



# **Clean Energy (Unit Shortfall Charge— General) Act 2011**

**No. 162, 2011**

**An Act to impose a charge on unit shortfalls under  
the *Clean Energy Act 2011*, so far as that charge is  
neither a duty of customs nor a duty of excise**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to impose a charge on unit shortfalls under  
the *Clean Energy Act 2011*, so far as that charge is  
neither a duty of customs nor a duty of excise**

[Assented to 4 December 2011]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Clean Energy (Unit Shortfall  
Charge—General) Act 2011*.

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## Section 2

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### 2 Commencement

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

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Sections 3 to 10	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	2 April 2012

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Definitions

In this Act:

***benchmark average auction price*** has the same meaning as in the *Clean Energy Act 2011*.

***fixed charge year*** has the same meaning as in the *Clean Energy Act 2011*.

***flexible charge year*** has the same meaning as in the *Clean Energy Act 2011*.

***Joint Petroleum Development Area*** has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

*person* has the same meaning as in the *Clean Energy Act 2011*.

*unit shortfall* has the same meaning as in the *Clean Energy Act 2011*.

*vintage year* has the same meaning as in the *Clean Energy Act 2011*.

#### **4 Crown to be bound**

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, it does not bind the Crown in right of the Commonwealth.

#### **5 Extension to external Territories**

This Act extends to every external Territory.

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

This Act extends to Australia's exclusive economic zone and continental shelf.

#### **7 Extension to Joint Petroleum Development Area**

This Act extends to the Joint Petroleum Development Area.

#### **8 Imposition of charge**

- (1) If a person has a unit shortfall for a financial year, charge is imposed on the unit shortfall.
- (2) Charge imposed by subsection (1) is payable by the person.

*Amount of charge*

- (3) The amount of charge imposed by subsection (1) on a unit shortfall is the amount worked out using the formula:

$$\frac{\text{Number of units in the unit shortfall}}{\text{the unit shortfall}} \times \frac{\text{Prescribed amount for the financial year}}{\text{the financial year}}$$

where:

***prescribed amount for the financial year*** means:

- (a) if the financial year is a fixed charge year—an amount equal to 130% of the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or
  - (b) if the financial year is a flexible charge year:
    - (i) if an amount is specified in the regulations for the financial year—that amount; or
    - (ii) otherwise—an amount equal to 200% of the benchmark average auction charge for the previous financial year.
- (4) An amount specified in regulations made for the purposes of subparagraph (b)(i) of the definition of ***prescribed amount for the financial year*** in subsection (3) in relation to a financial year:
- (a) must not be less than 130% of the benchmark average auction charge for the previous financial year; and
  - (b) must not exceed 200% of the benchmark average auction charge for the previous financial year.

*General*

- (5) This section imposes charge only so far as that charge is neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution.

## **9 Act does not impose a tax on property of a State**

- (1) This Act has no effect to the extent (if any) to which it imposes a tax on property of any kind belonging to a State.
- (2) In this section, ***property of any kind belonging to a State*** has the same meaning as in section 114 of the Constitution.

## **10 Regulations**

The Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed.



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*[Minister's second reading speech made in—  
House of Representatives on 13 September 2011  
Senate on 12 October 2011]*

(182/11)

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