at tax-neutral amount*

26 (5) If paragraph (2)(b) applies, the *value of the *registered emissions
27 unit at the end of the income year that ends, or, if section 701-30
28 applies, of the income year that is taken by subsection (3) of that
29 section to end, when the entity becomes a *subsidiary member is
30 taken to be equal to:

EXPOSURE DRAFT

Schedule 2 Taxation amendments

- 1 (a) if the unit was *held by the joining entity at the start of the
2 income year—the *value of the unit at the start of the income
3 year; or
4 (b) otherwise—the expenditure incurred by the joining entity in
5 becoming the *holder of the unit.

29 After subsection 701-55(3)

6 Insert:

7 *Registered emissions unit provisions*

- 8 (3A) If Division 420 is to apply in relation to the asset, the expression
9 means that the Division applies as if the asset were a *registered
10 emissions unit at the start of the income year in which the
11 particular time occurs, and its value at that time were equal to the
12 asset's *tax cost setting amount.
13

30 After subsection 705-30(1)

14 Insert:

15 *Registered emissions units*

- 16 (1A) If an asset of the joining entity is a *registered emissions unit, the
17 joining entity's *terminating value* for the unit is equal to:
18 (a) if the unit was *held by the joining entity at the start of the
19 income year—the *value of the unit at the start of the income
20 year; or
21 (b) otherwise—the expenditure incurred by the joining entity in
22 becoming the *holder of the unit.
23

31 Subsection 705-40(1)

24 After “*depreciating asset”, insert “, a *registered emissions unit”.

25 Note: The heading to section 705-40 is altered by adding at the end “etc.”.

32 Subsection 705-40(2)

26 After “*depreciating assets”, insert “, *registered emissions units”.

33 Paragraph 705-40(3)(b)

27 After “*depreciating asset”, insert “, to a *registered emissions unit”.

EXPOSURE DRAFT

Taxation amendments Schedule 2

1 **34 Subsection 705-57(1)**

2 After “*depreciating assets”, insert “, *registered emissions units”.

3 **35 Paragraph 705-57(2)(c)**

4 After “*depreciating asset”, insert “, a *registered emissions unit”.

5 **36 Subsection 705-163(1)**

6 After “*depreciating assets”, insert “, *registered emissions units”.

7 **37 Subsection 705-240(1)**

8 After “*depreciating assets”, insert “, *registered emissions units”.

9 **38 Subsection 713-225(4)**

10 Omit “or a *depreciating asset”, substitute “, a *depreciating asset or a
11 *registered emissions unit”.

12 Note: The heading to subsection 713-225(4) is altered by omitting “*or depreciating asset*”,
13 and substituting “, *a depreciating asset or a registered emissions unit*”.

14 **39 Subsection 715-660(1) (after table item 2)**

15 Insert:

2A Subsection 420-55(1) Valuing *registered emissions units

16 **40 At the end of section 719-165**

17 Add:

18 (3) Subsection 701-35(5) (setting value of registered emissions unit at
19 tax-neutral amount) does not apply to the assets of the MEC
20 joining entity if it is an *eligible tier-1 company at the MEC joining
21 time.

22 Note: The heading to section 719-165 is altered by inserting “**and registered emissions unit**
23 **value**” after “**value**”.

24 **41 Subsection 995-1(1)**

25 Insert:

26 *Australian emissions unit* has the same meaning as in the *Carbon*
27 *Pollution Reduction Scheme Act 2009*.

28 **42 Subsection 995-1(1) (at the end of the definition of cost,**
29 **before the note)**

EXPOSURE DRAFT

Schedule 2 Taxation amendments

1 Add:
2 ; and (c) *cost* of a *registered emissions unit has a meaning affected by
3 section 420-60.

4 **43 Subsection 995-1(1)**

5 Insert:
6 *free Australian emissions unit* has the same meaning as in the
7 *Carbon Pollution Reduction Scheme Act 2009*.

8 **44 Subsection 995-1(1) (at the end of the definition of *hold*)**

9 Add:
10 ; and (c) *hold* a *registered emissions unit has the meaning given by
11 section 420-12.

12 **45 Subsection 995-1(1)**

13 Insert:
14 *international emissions unit* means:
15 (a) a Kyoto unit (within the meaning of the *Carbon Pollution*
16 *Reduction Scheme Act 2009*); or
17 (b) a non-Kyoto international emissions unit (within the meaning
18 of that Act).

19 **46 Subsection 995-1(1)**

20 Insert:
21 *registered emissions unit* has the meaning given by
22 section 420-10.

23 **47 Subsection 995-1(1) (definition of *trading stock*)**

24 After “modified by”, insert “section 70-12 of this Act and”.

25 **48 Subsection 995-1(1) (paragraph (b) of the definition of** 26 ***value*)**

27 Omit “70-C.”, substitute “70-C; and”.

28 **49 Subsection 995-1(1) (after paragraph (b) of the definition** 29 **of *value*)**

30 Insert:

EXPOSURE DRAFT

Taxation amendments **Schedule 2**

1 (c) the *value* of a *registered emissions unit has the meaning
2 given by Subdivision 420-D; and

3 **50 Subsection 995-1(1)**

4 Insert:

5 *vintage year* of an *Australian emissions unit has the same
6 meaning as in the *Carbon Pollution Reduction Scheme Act 2009*.

7 ***Taxation Administration Act 1953***

8 **51 After subsection 45-120(5) in Schedule 1**

9 Insert:

10 *Gross proceeds on disposal of registered emissions units included*
11 *in instalment income*

12 (5A) Your *instalment income* for a period also includes an amount that
13 section 420-25 of the *Income Tax Assessment Act 1997* includes in
14 your assessable income, for the income year that is or includes that
15 period, because you cease to *hold a *registered emissions unit
16 during that period.