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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY (CONSEQUENTIAL AMENDMENTS) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Climate Change
and Energy Efficiency, the Honourable Greg Combet AM MP)

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Glossary

The following abbreviations and acronyms are used in this explanatory memorandum.

Abbreviation	*Definition*
ACCC	Australian Competition and Consumer Commission
ACCU	Australian Carbon Credit Unit
ASIC	Australian Securities and Investments Commission
Authority	Climate Change Authority
Carbon pricing mechanism	The carbon pricing mechanism set up by the Clean Energy Bill 2011
CFI	Carbon Farming Initiative
CGT	Capital Gains Tax
Clean Energy Legislative Package	The Clean Energy Bill 2011 and related legislation
CO_2-e	Carbon dioxide equivalence
Consequential amendments bill	Clean Energy (Consequential Amendments) Bill 2011
CPRS	Carbon Pollution Reduction Scheme
DCCEE	Department of Climate Change and Energy Efficiency
EITE	Emissions-intensive, trade-exposed
Eligible emissions unit	A carbon unit, an eligible international emissions unit, or an eligible Australian carbon credit unit
Eligible international emissions unit	A certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction), an emission reduction unit, a removal unit, a prescribed unit issued in accordance with the Kyoto rules
FIFO	First-In, First-Out
Fixed charge period	The financial years 2012-13, 2013-14 and 2014-15, being 'fixed charge years'

Abbreviation	***Definition***
	as defined in clause 5 of the Clean Energy Bill 2011
GEDO	Greenhouse and Energy Data Officer
GST	Goods and Services Tax
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
IPCC	Intergovernmental Panel on Climate Change
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
Kyoto units	An assigned amount unit, a certified emission reduction, an emission reduction unit, a removal unit or a prescribed unit issued in accordance with the Kyoto rules
Import Levy Act	*Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*
Main bill	Clean Energy Bill 2011
Manufacturing Levy Act	*Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*
NGER Act	*National Greenhouse and Energy Reporting Act 2007*
NGERS	National Greenhouse and Energy Reporting System
Non-Kyoto international emissions units	A prescribed unit issued in accordance with an international agreement (other than the Kyoto Protocol) or a prescribed unit issued outside Australia under a law of a foreign country
ODS	Ozone-depleting substance
ORER	Office of the Renewable Energy Regulator
OTN	Obligation transfer number
Ozone Act	*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
PFCs	Perfluorocarbons
Registry	Australian National Registry of Emissions

Abbreviation	***Definition***
	Units
Registry Act	*Australian National Registry of Emissions Units Act 2011*
Regulator	Clean Energy Regulator
RTC	Reporting Transfer Certificate
RTO	Refundable Tax Offset
SES	Senior Executive Service
SGG	Synthetic Greenhouse Gas
TAA 1953	*Taxation Administration Act 1953*
UNFCCC	United Nations Framework on Climate Change
VIPP	Vertically-integrated production process

General outline of the Clean Energy (Consequential Amendments) Bill 2011

The 2011 Clean Energy Legislative Package

The Clean Energy (Consequential Amendments) Bill 2011 is part of the Clean Energy Legislative Package, which sets up the carbon pricing mechanism (the mechanism) as part of the Government's climate change plan, as set out in *Securing a clean energy future: the Australian Government's climate change plan*.

The full policy context and background to the mechanism is set out in the explanatory memorandum for the Clean Energy Bill 2011. A description of the bills which will introduce the mechanism is set out below.

Table 1: The Clean Energy Bill 2011 and related bills

Main bill	The **Clean Energy Bill 2011** creates the mechanism. It sets out the structure of the mechanism and process for its introduction. These include: • entities and emissions that are covered by the mechanism; • entities' obligations to surrender eligible emissions units; • limits on the number of eligible emissions units that will be issued; • the nature of carbon units; • the allocation of carbon units, including by auction and the issue of free units; • mechanisms to contain costs, including the fixed charge period and price floors and ceilings; • linking to other emissions trading schemes; • assistance for emissions-intensive trade-exposed activities and coal-fired electricity generators; • monitoring, investigation, enforcement and penalties; • administrative review of decisions; and • reviews of aspects of the mechanism over time.
Statutory bodies	The **Clean Energy Regulator Bill 2011** sets up the Regulator, which is a statutory authority that will administer the mechanism and enforce the law. The responsibilities of the Regulator include: • providing education on the mechanism, particularly about the administrative arrangements of the mechanism; • assessing emissions data to determine each entity's liability; • operating the Australian National Registry of Emissions Units (the Registry);

	• monitoring, facilitating and enforcing compliance with the mechanism; • allocating units including freely allocated units, fixed charge units and auctioned units; • applying legislative rules to determine if a particular entity is eligible for assistance in the form of units to be allocated administratively, and the number of other units to be allocated; • administering the National Greenhouse and Energy Reporting System (NGERS), the Renewable Energy Target (RET) and the Carbon Farming Initiative (CFI); and • accrediting auditors for the CFI and NGERS.
	The **Climate Change Authority Bill 2011** sets up the Authority, which will be an independent body that provides the Government with expert advice on key aspects of the mechanism and the Government's climate change mitigation initiatives. The Government will remain responsible for carbon pricing policy decisions. This Bill also sets up the Land Sector Carbon and Biodiversity Board which will advise on key initiatives in the land sector.
Consequential amendments	The **Clean Energy (Consequential Amendments) Bill 2011** makes consequential amendments to ensure: • NGERS supports the mechanism; • the Registry covers the mechanism and the CFI; • the Regulator covers the mechanism, CFI, the Renewable Energy Target and NGERS; • the Regulator and Authority are set up as statutory agencies and regulated by public accountability and financial management rules; • that emissions units and their trading are covered by laws on financial services; • that activities related to emissions trading are covered by laws on money laundering and fraud; • synthetic greenhouse gases are subject to an equivalent carbon charge applied through existing regulation of those substances; • the Regulator can work with other regulatory bodies, including the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Transaction Reporting and Analysis Centre (Austrac); • the taxation treatment of emissions units for the purposes of GST and income tax is clear; and • the Conservation Tillage Refundable Tax Offset is established.

Procedural bills	Those elements of the mechanism which oblige a person to pay money are implemented through separate bills that comply with the requirements of section 55 of the *Constitution*. These bills are the **Clean Energy (Unit Shortfall Charge—General) Bill 2011**, the **Clean Energy (Unit Issue Charges – Fixed Charge) Bill 2011**, the **Clean Energy (Unit Issue Charges – Auctions) Bill 2011,** the **Clean Energy (Charges—Excise) Bill 2011,** the **Clean Energy (Charges—Customs) Bill 2011**, the **Clean Energy (International Unit Surrender Charge) Bill 2011**, the **Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011** and the **Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011**.
Related bills	Other elements of the Government's Climate Change Plan are being implemented through other legislation. These are: • the **Clean Energy (Excise Tariff Legislation Amendment) Bill 2011** and the **Clean Energy (Customs Tariff Amendment) Bill 2011**, which imposes an effective carbon price on aviation and non-transport gaseous fuels through excise and customs tariffs; • the **Clean Energy (Fuel Tax Legislation Amendment) Bill 2011**, which reduces the business fuel tax credit entitlement of non-exempted industries for their use of liquid and gaseous transport fuels, in order to provide an effective carbon price on business through the fuel tax system; and • the **Clean Energy (Household Assistance Amendments) Bill 2011**, the **Clean Energy (Tax Laws Amendments) Bill 2011** and the **Clean Energy (Income Tax Rates Amendments) Bill 2011,** which will implement the household assistance measures announced by the Government on 10 July 2011. These bills amend relevant legislation to provide payment increases for pensioners, allowees and family payment recipients and provide income tax cuts and establish new supplements for low- and middle-income households.

The bill needs to be read in the context, in particular, of the main bill.

Clean Energy (Consequential Amendments) Bill 2011

The consequential amendments bill includes consequential amendments and transitional provisions.

The consequential amendments include amendments to the *National Greenhouse and Energy Reporting Act 2007*, the *Carbon Credits (Carbon*

Farming Initiative) Act 2011, and the *Australian National Registry of Emissions Units Act 2011*. Amendments to taxation legislation are also included, to accommodate the new carbon pricing mechanism, and to provide a refundable tax offset (RTO) for certain new depreciating assets used in conservation tillage farming practices. Amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and associated legislation provide that importers and manufacturers of Kyoto Protocol synthetic greenhouse gases will be subject to the carbon charge by way of the existing levy structure.

The transitional provisions include provisions which are necessary as the result of amendments which will transfer the functions of the Greenhouse and Energy Data Officer under the *National Greenhouse and Energy Reporting Act 2007*, the Carbon Credits Administrator under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000*, to the Clean Energy Regulator. These include provisions to enable staff transferring from the Office of the Renewable Energy Regulator or the Department of Climate Change and Energy Efficiency to start their employment on the same terms and conditions as they had prior to transfer. Similar provision is made for staff transferring to the new Climate Change Authority.

Structure of the explanatory memorandum

Amendments to the *National Greenhouse and Energy Reporting Act 2007* are described in Chapter 1 of this explanatory memorandum.

Amendments to the taxation legislation in relation to the carbon pricing mechanism are described in Chapter 2.

Amendments to taxation legislation in relation to the conservation tillage refundable tax offset are described in Chapter 3.

Amendments to the *Australian National Registry of Emissions Units Act 2011* are described in Chapter 4.

Amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011* are described in Chapter 5.

Amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* are described in Chapter 6.

Amendments to other legislation are described in Chapter 7.

The transitional and application provisions are described in Chapter 8.

Date of effect and application

Part 1 of Schedule 1 and Part 2 of Schedule 2 will come into effect at the same time as section 3 of the proposed main bill.

Part 2 of Schedule 1 will come into effect on 1 July 2012. This is the date the carbon pricing mechanism will commence with a fixed charge for each tonne of carbon pollution put into the atmosphere each year.

Part 1 of Schedule 2 will come into effect on the later of the day after the Treasurer announces, by notice in the Gazette, that the States and Territories have agreed to the amendments, and the day that section 3 of the proposed main bill commences.

Part 3 of Schedule 2 will come into effect on 1 July 2015.

Schedule 3 will come into effect the day after the consequential amendments bill receives the Royal Assent.

Schedule 4 will come into effect the later of the day the consequential amendments bill receives the Royal Assent and the day section 3 of the *Australian National Registry of Emissions Units Act 2011* commences.

Schedule 5 will come into effect the later of the day the consequential amendments bill receives the Royal Assent and the day section 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* commences.

Proposal announced

The measures are based on the Government's announcement of its *Clean Energy Future Plan* on 10 July 2011.

Financial impact

The financial impact statement is included in the main bill.

Regulation impact statement

The Regulation Impact Statement for the mechanism is available at http://ris.finance.gov.au. The RIS was prepared by the Department of Climate Change and Energy Efficiency and has been assessed as adequate by the Office of Best Practice Regulation.

Amendments to the National Greenhouse and Energy Reporting Act 2007

Outline of chapter

1.1 The consequential amendments to the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) are in Schedule 1 of the consequential amendments bill. This Schedule is divided into two Parts:

- Part 1 deals with amendments commencing at the same time as section 3 of the Clean Energy Bill 2011 commences (that is 28 days after the main bill and the Acts listed in Item 2 of the table in section 2 of the main bill receive Royal Assent). The relevant amendments in this Part are largely concerned with replacing references to the Greenhouse and Energy Data Officer (GEDO) with references to the Regulator.
- Part 2 includes amendments to the NGER Act that commence on 1 July 2012.

1.2 This approach is adopted because the GEDO will cease to administer the NGER Act when section 3 of the Clean Energy Bill 2011 commences and the Regulator is established. Reporting obligations for entities liable under the carbon pricing mechanism will only commence from 1 July 2012**.**

Context

1.3 The NGER Act provides a national framework for the reporting and dissemination of information related to greenhouse gas emissions, energy consumption and energy production. Many liable entities that are controlling corporations will already be reporting under the NGER Act. To maintain the Government's commitment to the streamlining of reporting of greenhouse and energy data, including for liable entities, the NGER Act will require greenhouse gas emissions covered by the carbon pricing mechanism to be reported. Amendments to the existing NGER Act are required to support the carbon pricing mechanism.

1.4 The Government's policy is to establish a single regulator, the Clean Energy Regulator (the Regulator), to administer the carbon pricing mechanism, the Renewable Energy Target, the Greenhouse and Energy Reporting System, the Carbon Farming Initiative and the Australian National Registry of Emissions Units. The establishment of the Regulator is discussed

further in the explanatory memorandum on the Clean Energy Regulator Bill 2011.

1.5 The introduction of amendments to the NGER Act due to the carbon pricing mechanism does not alter the effect of reporting provisions for controlling corporations under that Act as introduced in 2007. This is because the NGER Act will continue to have objects in addition to underpinning the carbon pricing mechanism including:

- informing Australian government policy formulation and the Australian public,
- meeting Australia's international reporting obligations,
- assisting Commonwealth, State and Territory government programs and activities, and
- avoiding duplication of similar reporting requirements in the States and Territories.

Summary of new law

Part 1: Amendments commencing on the same date as section 3 of the Clean Energy Bill 2011

Replacement of references to the Greenhouse and Energy Data Officer

1.6 Currently the GEDO is responsible for administration of the NGER Act and is established under section 49 of that Act. References to the Greenhouse and Energy Data Officer are replaced with references to the Regulator and provisions enabling the establishment of the GEDO are removed.

Publication

1.7 The requirement for written approval from the Regulator to allow the States, Territories and other persons to publish information is removed.

Disclosure

1.8 Disclosure provisions have been aligned with provisions included in the Clean Energy Regulator Bill 2011.

Part 2: Amendments commencing on 1 July 2012

Definitions

1.9 Key definitions are amended so that they apply consistently to liable entities across both the main bill and the NGER Act.

Registration

1.10 Registration under the NGER Act is required by entities that will have, or expect to have, reporting obligations due to the carbon pricing mechanism. These entities include:

- liable entities, and
- liable entities with an interim emissions number.

1.11 The names of persons who are registered under the NGER Act will be published on the National Greenhouse and Energy Register on the Regulator's website.

Deregistration

1.12 Entities are allowed to apply to deregister if they meet the requirements for deregistration under the NGER Act. An entity is deregistered once the Regulator takes the person's name off the National Greenhouse and Energy Register.

Reporting

1.13 As a result of the introduction of the carbon pricing mechanism, liable entities are required to report under the NGER Act.

1.14 Different reporting requirements may apply in different circumstances. This segment of the explanatory memorandum also discusses the differences in reporting requirements between the fixed and flexible charge periods.

Methodologies

1.15 The *National Greenhouse and Energy Reporting (Measurement) Determination 2008* will be updated to allow for reporting by liable entities under the carbon pricing mechanism.

Audit

1.16 Audit provisions are included for entities liable under the carbon pricing mechanism. Entities with an emissions number exceeding a specified amount are required to have their emission reports audited prior to submission.

Public Disclosure

1.17 Emissions numbers will be published for all liable entities at the entity level. Additionally, greenhouse gas emissions and energy production data will be published for electricity generation facilities. This segment also covers other disclosure provisions.

Penalties

1.18 Penalties for provisions in the NGER Act that relate to carbon pricing mechanism obligations and liability have been increased to align with penalties under the main bill.

Operational reviews of the NGER Act

1.19 The Climate Change Authority is required to undertake periodic reviews of the NGER Act and its instruments. These will evaluate whether the objectives of the Act are being met, and must be performed at least every five years. The Minister may also commission a special review of the NGER Act and its instruments at any time. This review can evaluate the operation of the NGER Act and its instruments.

Other General Amendments

1.20 Other amendments align the NGER Act with the main bill. This will make understanding both the legislation and compliance regime simpler for entities with obligations under both pieces of legislation.

Comparison of key features of new and current law

New Law	*Current Law*
Emissions, scope 1 (direct) and scope 2 (indirect) are defined separately	The definition of emissions includes scope 1 (direct) and scope 2 (indirect) emissions
The statutory authority that is responsible for enforcing the NGER Act is the Regulator	The statutory office that is responsible for enforcing the NGER Act is the Greenhouse and Energy Data Officer
Defines potential greenhouse gas emissions embodied in an amount of natural gas	Potential greenhouse gas emissions are not included in the NGER Act
Reporting obligations associated with liabilities can apply to all legal entities defined as a 'person'	Reporting obligations only apply to controlling corporations
Existing reporting obligations for controlling corporations have not changed. Reporting obligations for entities liable under the carbon pricing mechanism only relate to 'covered' scope 1 emissions	Reporting obligations for controlling corporations relate to greenhouse gas emissions (scope 1 and scope 2), energy consumption and energy production
Operational control is amended to: include persons; allow for a declaration of operational control by the Regulator in relation to persons; and to allow for the nomination of	Operational control and the Greenhouse and Energy Data Officer's ability to declare operational control only applies to members of a controlling

operational control where no single person has the greatest authority	corporation's group
Facility and activity definitions include carbon capture and storage and landfill facilities	Facility and activity definitions do not explicitly include situations where there are no operations occurring (for example closed landfill facilities)
Liable entities will have to register and meet reporting obligations under the NGER Act	Only controlling corporations that meet NGER Act thresholds are required to register and meet reporting obligations
Record keeping requirement is five years for the carbon pricing mechanism and the NGER Act	Record keeping requirement is seven years for the NGER Act
Penalties for provisions that are relevant to the carbon pricing mechanism are increased to ensure consistency in penalties. Maximum penalty is 10,000 penalty units	Penalties generally only apply to controlling corporations. Maximum penalty is 2,000 penalty units

Detailed explanation of new law

Amendments commencing on the same date as section 3 of the Clean Energy Bill 2011

Removal and replacement of references to the Greenhouse and Energy Data Officer etc.

1.21 References to the GEDO and a member of the staff of the Officer are replaced with references to the Regulator and officials of the Regulator. ***[Schedule 1, Part 1, items 106-108] [Schedule 1, Part 1, items 110-143] [Schedule 1, Part 1, items 147-153] [Schedule 1, Part 1, item 154] [Schedule 1, Part 1, items 158-192]***

Publication

1.22 In addition to the existing ability to publish data if required to do so by law, States and Territories will also be permitted to publish information disclosed to them by the Regulator, provided that it is in an aggregate form. All provisions relating to the publication of information by the States, Territories and other persons are revised to remove the requirement for written approval from the Regulator. While the requirement for written approval is removed, existing secrecy provisions and data aggregation requirements remain in place. ***[Schedule 1, Part 1, item 153A]***

Disclosure

1.23 In this chapter, public disclosure refers only to the publication of greenhouse and energy information in the public domain. Offences relating to the disclosure of 'protected information' to certain agencies, bodies and persons (other than by publication in the public domain) are dealt with under the Clean Energy Regulator Bill 2011. As such, section 26 in the NGER Act is repealed. Disclosure to the States and Territories continues to be provided for under section 27 of the NGER Act. ***[Schedule 1, Part 1, item 109] [Schedule 1, Part 1, item 146] [Schedule 1, Part 1, item 155]***

1.24 Secrecy provisions in the NGER Act relate to information obtained prior to the commencement of the Clean Energy Bill 2011. Information obtained after commencement is covered by Part 3 in the Clean Energy Regulator Bill 2011. These amendments therefore differentiate between information obtained prior to and after the commencement of the Clean Energy Bill 2011. A provision is also included to clearly indicate that information disclosed under section 26 relates to information provided under a provision which has been repealed. However, upon commencement of the Clean Energy Regulator Bill 2011, all greenhouse and energy information, which is subsequently obtained by an official of the Regulator, will become 'protected information', and therefore subject to the Clean Energy Regulator Bill 2011. ***[Schedule 1, Part 1, items 144-145A]***

Definitions

Overview

1.25 This section outlines amendments to the NGER Act definitions as a consequence of the introduction of the carbon pricing mechanism. The intention is to incorporate new definitions, amend existing definitions and include definitions that will have the same meaning under both the Clean Energy Bill 2011 and the NGER Act.

Emissions

1.26 The definition of 'emissions' under the NGER Act encompasses scope 1 (direct) and scope 2 (indirect) emissions. Carbon pricing mechanism liability is attached to a subset of scope 1 emissions of greenhouse gas. The NGER Act is amended to take this into account through defining scope 1 emissions separately from scope 2 emissions. ***[Schedule 1, Part 2, item 282]***

1.27 Definitions of a 'scope 1 emission' and a 'scope 2 emission' are included in section 10 of the NGER Act. ***[Schedule 1, Part 2, items 315-316]***

1.28 Section 10 also allows for a scope 1 and a scope 2 emission to be defined in the NGER regulations. ***[Schedule 1, Part 2, items 333-339]***

Greenhouse gas

1.29 The definition of 'greenhouse gas' applies for the purposes of both the Clean Energy Bill 2011 and the NGER Act.

1.30 The NGER regulations may also prescribe new greenhouse gases if required. It is intended that a new greenhouse gas would only be included in regulations if it becomes a gas that is agreed internationally to be included for the purposes of meeting Australia's international emissions reduction obligations. ***[Schedule 1, Part 2, item 323] [Schedule 1, Part 2, item 290]***

Carbon dioxide equivalence

1.31 The definition of 'carbon dioxide equivalence' (CO_2-e) in the NGER Act is amended to provide for calculating:

- the carbon dioxide equivalence of an amount of greenhouse gas; and
- the carbon dioxide equivalence of an amount of potential greenhouse gas emissions embodied in an amount of natural gas.

1.32 The carbon dioxide equivalence of an amount of greenhouse gas (metric weight) means the amount of the gas multiplied by a value specified in the regulations in relation to that kind of greenhouse gas. This value is the internationally accepted global warming potential for that gas. ***[Schedule 1, Part 2, item 278] [Schedule 1, Part 2, item 323]***

Potential greenhouse gas emissions

1.33 'Potential greenhouse gas emissions' embodied in an amount of natural gas and its carbon dioxide equivalence are defined to allow for upstream reporting of emissions from natural gas. ***[Schedule 1, Part 2, item 309] [Schedule 1, Part 2, item 323]***

Liable entities, controlling corporations and corporate groups

1.34 To the extent it underpins the carbon pricing mechanism; the NGER Act applies to all legal entities covered by the Clean Energy Bill 2011, through the definition of 'person'. ***[Schedule 1, Part 2, item 308] [Schedule 1, Part 2, item 299]***

1.35 To reflect the approach under the carbon pricing mechanism to liability and operational control over a facility, the definition of 'groups', 'joint ventures' and 'trusts' under the NGER Act is amended and references to partnerships are removed. (For detail on the treatment of joint ventures, see Chapter 1 of the explanatory memorandum to the main bill). ***[Schedule 1, Part 2, item 293] [Schedule 1, Part 2, item 297] [Schedule 1, Part 2, item 300] [Schedule 1, Part 2, item 319] [Schedule 1, Part 2, items 324-326]***

1.36 A provision is included to avoid doubt that a controlling corporation's group may consist of the controlling corporation alone. ***[Schedule 1, Part 2, item 327]***

1.37 To assist in the enforcement of obligations under the Clean Energy Bill 2011 and the NGER Act, a provision is included to define a foreign person. ***[Schedule 1, Part 2, item 288]***

1.38 The definition of a non-group entity identifies any person that is not a member of a controlling corporation's group (essentially this encompasses individuals and any other entities that are not constitutional corporations). ***[Schedule 1, Part 2, item 303]*** These entities only have obligations under the NGER Act because of obligations under the carbon pricing mechanism.

Operational control

1.39 'Operational control' is the concept used when determining the entity with NGER obligations and/or a liability under the carbon pricing mechanism for a facility. The operational control approach is adopted for the carbon pricing mechanism as it places obligations on the person that has the greatest ability to introduce and implement operational and environmental policies for a covered facility. In addition many entities have already begun organising emission reporting systems around the operational control approach as defined in the NGER Act.

1.40 The definition of operational control underpins both the Clean Energy Bill 2011 and the NGER Act through the expansion of operational control to all carbon pricing mechanism entities through its application to any person. ***[Schedule 1, Part 2, items 339A-347]***

1.41 To support this inclusion and the carbon pricing mechanism's approach to liability, the definition of operational control in the NGER Act includes:

- an operational control provision for the person who has the greatest authority over operational and environmental policies (section 11A); and
- provisions that relate to circumstances where more than one person has authority over operational and environmental policies (sections 11B and 11C). ***[Schedule 1, Part 2, item 307] [Schedule 1, Part 2, items 348-349]***

1.42 Nomination of a person as the person with operational control under the NGER Act requires the nomination of a non-foreign person where possible. A definition for 'foreign person' is included in the NGER Act. ***[Schedule 1, Part 2, item 349] [Schedule 1, Part 2, item 288]***

1.43 The Regulator may make a declaration in regard to operational control in relation to a non-group entity either on application by the non-group entity or at the Regulator's own initiative. ***[Schedule 1, Part 2, item 407] [Schedule 1, Part 2, item 411]*** The NGER Act previously provided for such declarations only in relation to constitutional corporations and members of their groups (section 55).

1.44 The Regulator cannot declare that a member of a corporation's group or a non-group entity has operational control unless it is satisfied that the entity has substantial authority over operational and environmental policies. Further, in the case of an application by a member of a controlling

corporation's group for a declaration of operational control, the controlling corporation must have consented to the application. ***[Schedule 1, Part 2, items 406-407]***

Facility

1.45 The definition of a 'facility' applies to both the NGER Act and the Clean Energy Bill 2011. The Regulator may declare a facility on application by a controlling corporation or a non-group entity or at its own initiative. ***[Schedule 1, Part 2, items 328-330] [Schedule 1, Part 2, items 403A-405] [Schedule 1, Part 2, item 410]***

1.46 The limitation of the definition of a 'facility' and 'greenhouse gas projects' to oil and gas extraction activities in the exclusive economic zone is removed so that the NGER Act can apply to emissions such as those from offshore carbon storage facilities under the sea bed. ***[Schedule 1, Part 2, items 291-292] [Schedule 1, Part 2, item 304] [Schedule 1, Part 2, item 331]***

1.47 A definition for 'carbon capture and storage' is inserted into the NGER Act to ensure that the definition of 'activity' extends to carbon capture and storage. ***[Schedule 1, Part 2, item 275] [Schedule 1, Part 2, item 277]***

1.48 To allow for the coverage of emissions from solid waste and other things such as stockpiling and storage the definition of 'activity' in relation to a facility is expanded. ***[Schedule 1, Part 2, item 275]***

1.49 In addition, 'operation' in relation to a facility will be defined to include the subsistence of the facility. For example a closed landfill facility continues to emit greenhouse gas emissions and is therefore still considered to be in operation even though waste is no longer being received. ***[Schedule 1, Part 2, item 305]***

1.50 Subsection 9(3) of the NGER Act currently provides that, for the purposes of paragraph 9(1)(a) of the NGER Act, the activity or activities constituting the undertaking or enterprise must not be attributable to more than one industry sector. The question as to which industry sector a facility belongs is used for statistical purposes only and not for determining what a facility is. As it is not relevant in this context, subsection 9(3) is repealed. ***[Schedule 1, Part 2, item 332]***

Further amendments to definitions

1.51 The meaning of 'natural gas' will be defined in the *National Greenhouse and Energy Reporting Regulations 2008*. ***[Schedule 1, Part 2, item 301]***

1.52 The terms listed below will be defined in the NGER Act by reference to the Clean Energy Bill 2011:

- 'eligible financial year'; ***[Schedule 1, Part 2, item 281]***
- 'emissions number'; ***[Schedule 1, Part 2, item 283]***
- 'financial control liability transfer certificate'; ***[Schedule 1, Part 2, item 285]***

- 'fixed charge year'; ***[Schedule 1, Part 2, item 286]***
- 'foreign country'; ***[Schedule 1, Part 2, item 287]***
- 'interim emissions number'; ***[Schedule 1, Part 2, item 295]***
- 'liable entity'; and ***[Schedule 1, Part 2, item 298]***
- 'provisional emissions number'. ***[Schedule 1, Part 2, item 310]***

1.53 Other terms will be defined in the NGER Act by reference to other Acts.

- 'Joint Petroleum Development Area' ***[Schedule 1, Part 2, item 296]*** is defined in the *Petroleum (Timor Sea Treaty) Act 2003*, while 'trustee' ***[Schedule 1, Part 2, item 320]*** and 'trust estate' ***[Schedule 1, Part 2, item 321]*** are defined in the *Income Tax Assessment Act 1997*.

1.54 A number of terms will have the meanings given by the *Acts Interpretation Act 1901*, as amended by the *Acts Interpretation Amendment Act 2011* which commences prior to 1 July 2012.

- 'continental shelf';
- 'exclusive economic zone'; and
- 'territorial'.

1.55 A definition of 'approved by the Regulator' has been included to make it clear that where the Regulator has approved something, this means that it has done so in writing, for the purposes of the provision in which the term occurs. This also ensures that such a provision will attract the provisions in the *Acts Interpretation Act 1901* concerning varying and revocation. ***[Schedule 1, Part 2, item 276]***

Registration

1.56 The following liable entities are required to apply to register under the NGER Act:

- ***Controlling corporations*** that meet a threshold under section 13 of the NGER Act are required to apply to register under the NGER Act by 31 August following the first financial year which triggers their registration requirement.
- ***Liable entities*** are required to apply to register under the NGER Act by 31 August following the first financial year which triggers their registration requirement.
- ***Liable entities with an interim emissions number*** are required to apply to register under the NGER Act by 1 May in the current eligible financial year if the person was not previously registered but is a liable entity (or is expected to

be a liable entity) for the current fixed charge year. This registration requirement is intended to apply to persons who have an interim emissions number. This registration category applies during the fixed charge period to enable persons to register prior to making a progressive surrender.

1.57 Registration occurs under two separate Divisions of the NGER Act, Division 3 and Division 4 of Part 2. Only controlling corporations that meet a threshold outlined in section 13 of that Act are required to apply to register under Division 3 of Part 2. If a controlling corporation is already registered under that Division and subsequently becomes a liable entity, it will not be required to register again under Division 4. If a corporate group member, other than the registered controlling corporation, is a liable entity for a particular facility, it is required to register under Division 4. ***[Schedule 1, Part 2, item 350] [Schedule 1, Part 2, item 352] [Schedule 1, Part 2, item 354] [Schedule 1, Part 2, item 356] [Schedule 1, Part 2, items 313-314]***

1.58 Once a person has applied to register under the NGER Act, the Regulator must cause their name to be entered on the National Greenhouse and Energy Register (the Register). The Register will include the names of registered persons and the matters specified in the regulations, which may include information provided in reports submitted under the NGER Act. The intent is for a published version of the Register for each financial year to be made available on the Regulator's website by 28 February following the relevant financial year. For example, the 2012-13 Register must be published by 28 February 2014 and the 2013-14 Register must be published by 28 February 2015. The intent is for the published Register to, at a minimum, include names of persons registered for the previous financial year. Other information may be published at the Regulator's discretion. Publication of annual registers will help inform the Australian public as to whether and when an entity was registered under the NGER Act. ***[Schedule 1, Part 2, item 312] [Schedule 1, Part 2, item 353] [Schedule 1, Part 2, item 356]***

1.59 A provision is included to ensure that greenhouse gas emissions, energy production and energy consumption are only counted towards meeting a specified threshold where the Minister has determined a method or criteria for measurement, as published in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*. This provision is intended to ensure that only recognised and measurable sources of greenhouse gas emissions and energy count towards meeting a specified threshold. ***[Schedule 1, Part 2, item 351]***

Deregistration

1.60 Once registered, a person may apply to the Regulator to deregister. The Regulator must deregister the person provided that:

- if they are a controlling corporation, they are unlikely to meet any of the thresholds in section 13 of the NGER Act for the

financial year in which they apply and are not likely to meet one of those thresholds in the following two financial years,

- they are not a liable entity for the financial year in which they apply and are not likely to be a liable entity in the following 2 financial years,
- they do not hold a reporting transfer certificate, and
- they have complied with their obligations under the Act. ***[Schedule 1, Part 2, item 356]***.

1.61 The Regulator may also initiate deregistration where a 'person' is no longer a legal entity (that is, it has ceased to exist). This provision is intended to cover instances where organisations do not apply for removal from the Register notwithstanding that they have ceased to trade and have no outstanding obligations under the Act. ***[Schedule 1, Part 2, item 356]***

1.62 A person ceases to be registered in the NGER Act when the Regulator removes their name from the National Greenhouse and Energy Register. ***[Schedule 1, Part 2, item 355-356]***

Reporting

1.63 As outlined above, reporting requirements under section 19 of the NGER Act will continue to apply to controlling corporations that met a threshold under section 13 of that Act and therefore are registered under Division 3 of Part 2 of that Act. The introduction of the carbon pricing mechanism will not alter the effect of reporting provisions for controlling corporations under that Act.

1.64 A provision is included to ensure that greenhouse gas emissions, energy production and energy consumption are only to be included in reports where the Minister has determined a method or criteria for measurement, as published in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*. This provision is intended to ensure that only recognised and measurable sources of greenhouse gas emissions and energy are included in submitted reports. ***[Schedule 1, Part 2, item 360] [Schedule 1, Part 2, items 367-369]***

1.65 Additional reporting requirements outlined in this segment are introduced into the NGER Act to underpin the introduction of the carbon pricing mechanism, including obtaining covered scope 1 greenhouse gas emissions data from liable entities. Liable entities (registered under Division 4 of Part 2 of the NGER Act) are not required to report scope 2 emissions, energy consumption or energy production data (see new part 3A). It is intended to streamline reporting requirements for controlling corporations and liable entities. ***[Schedule 1, Part 2, items 357-359] [Schedule 1, Part 2, item 362] [Schedule 1, Part 2, item 367]***

1.66 During both the fixed charge and flexible charge periods, liable entities under the carbon pricing mechanism are required to report to the

Regulator by 31 October each year following the reporting (financial) year. The NGER Act requires reporting of matters relevant to liability under the carbon pricing mechanism as specified in the Regulations, including:

- the calculation of their provisional emissions numbers,
- the greenhouse gas emissions attributable to covered scope 1 emissions (if applicable),
- the greenhouse gas emissions attributable to potential greenhouse gas emissions embodied in an amount of natural gas (if applicable), and
- the calculation of their final emissions number (see new section 22A). ***[Schedule 1, Part 2, item 367] [Schedule 1, Part 2, item 359]***

1.67 It is intended that during the fixed charge period, a liable entity who has a progressive surrender obligation must also report information relating to its interim emissions number. ***[Schedule 1, Part 2, item 367]***

Example 1.1

Existing reporter — not liable under the carbon pricing mechanism

Company A consumes 250 terajoules of energy and has direct emissions of 5,000 tonnes CO_2-e in 2012-2013. It therefore will continue to have reporting obligations under section 19 of the NGER Act because it meets an energy threshold under section 13 of the NGER Act. It is not a liable entity under the carbon pricing mechanism.

Company A's reporting requirements under the NGER Act will remain unchanged and it will not have any additional reporting obligations due to the carbon pricing mechanism.

Example 1.2

Existing reporter — liable under the carbon pricing mechanism

Company B is a controlling corporation that has previously registered and reported under the NGER Act because it has operational control over a facility with typical annual scope 1 (direct) emissions of 35,000 tonnes CO_2-e. It therefore will continue to have reporting obligations under section 19 of the NGER Act because it meets the threshold under paragraph 13(1)(d) of the NGER Act. Its scope 1 (direct emissions) are fugitive emissions from an active mine site and are covered under the carbon pricing mechanism. It will therefore become a liable entity from 1 July 2012.

Company B's existing reporting requirements under the NGER Act will remain unchanged and it will have additional reporting requirements due to the carbon pricing mechanism from 1 July 2012 onwards such as:

- Scope 1 (direct) emissions covered by the carbon pricing mechanism
- the calculation of its provisional emissions number

- the calculation of its emissions number

Example 1.3

New reporting entity — direct emitter

A local governing body is a liable entity from 1 July 2012 due to emissions from its landfill facility exceeding the facility threshold, but was not previously registered under the NGER Act on the basis that it was not a constitutional corporation. The local governing body will have reporting obligations relating to its emissions from 1 July 2012 onwards such as:

- Scope 1 (direct) emissions covered by the Carbon pricing mechanism
- the calculation of its provisional emissions number
- the calculation of its emissions number

The local governing body will not have any other obligations under the NGER Act such as reporting of scope 2 (indirect) emissions, energy production and energy consumption as it is not a controlling corporation and is therefore not required to register under section 12 and Division 3 or report under section 19 of that Act.

Example 1.4

New Reporting Entity — Natural Gas Retailer

Company Z is a natural gas retailer and was not previously registered under the NGER Act. Under the Clean Energy Bill 2011, as a supplier of natural gas it has obligations to register and report as a liable entity under the NGER Act. Company Z will have reporting obligations relating to its emissions from 1 July 2012 onwards such as:

- potential greenhouse gas emissions attributable to potential greenhouse gas emissions embodied in an amount of natural gas;
- the calculation of its provisional emissions number; and
- the calculation of its emissions number.

Financial control liability transfer certificates

1.68 Financial control liability transfer certificates are discussed in more detail in Chapter 1 of the explanatory memorandum to the main bill.

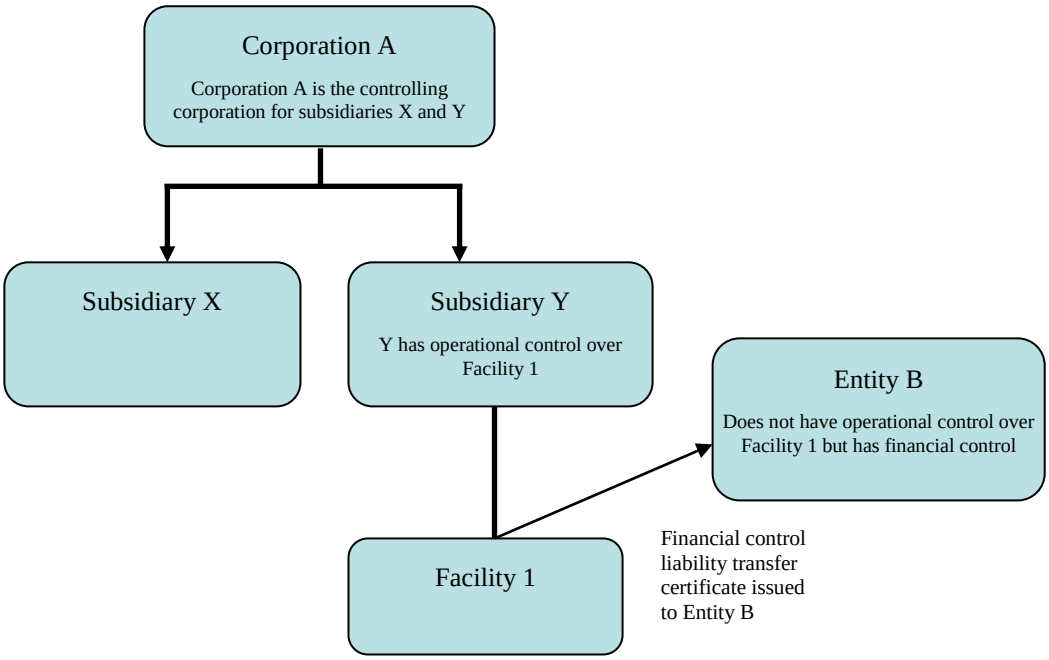
1.69 Financial control liability transfer certificate holders must provide a report to the Regulator relating to the greenhouse gas emissions, energy production and energy consumption from the operation of that facility relating to the whole, or part of the year for which it holds that certificate (see new section 22E). Similar to other liable entities, the holder of the financial control liability transfer certificate will also be required to report those matters relevant to it being the liable entity for that facility (see new section 22E). ***[Schedule 1, Part 2, item 367]***

1.70 Where liability has been transferred from an entity using a financial control liability transfer certificate, that entity will no longer have

reporting obligations for that facility. This is relevant to liable entities that are required to register under Division 4 of Part 2 of the NGER Act (see the liability transfer certificate exemption paragraphs in clauses 17, 18, 20 and 21 of the main bill). ***[Schedule 1, Part 2, item 361]***

1.71 The effect of the financial control liability transfer certificate will also be to remove the facility from the controlling corporation's group such that the facility no longer contributes to the controlling corporation's threshold calculations. This provision does not apply to holders of a controlling group liability transfer certificate. ***[Schedule 1, Part 2, item 351A]***

Example 1.5



A financial control liability transfer certificate is issued to Entity B in relation to Facility 1.

Facility 1 will be reported by Entity B as the holder of the financial control liability transfer certificate. Facility 1 will not form part of Corporation A's group for the purposes of meeting group thresholds under the NGER Act.

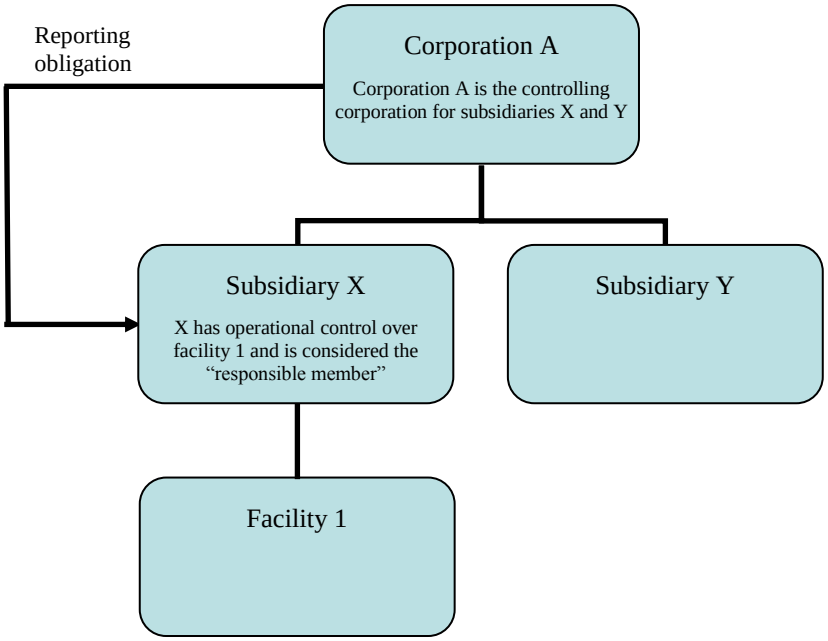
Transferring reporting obligations to a member of the corporate group

1.72 A provision is included to allow for the obligation to report to be transferred to a member of a corporate group, where both the controlling corporation and the responsible member jointly agree to the transfer. The responsible member must either have operational control over the facility or hold a corporate group Liability Transfer Certificate relating to the facility.

The responsible member will be required to report all information relating to that facility in place of the controlling corporation.

1.73 In practice, this means that where an entity transfers reporting obligations within a corporate group, that facility will still contribute toward its greenhouse gas emissions, energy consumption and energy production totals for the purposes of calculating whether it meets a group threshold under section 13 of the NGER Act. However, the controlling corporation is not required to report information relating to that facility. ***[Schedule 1, Part 2, item 369] [Schedule 1, Part 2, item 363]***

Example 1.6



Subsidiary X (as the responsible member) is required to provide all relevant information to the Regulator.

Facility 1 will continue to form part of Corporation A's group for the purposes of meeting a group thresholds under the NGER Act.

Methodologies

1.74 Emissions estimation methodologies under the carbon pricing mechanism are those set out under the *National Greenhouse and Energy Reporting (Measurement) Determination 2008,* which is made by the Minister under sub-section 10(3) of the NGER Act.

1.75 Provisions relating to methodology policy decisions are expected to be included in amendments to the *National Greenhouse and*

Energy Reporting Regulations 2008 and the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* to ensure that specific methodologies exist to meet obligations under the carbon pricing mechanism.

Audit

Audit regime overview

1.76 Audits under the NGER Act can be broadly divided into three main categories, as follows:

- mandatory pre-submission audits (see below),
- compliance (undertaken where non-compliance is suspected), and
- other (undertaken as monitoring general compliance as part of a broader risk minimisation framework).

1.77 Compliance and 'other' audits may be undertaken in relation to the compliance with, or investigation into, one or more aspects of the NGER Act or the regulations, for the following entities:

- a registered corporation (including those which are liable entities);
- a non group entity; or
- an entity reporting under section 22X, that is not a registered corporation.

To whom the mandatory audit requirement applies

1.78 A person who is a liable entity for a financial year and who is required to provide a report under section 22A of the NGER Act and whose emissions number exceeds the number specified in the regulations is subject to mandatory audit provisions as set out in new section 74AA. ***[Schedule 1, Part 2, item 414]***

1.79 The emissions number is the total of the person's provisional emissions numbers (if any) for the relevant financial year. This means that excess surrender numbers and make good numbers are not taken into account for the purposes of meeting the audit threshold.

1.80 It is expected that the emissions number which is initially prescribed will be 125,000, corresponding to covered scope 1 emissions of 125,000 tonnes of carbon dioxide equivalence. The Government will then consider the need to extend this requirement on the basis of initial experience, developments relating to international linking and the compliance burden on small entities.

Mandatory audit requirements

1.81 Any liable entity meeting the above criteria will be required to appoint an audit team leader who is a registered greenhouse and energy auditor. ***[Schedule 1, Part 2, item 414]***

1.82 The liable entity must then arrange for that audit team leader to carry out an audit of its emissions report under section 22A, other matters relating to the report as prescribed in regulations, and compliance with the record-keeping requirement under section 22B.

1.83 The liable entity must arrange for the audit report to be provided to them setting out the results of the audit and the liable entity must give the Regulator a copy of this report on the day that the emissions report set out under 22A is submitted.

1.84 Regulations may specify the type of audit, the matters to be covered by the audit, the form of the audit and the kinds of details it is to contain.

1.85 Ensuring the accuracy of emissions reports will be vital in achieving the environmental objectives of the carbon pricing mechanism. Penalties are included to encourage prompt and effective auditing of emissions reports.

Other audit amendments

1.86 The NGER Act is amended to apply the existing external audit provisions to non-group entities and non-registered corporate group members who have agreed to take on a controlling corporation's reporting obligations for a facility. ***[Schedule 1, Part 2, item 414] [Schedule 1, Part 2, item 289]***

Public Disclosure

1.87 The publication requirements relating to energy consumption are revised. Amendments provide for adjusted 'net' energy consumption information to be published to ensure that the published amount is representative for a registered corporation. The procedures for adjustment will be outlined in the Regulations. Publication requirements are extended to include information provided under Parts 3D and 3F, in addition to Part 3. ***[Schedule 1, Part 2, item 371]***

1.88 The Regulator will publish, for each eligible financial year, a liable entity's total provisional emissions numbers, split according to the total covered scope 1 emissions of greenhouse gas and the total attributable to potential greenhouse gas emissions embodied in an amount of natural gas.

1.89 The above information is published at the entity level and not at the facility level. ***[Schedule 1, Part 2, item 375] [Schedule 1, Part 2, items 379-379A]***

1.90 The Regulator will also publish on its website, information on greenhouse gas emissions and energy production data (totals and disaggregated) reported by designated generation facilities. Publication will

apply to all facilities where the principal activity is electricity generation and where the facility is not part of a vertically-integrated production process (VIPP). ***[Schedule 1, Part 2, items 378] [Schedule 1, Part 2, item 280] [Schedule 1, Part 2, item 381]***

1.91 This means that facilities generating electricity for their own use or as a secondary activity will not have their emissions and electricity production data published. For example, landfill sites that generate electricity from landfill gas, sugar mills that generate electricity from sugar cane bagasse, or mining operations or smelting facilities that generate electricity for use on-site would not have their facility-level data published where the electricity generation capacity forms part of the larger facility. This information is intended to better inform markets and the community about the performance of electricity generators. Accordingly, designated generation facilities will not be able to apply to have their facility-level data withheld.

1.92 In addition, generation facilities that are part of VIPPs will not have their data published as these corporations are currently not required to report separate facility-level data for VIPP facilities and it is intended that only data which is already reported under the NGER Act will be published. ***[Schedule 1, Part 2, item 378] [Schedule 1, Part 2, item 280]***

1.93 The Regulator can only publish information relating to reporting transfer certificate holders and financial control liability transfer certificate holders if the facility triggers a specified energy and/or emissions threshold. This provision facilitates consistency between public disclosure arrangements. Further, if an entity only held either of these certificates for part of a year, published data will be based on the proportion of time that the certificate holder was considered to have control. ***[Schedule 1, Part 2, items 375A-377A] [Schedule 1, Part 2, item 380]***

1.94 Persons that are required to report under sections 22A, 22AA, 22E and 22X of the NGER Act may apply to the Regulator to request that information not be published if that information reveals, or is capable of revealing trade secrets or any other matter that has commercial value that would be or could be reasonably diminished if the information were disclosed about a specific facility, technology or corporate initiative relating to the corporation or the person. ***[Schedule 1, Part 2, items 384-385]*** However, designated generation facilities will not be able to apply to have their facility-level data withheld (see new part 24(1AF)). ***[Schedule 1, Part 2, item 386]***

1.95 The Regulator may delegate its registration powers relating to maintaining the Register to another person. ***[Schedule 1, Part 2, item 415]***

Penalties

1.96 The penalty for breaching the secrecy provision is revised to include a financial penalty in addition to the possibility of imprisonment. ***[Schedule 1, Part 2, item 370]***

1.97 Penalties for provisions in the NGER Act that relate to carbon pricing mechanism obligations and liability have been clarified where relevant and increased to align them with penalties under the main bill. ***[Schedule 1, Part 2, items 412-413]***

1.98 Liable entities will be subject to penalties, including for continuing contraventions if they fail to comply with reporting requirements or if they fail to comply with external audit provisions. ***[Schedule 1, Part 2, items 387-390]***

Operational Reviews of the NGER Act

Regular Reviews of the Act

1.99 The Climate Change Authority (Authority) will conduct periodic reviews on the operation of NGER Act and its instruments.

1.100 The Authority must publish the report of a review on its website and give the report to the Minister, who must table copies in each House of the Parliament. The report may set out recommendations to the Government, which includes a cost benefits analysis of that action.

1.101 The Minister must, on behalf of the Government, prepare a response to each of the Authority's recommendations as soon as practicable after receiving the report. It is expected that the document will outline the Government's reasons for each response.

1.102 The first of these reviews must be completed between July 2016 and December 2018 and subsequent reviews must be completed within five years of the last review. ***[Schedule 1, Part 2, item 415A]***

Special Reviews of the Act

1.103 The Minister may cause the Authority to conduct a special review of the operation of the NGER Act and its instruments.

1.104 The Authority must give the report of a review to the Minister and must publish the report of a review on its website as soon as practicable thereafter. The Minister must table copies of the report in each House of the Parliament. The report may set out recommendations to the Government, which includes a cost benefits analysis of that action.

1.105 The Minister must, on behalf of the Government, prepare a response to each of the Authority's recommendations as soon as practicable after receiving the report. It is expected that the document will outline the Government's reasons for each response. ***[Schedule 1, Part 2, item 415A]***

1.106 The major difference between a special review and a regular review is that the regular reviews are undertaken periodically, while a special review is undertaken at the request of the Minister as required.

Other General Amendments

Record Keeping

1.107 Record keeping requirements in the NGER Act require all reporting entities and other relevant persons to retain records for five years, in line with standard taxation record keeping. ***[Schedule 1, Part 2, items 364-366] [Schedule 1, Part 2, item 368A]***

Object of the NGER Act

1.108 The objects of the NGER Act are amended to reflect the interaction between the NGER Act and the Clean Energy Bill 2011. The second object of the NGER Act is to underpin the Clean Energy Bill 2011 by imposing various registration, reporting and record-keeping requirements. These requirements, as outlined above, apply to liable entities. ***[Schedule 1, Part 2, items 261A-265]***

Constitutional basis

1.109 Where the NGER Act underpins the Clean Energy Bill 2011 the former relies on the same legislative powers as the latter. ***[Schedule 1, Part 2, items 266-268]***

Extension and limitation with regard to exclusion of some State and Territory laws

1.110 Section 5 of the NGER Act provides for the exclusion of specific State or Territory laws (or a part thereof) that apply to persons if that law provides for the reporting or disclosure of information relating to greenhouse gas emissions, greenhouse gas projects, energy consumption or energy production and is listed in the regulations as a law, or part of a law, to which the section applies. An exemption to the application of this provision in relation to laws providing for the reporting or disclosure of information related to greenhouse gas emissions is made for local governing bodies and authorities of a State or Territory. This limitation recognises that the Commonwealth does not wish to limit State and Territory laws (or a part thereof) from requiring reporting and disclosure of information related to greenhouse gas emissions by these entities to the States and Territories.

1.111 The purpose of section 5 is to support the streamlining of greenhouse and energy reporting by enabling corporations to meet the reporting requirements of multiple programmes through a single framework, created under the NGER Act.

1.112 No regulations have been made under this section to date and the Government is continuing to work cooperatively with State and Territory governments to transition towards a single reporting system across all jurisdictions. ***[Schedule 1, Part 2, items 269-272]***

Crown to be bound

1.113 In line with usual practice, while the Crown is bound by the NGER Act, the Crown is not subject to a pecuniary or criminal penalty. ***[Schedule 1, Part 2, item 273]*** This protection does not apply to an authority of the Crown.

Territorial boundary

1.114 The application and extensions of the NGER Act is the same as those of the Clean Energy Bill 2011, including extensions to the exclusive economic zone and continental shelf (as defined in the *Acts Interpretation Act 1901*, as amended by the *Acts Interpretation Amendment Act 2011*), and to the Joint Petroleum Development Area. The application of the NGER Act to foreign ships is also defined in the same manner as in the Clean Energy Bill 2011. ***[Schedule 1, Part 2, item 274] [Schedule 1, Part 2, item 294] [Schedule 1, Part 2, item 322]***

1.115 Executive officers of bodies corporate are liable under the NGER Act in line with the Clean Energy Bill 2011. ***[Schedule 1, Part 2, item 284] [Schedule 1, Part 2, items 391-403]***

Decisions that are reviewable by the Administrative Appeals Tribunal

1.116 Decisions by the Regulator not to register and not to deregister a person are reviewable by the Administrative Appeals Tribunal. ***[Schedule 1, Part 2, items 408-411]***

Taxation Amendments

Outline of chapter

2.1 Schedule 2 to the Clean Energy (Consequential Amendments) Bill 2011 amends the *Income Tax Assessment Act 1997* (ITAA 1997), the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Taxation Administration Act 1953* (TAA 1953) to establish a rolling balance treatment of registered emissions units for income tax with the following main features:

- The cost of a registered emissions unit (a unit) is deductible, with the effect of the deduction being deferred through the rolling balance (in the standard case where banked units are valued at cost) until the sale or surrender of the unit.
- The proceeds of selling a unit are assessable income.
- Any difference in the value of units held at the beginning of an income year and at the end of that year is reflected in taxable income, with:
  - any increase in value included in assessable income; and
  - any decrease in value allowed as a deduction.
- Taxpayers can elect to value all units held at the end of the first income year they hold units at either cost or market value.
- The valuation method chosen continues to apply but can be changed once at any time before the end of the 2014-15 income year (the fixed charge period) after which a change will only be allowed after a method has been used for four years.
- Where an entity surrenders a unit for a purpose unrelated to producing assessable income, the deduction for the cost is effectively reversed by including in assessable income an amount equal to the amount deducted for its acquisition.

2.2 Schedule 2 also inserts a provision to make an amount of unit shortfall charge an amount that is not deductible under the income tax law.

2.3 Schedule 2 also amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to make supplies of eligible emissions units under the carbon pricing mechanism GST-free.

2.4 Legislative references in this chapter are to the ITAA 1997, except where indicated.

Context of amendments

Summary of how existing law would have applied

2.5 When the carbon pricing mechanism commences, the proposed tax amendments apply immediately to set out the income tax treatment of units, and clarify the goods and services tax (GST) treatment of eligible units. The summary below outlines how the existing law would have applied to these units, if the proposed tax amendments were not enacted.

Income tax

2.6 For a taxpayer carrying on a business or undertaking other assessable income earning activities, the existing income tax law would recognise the cost of acquiring units. The particular treatment and provisions that would apply in any particular case would depend on the taxpayer's activities and its purpose, both when purchasing the unit and while holding the unit.

2.7 An entity could purchase a unit for the following purposes:

- to meet an obligation under the carbon pricing mechanism;
- to surrender voluntarily as part of a marketing campaign;
- as part of its trading portfolio; or
- otherwise for sale at a profit.

2.8 Under the existing law in the first two cases the cost may be deductible but the timing of the deduction would be unclear. In the third case, where units were bought for trading, the cost would generally be deductible on acquisition but any change over an income year in the value of units held would be brought to account as a deduction (where the value declined) or assessable income (where the value increased). In all three cases, any proceeds on the sale of the unit would be assessable income.

2.9 In the fourth case, where the cost would not be deductible or the proceeds assessable, both would be taken into account in working out any assessable gain or deductible loss on the sale of a unit. In all cases, it would be very unlikely that a capital gain or loss would be recognised under the capital gains tax (CGT) or losses provisions.

2.10 A unit acquired for private or domestic purposes (for example, to be surrendered voluntarily to offset the carbon footprint of the purchaser's private residence) would not be deductible under the current tax law.

Goods and services tax

2.11 The supply of an eligible emissions unit is a taxable supply if the requirements of section 9-5 of the GST Act are met.

2.12 GST applies to an eligible emissions unit acquired from an entity outside Australia if the supply is connected with Australia and the other requirements of a taxable supply are met. If the supply of an eligible emissions unit to a GST registered recipient carrying on an enterprise in Australia is not connected with Australia and the unit is acquired by the recipient solely for a creditable purpose, GST does not apply.

2.13 The supply of an eligible emissions unit to an entity outside Australia may be GST-free under an item in the table in subsection 38-190(1) of the GST Act if it is a supply other than of goods or real property. To satisfy certain items in the table, it is a requirement that the supply of the eligible emissions unit is not a supply directly connected with real property.

Objectives of the tax treatment of units

2.14 The tax treatment of units aims to:

- assist the carbon pricing mechanism's main aim of cost effectively meeting Australia's emissions reduction targets and contributing to the development of an effective global response to climate change; and
- incorporate the tax axioms of simplicity, efficiency and equity.

Income tax

2.15 To prevent complexities and uncertainties that would result from applying the existing income tax law to emissions units, discrete income tax provisions specify the income tax treatment for units registered on the Australian National Registry of Emissions Units. Those specific provisions establish a rolling balance treatment, similar to the trading stock provisions, under which:

- the cost of a unit would be deductible when the unit is acquired;
- the proceeds from selling a unit would be assessable income; and

- any difference in the value of units held at the beginning of an income year and at the end of that year would be reflected in taxable income, with any increase in value included as assessable income and any decrease in value allowed as a deduction.

2.16 The preference for specific provisions establishing a rolling balance treatment for units was the Government's position in the Carbon Pollution Reduction Scheme (CPRS) White Paper.

Goods and services tax

2.17 The Government's preferred position on the application of GST to eligible emissions units is to minimise compliance costs for taxpayers associated with the GST treatment of emissions unit transactions. Under the CPRS this was achieved by applying the normal GST rules to carbon pricing mechanism transactions. This was intended to ensure that carbon pricing mechanism transactions would receive the same treatment as similar transactions in the broader economy.

2.18 Under the carbon pricing mechanism, the policy objective remains to minimise compliance costs. However, the approach to achieving this is to make supplies of eligible emissions units GST-free and to apply the normal GST rules to financial derivatives of eligible emissions units and payments of grants of government assistance and other transactions under the carbon pricing mechanism.

Summary of new law

2.19 Schedule 2 of the *Clean Energy (Consequential Amendments) Bill 2011* establishes the income tax treatment, and clarifies the GST treatment, of emissions units.

Income tax

2.20 The Bill introduces discrete provisions that establish a rolling balance method of accounting for registered emissions units, similar to that for trading stock. The main features are:

- the cost of a unit is deductible, with the effect of the deduction being deferred through the rolling balance (in the default case where banked units are valued at cost) until its sale or surrender;
- the proceeds of selling a unit are assessable income;
- any difference in the value of units held by a taxpayer at the beginning of an income year and at the end of that year are reflected in taxable income, with:

  - any increase in value included in assessable income; and
  - any decrease in value allowed as a deduction;
- a taxpayer can elect to value all units held at the end of an income year at cost, using the 'first-in, first-out' (FIFO) cost method or the actual cost method, or at market value;
- a taxpayer's chosen valuation method continues to apply; however, a taxpayer will be able to change valuation methods once at any time before the end of the 2014-15 income year (the fixed charge period) after which a change will only be allowed after a method has been used for at least the previous four years that units were held at the end of the income year;
- the value of an eligible emissions unit will be deemed to be its market value where:
  - it is transferred under a non-arm's length transaction or a transaction with an associate;
  - it is issued as a free carbon unit (except in certain circumstances relating to emissions intensive trade exposed entities); and
  - it is a unit issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- where an entity surrenders a unit for a purpose unrelated to producing assessable income, the deduction for the cost of the unit is effectively reversed by including in assessable income an amount equal to the amount deducted;
- an amount of unit shortfall charge is not deductible under the income tax law.

Goods and services tax

2.21 The measure adds 'Subdivision 38-S – Eligible Emissions Units' to the GST Act, making eligible emissions units under the carbon pricing mechanism GST-free.

Detailed explanation of new law

Income tax

2.22 The income tax treatment of units centres on the holding of units on the Australian National Registry of Emissions Units (Registry or Australian Registry). The treatment of emissions units can be divided into what happens to an entity's holding of units on the Registry when the entity:

- becomes the holder of a registered emissions unit during an income year;
- holds a registered emissions unit at the end of an income year;
- ceases to hold a registered emissions unit during an income year by:
  - surrendering it, in which case the unit is removed from the Registry (section 122 of the *Clean Energy Bill 2011* (the main bill));
  - transferring the unit to a registry account held by another entity on the Registry (for example, under sections 104 and 105 of the main bill) or to another entity's foreign account;
  - transferring the unit to the entity's own foreign account, or the foreign account of its nominee upon which it ceases to be a registered emissions unit (section 35 and 52 of the *Australian National Registry of Emissions Units Act 2011* (the Registry Act));
  - relinquishing it, in which case the unit is cancelled or transferred to the Commonwealth (section 210 of the main bill).

Meaning of registered emissions unit

2.23 'Registered emissions unit' is a defined term that covers those units that are actually registered on the Registry. An emissions unit is a registered emissions unit if it is:

- a carbon unit; or
- a Kyoto unit; or
- a prescribed international unit; or

- an Australian Carbon Credit Unit (ACCU), as defined by the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act);

for which there is an entry in a registry account for the unit. ***[Schedule 2, item 28, section 420-10 and item 67, definition registered emissions unit, subsection 995--1(1)]***

2.24 The term 'carbon unit' has the same meaning as in the main bill. The terms 'Kyoto unit', 'prescribed international unit' and 'Registry account' all have the meanings as defined in the Registry Act (as amended by this bill). An eligible emissions unit is one that an entity can surrender to prevent a unit shortfall. Some types of Kyoto units (assigned amount units and certified emission reductions derived from afforestation or reforestation projects) and some ACCUs cannot be surrendered to prevent a unit shortfall but nevertheless they can be registered on the Registry, and are therefore by definition registered emissions units but are not eligible emissions units.

Holding a registered emissions unit

2.25 For income tax, an entity ordinarily holds a registered emissions unit if it is the registered holder of the unit within the meaning of the Registry Act. The holder of a registered emissions unit is defined in section 5 of the main bill as the person in whose Registry account there is an entry for the unit. ***[Schedule 2, item 28, section 420-12]***

Registered emissions units held by a person as a nominee

2.26 There is a specific 'look–through' rule that clarifies the income tax treatment where the registered holder of a registered emissions unit is merely a nominee for another entity. The other entity is treated as holding the unit and the registered holder is treated as not holding the unit. ***[Schedule 2, item 28, subsection 420-12(2)]***

2.27 Nominee has its ordinary meaning, which in this context is someone who holds bare legal title for the benefit of another (Black's Law Dictionary, 8th edition).

2.28 While the entity that is taken to hold the registered emissions unit under the 'look–through' rule can themselves be holding the unit as nominee, the provision only operates to 'look-through' the registered holder of the unit.

Example 2.1

Z is a stock broker who acquires and holds 50,000 carbon units in a Registry account. Z acquired and holds those units on behalf of its client, Company B.

The 'look-through' rule applies for income tax because Z holds the units as nominee for Company B. Company B is treated as holding the

50,000 carbon units, which are registered emissions units, and Z is treated as not holding those units.

Example 2.2

T is the trustee of a discretionary trust. Acting as trustee, T acquires and holds 10,000 carbon units in a Registry account.

The 'look-through' rule for nominees does not apply because T is not a mere nominee. The units are held by the trust for income tax purposes. Under the Registry Act, carbon units are held in a Registry account kept by a person. Person is defined to include a trust, which in turn is defined to mean a person in the capacity as trustee or, as the case requires, a trust estate. Both meanings of trust under the main bill are consistent with treating the unit as held by the trust for the purpose of working out income tax liabilities.

Becoming the holder of a registered emissions unit

2.29 An entity becomes the holder of a registered emissions unit during an income year by having that unit entered into their Registry account. This may occur as the result of:

- purchasing a registered emissions unit:
  - at an original auction conducted by the Authority for the Commonwealth (section 111 of the main bill);
  - on the secondary market, including at a secondary market auction (section 112 of the main bill);
  - as part of the fixed charge arrangement (section 100 of the main bill);
- transmission of the registered emissions unit by operation of law (section 106 of the main bill);
- being issued a free carbon unit by reason of:
  - the Jobs and Competitiveness Program (Part 7 of the main bill);
  - being a coal-fired electricity generator (Part 8 of the main bill);
- being issued an ACCU by reason of certain activities undertaken by the entity under the CFI Act; and
- transferring an international emissions unit from a foreign account onto the Registry (section 36 or section 53 of the Registry Act).

Deductions for expenditure incurred in obtaining a unit

2.30 An entity can deduct expenditure to the extent that the entity incurs it in becoming the holder of a registered emissions unit. The expenditure is deductible in the year the entity starts to hold the unit, ensuring that the timing of the deduction is matched to the income year in which the unit enters the entity's rolling balance account. ***[Schedule 2, item 28, subsections 420–15(1) and (2)]***

2.31 However, there are exceptions. Expenditure incurred in becoming the holder is not deductible under the proposed provisions in Division 420 if the registered emissions unit is issued in accordance with:

- the Jobs and Competitiveness program; ***[Schedule 2, item 28, paragraph 420-15(3)(a)]***
- coal-fired electricity generation assistance; or ***[Schedule 2, item 28, paragraph 420- 15(3)(b)]***
- the CFI Act resulting in the issue of ACCUs. ***[Schedule 2, item 28, subsection 420-15(4)]***

2.32 Expenditure that does not come within one of the deduction provisions in Division 420, and which is not made non-deductible by that Division, may nevertheless be deductible under other provisions of the income tax law.

2.33 Where an entity is undertaking activities under the Carbon Farming Initiative the normal deduction provisions apply to work out the deductibility of the expenses they incur in those activities. The activities are effectively regarded as directed towards establishing an eligible offsets project rather than towards producing ACCUs. If Division 420 were applied in these cases, various deductions would potentially be deferred until the ACCUs produced started to be held. ***[Schedule 2, item 28, subsection 420-15(4)]***

2.34 Expenditure incurred in preparing or lodging an application for a certificate of entitlement or an offsets report in relation to the CFI can be deducted under Division 420 (where the relevant conditions are satisfied). ***[Schedule 2, item 28, paragraphs 420- 15(4)(a) and (b)]***

Example 2.3

An entity engages an expert to assist in submitting an offsets report and applying for a certificate of entitlement under the CFI Act. The amount paid to the expert so far as this is for preparation of the offsets report and of the application for a certificate of entitlement is deductible under subsection 420-15(4).

2.35 Expenditure incurred in becoming the holder of a registered emissions unit (including under a deemed acquisition) is also not deductible where, if the unit were sold immediately after the taxpayer began to hold it, the proceeds would not be assessable income. This is

primarily designed to prevent foreign residents who are not assessable on the proceeds of sale of units from obtaining a deduction which could be offset against other Australian assessable income. For a more detailed discussion of the treatment of foreign residents see below under 'Foreign residents - whether they are taxable in relation to registered emissions units'. ***[Schedule 2, item 28, subsection 420-15(5)]***

Non-arm's length transactions and transactions with associates

2.36 If the consideration provided in a non-arm's length transaction or in a transaction between associates by which an entity became the holder of a registered emissions unit is not equal to the market value of the unit, the consideration is instead taken to have that market value. That is, market value consideration is taken to have been incurred whether the actual consideration was less than, or greater than, the market value of the unit or if there was no consideration paid or given. ***[Schedule 2, item 28, subsection 420-20(1)]***

2.37 There are a number of carve outs from this general principle. The principle does not apply to the issue of carbon units under the carbon pricing mechanism. Carbon units issued in Australia via auctions will by their nature be issued at the market value and so do not need to be covered by the principle. The tax treatment of recipients of free carbon units is specifically dealt with elsewhere in the Division. The recipients are not taken to have provided any consideration. The other broad category of units is ACCUs issued under the CFI Act. ***[Schedule 2, item 28, subsection 420-20(3)]***

2.38 Another category of transaction that is carved out from the non-arm's length transactions and transactions with associates principle is the transmission of registered emissions units arising from the death of individuals who held them just before their death, whether to a legal personal representative or to a beneficiary in the individual's estate. ***[Schedule 2, item 28, subsection 420-20(2)]***

Relationship with international transfer pricing provisions

2.39 Section 136AB of the ITAA 1936 is amended to clarify the relationship between the proposed non-arm's length transaction sections (sections 420-20 and 420-30) and the international transfer pricing provisions in Division 13 of Part III of the ITAA 1936. If both or either section 420-20 or section 420-30 and Division 13 could otherwise apply, the potential operation of section 420-20 and/or section 420-30 is to be disregarded. This leaves Division 13 to apply comprehensively in the international area, subject to the terms of any relevant double tax treaty. ***[Schedule 2, item 3, subsection 136AB(2) of the ITAA 1936]***

2.40 The result is that the relationship of sections 420-20 and 420-30 with Division 13 is the same as that of section 70-20, the non-arm's length rule for trading stock.

Transfer of an emissions unit from a foreign registry to the Australian Registry

2.41 An entity may transfer an international emissions unit from a foreign registry to its account on the Australian Registry. The process for this is set out in Part 4 of the main bill and it is commonly called importing an emissions unit. The importing rules also cover the following cases where both before and after importation the same entity holds the unit, either in an account in its own name or because another entity holds the unit as its nominee:

- an entity transferring an international emissions unit from its account on a foreign registry to its or its nominee's account on the Australian Registry; and
- an entity's nominee transferring an international emissions unit from its account on a foreign registry to the entity's account or its nominee's account, on the Australian Registry. ***[Schedule 2, item 28, section 420-21]***

2.42 An international emissions unit is defined in the Dictionary to the ITAA 1997 to mean a Kyoto unit or prescribed international unit, both of which have the same meaning as they have in the Registry Act. ***[Schedule 2, item 63, definition international emissions unit, subsection 995-1(1)]***

2.43 In addition to international emissions units, an entity may also transfer a carbon unit or ACCU that has previously been transferred from the Australian Registry to a foreign registry back onto the Australian Registry. These units are treated in the same way as international emission units when transferred onto the Australian Registry. There are thus three categories of units that may be imported - international emissions units, carbon units previously exported and ACCUs previously exported.

2.44 Division 420 provides specific rules for registered emissions units once they become registered on the Australian Registry. The general income tax provisions apply to international emissions units and to carbon units and ACCUs that have been transferred to a foreign account until the time the units are registered on the Australian Registry and become subject to Division 420 treatment (that is, when they are transferred from your foreign account). The treatment of the importation of these emission units depends on how the unit is treated under the income tax law before importation - in particular, on whether it was held on revenue or capital account.

2.45 Before they become registered emissions units in Australia, the international emissions units would generally be dealt with on revenue account (the cost and proceeds would be directly deductible and assessable or taken into account in working out assessable profits or deductible losses). In this context it is necessary to determine

whether, just before the transfer, the unit was trading stock or a revenue asset of the entity. Trading stock and revenue assets are both defined terms in the existing law. ***[Schedule 2, item 28, section 420-21]***

2.46 For each of the three categories of emissions units that may be imported new provisions describe the transfer of each type from either the entity's or the entity's nominee's foreign account to the entity's or the entity's nominee's registry account respectively. This is consistent with the way units may be held discussed above. ***[Schedule 2, item 28, paragraph 420-21(1)(a)]***

2.47 Where the importing entity (the entity or the entity's nominee) held the emissions unit on revenue account before importation, the entity is treated as having sold the unit to someone else just before it became a registered emissions unit for its cost. The entity is also treated as having immediately bought it back as a registered emissions unit for the same amount (the former cost). This process effectively rolls the unit onto the Australian Registry without a taxing point. ***[Schedule 2, item 28, subsection 420-21(1)]***

Example 2.4

An Australian resident company carries on a large manufacturing business in Australia and in the ordinary course of that business acquires, sells and surrenders emissions units. The company holds 100,000 emission reduction units (a type of international emissions unit) that are registered in New Zealand. The company then transfers all those emission reduction units from the New Zealand Register to its Australian Registry account and immediately after that surrenders them to acquit an Australian emissions liability.

Before the transfer the units were trading stock or revenue assets of the company. The company is treated as having sold each unit to someone else just before it became a registered emissions unit in Australia at its cost.

The company is also treated as having bought 100,000 registered emissions units for the same amount. The company is entitled to a deduction for that amount (section 420-15).

2.48 It is expected to be unusual for an importing entity to hold units that may be imports on capital account before importation. If this happens, the emissions unit is brought into Division 420 at its market value. A 'roll-over' treatment would be inappropriate because it would result in capital gains or losses being rolled over onto revenue account. Capital gains and losses are treated differently from revenue gains and losses under the income tax law. ***[Schedule 2, item 28, subsection 420-21(2)]***

2.49 Treating the incoming unit at market value causes a realisation event before the unit is transferred onto revenue account. It is important to note that taxpayers have discretion as to when they move units onto the Australian Registry and therefore they choose

when to realise an amount on capital account, before commencing treatment under Division 420.

2.50 As for units held on revenue account, rules are inserted to recognise that transfers of units held on capital account may occur from either the entity's or their nominee's foreign account to the entity's or their nominee's Registry account. Here, the importing entity is treated as if it sold the imported emissions unit for market value to someone else, and repurchased it for the same amount, just before it was entered on the Australian Registry. This ensures that any gain or loss that accrued before the unit was registered is brought to account under the provisions that applied before registration and any gain or loss while the unit is registered is treated under Division 420. ***[Schedule 2, item 28, subsection 420-21(2)]***

2.51 The capital gains and capital losses provisions are also amended because the capital gains tax (CGT) events generally do not rely on deemed sales or disposals. When a taxpayer starts to hold as a registered emissions unit, an international emissions unit they already held as neither trading stock nor a revenue asset, a CGT event happens. This is done by inserting a new CGT event K1, which expressly provides that the entity can make a capital gain or capital loss when they start to hold an international emissions unit as a registered emissions unit. The unit must, just before importation, be neither trading stock nor a revenue asset of the entity. ***[Schedule 2, items 14 to 16, sections 104-5, table item relating to CGT event K1, and 104-205]***

2.52 Where an emissions unit transferred to the Australian Registry was held as trading stock just before the transfer, the Division 420 rules apply rather than the trading stock rules that deal with a taxpayer ceasing to hold an item as trading stock but still owning it. ***[Schedule 2, items 12 and 13, subsection 70-110(2)]***

Ceasing to hold a registered emissions unit

2.53 An entity ceases to hold a registered emissions unit during an income year by:

- transferring it to either another account holder on the Australian Registry (for example, under paragraph 104(1)(a) of the main bill) or to another account holder on the Registry of another country (for example, under paragraph 104(1)(c) of the main bill);
- surrendering it to the Authority, upon which the registration is cancelled or the unit is removed from the entity's Registry account (under section 122 of the main bill);
- transferring it from their account on the Australian Registry to their account on the registry of another country (for example, under paragraph 104(1)(d) of the main bill); or

- relinquishing it, in which case the unit is cancelled or transferred to the Commonwealth relinquished units account (under section 210 of the main bill).

2.54 An entity's assessable income includes an amount the entity is entitled to receive because they cease to hold a registered emissions unit. The amount is assessable income in the income year they cease to hold the unit, ensuring that the timing of assessability is matched to the income year in which the unit leaves the entity's rolling balance account. That amount is also taken to have a source in Australia.
[Schedule 2, item 28, section 420-25]

Non-arm's length transactions and transactions with associates

2.55 If the consideration an entity is entitled to receive in a non-arm's length transaction or in a transaction between associates by which an entity ceases to be the holder of a registered emissions unit, is not equal to the market value of the unit, the consideration is instead taken to have that market value. That is, market value consideration is taken to have been receivable by the entity that ceases to hold the unit whether the actual consideration was less than, or greater than, the market value of the unit or if there was no consideration paid or given.
[Schedule 2, item 28, section 420-30]

Transfer of a registered emissions unit from the Australian Registry to a foreign registry

2.56 An entity, or its nominee, may transfer a registered emissions unit from the Australian Registry to the entity's own account or its nominee's account on a foreign registry. The process for this is set out in Part 4 of the main bill and is commonly called exporting an emissions unit.

2.57 The income tax treatment under Division 420 ceases when the emissions unit ceases to be registered in Australia on the Australian Registry. The unit thus ceases to be held as a registered emissions unit. After that, the emissions unit is treated under the general income tax law. Similarly to the importation of a unit, the termination of the Division 420 treatment and the commencement of the new treatment are both based on market value at de-registration. Any gain or loss while the unit is registered on the Australian Registry is treated under Division 420. Any gain or loss after registration on the Australian Registry ceases is brought to account under the general provisions of the income tax law.

2.58 To achieve this result for income tax, the entity that transfers the unit is treated as having sold the unit to someone else for its market value just before it ceased to be a registered emissions unit with the market value of the transferred unit being included in the entity's assessable income under section 420-25. The entity is also treated as having immediately bought it back as an emissions unit that is not a

registered emissions unit in Australia for the same amount. ***[Schedule 2, item 28, section 420-35]***

2.59 Where the entity that transfers a registered emissions unit from the Australian Registry to its account on a foreign registry holds the unit as trading stock just after the transfer, the Division 420 rules apply rather than the trading stock rules that deal with a taxpayer starting to hold as trading stock an item they already own. ***[Schedule 2, item 11, subsection 70-30(6)]***

Example 2.5

An Australian resident company carries on a business of trading in emissions units. The company owns 10,000 emission reduction units (a type of an international emissions unit) that are registered in Australia. 5,000 of those units are transferred from the Australian Registry to its foreign account on the New Zealand Register.

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

The company is also treated as having bought 5,000 emission reduction units for the same amount. The company may be able to deduct that amount under section 8-1 and, assuming the units became trading stock of the company, normally would be able to do so (subject to other special provisions that might deny a deduction).

2.60 The proposed treatment applies across the income tax law — it is not just for the purposes of Division 420. After an emissions unit ceases to be a registered emissions unit in Australia, it would normally be dealt with on revenue account (the cost and proceeds would be directly deductible and assessable or taken into account in working out assessable profits or deductible losses). However, if it were not a revenue asset in a particular case, a capital gain or capital loss on its eventual disposal would be brought to account.

2.61 The deemed acquisition of the emissions unit is an acquisition of a CGT asset for the capital gains and capital losses provisions. The capital gains and capital losses provisions are amended to clarify how to work out the cost base of a unit that is deemed to be acquired. The first element of the cost base (what the taxpayer paid for the unit) is the market value just before the unit stopped being a registered emissions unit. ***[Schedule 2, item 16, section 112-97]***

Disposal for a purpose other than gaining assessable income

2.62 Where an entity ceases to hold a registered emissions unit and that cessation is unrelated to gaining assessable income, there is a claw back of any amount that the entity has deducted or can deduct for expenditure incurred in acquiring or disposing of the unit. ***[Schedule 2, item 28, subsection 420-40(1)]***

2.63 This claw-back provision tests for whether or not there is a sufficient connection between the disposal of the unit and the taxpayer's assessable income producing activities (for example, was the disposal for a private or domestic purpose) at the time of disposal of the unit. ***[Schedule 2, item 28, subsection 420-40(1)]***

2.64 The test is based on the general deduction provision, section 8-1. It is whether the cessation is neither:

- in gaining or producing an entity's assessable income; nor
- in carrying on a business for the purpose of gaining or producing assessable income. ***[Schedule 2, item 28, paragraph 420-40(1)(d)]***

2.65 The wording of this test is not identical to the corresponding words in section 8-1. In particular, the second limb of the test differs from the second positive limb of section 8-1 in that it does not contain the word 'necessarily'. This minor difference flows from the context of the words and is not intended to result in any material difference in meaning. The courts have interpreted 'necessarily' in section 8-1 to mean 'clearly appropriate or adapted for'.

2.66 A business entity that surrenders units (beyond any potential emissions liability) for promotional or marketing purposes would not satisfy this test and the claw–back provision would not apply. In contrast, an individual who surrenders units to offset the carbon footprint of their private residence would satisfy the test and the clawback would apply (assuming other conditions were met). ***[Schedule 2, item 28, subsection 420-40(1)]***

2.67 The claw-back operates by including in assessable income, for the income year in which the cessation occurred, an amount equal to the amount that the entity can deduct or has deducted. This claw-back method is used rather than denying the original deduction because it avoids the compliance and administration costs of re-opening assessments for previous income years. The amount included under the claw-back method is taken to have a source in Australia. ***[Schedule 2, item 28, subsections 420-40(1) and (6)]***

2.68 If the entity ceases to hold the unit as a result of a non-arm's length transaction to which section 420-30 applies, section 420-30 applies instead of the claw-back provision. ***[Schedule 2, item 28, paragraph 420-40(1)(e)]***

2.69 Where the cessation is because of the death of an individual and the unit passes to the deceased's legal personal representative or (directly or indirectly) to a beneficiary of the deceased's estate, there is essentially a "roll-over" treatment. The acquirer is treated as acquiring the unit for the amount included in the transferor's assessable income under the claw-back provision, which is equal to any amounts

deducted or deductible for expenditure incurred in acquiring it (basically its cost). A legal personal representative who passes the unit to a beneficiary is also treated as disposing of the unit for the same amount. ***[Schedule 2, item 28, subsections 420-40(2) and (3)]***

2.70 Where the cessation is for a purpose unrelated to producing assessable income and is not because of death, the acquirer is also treated as acquiring the unit for the amount included in the transferor's assessable income under the claw-back provision. In this case, the transferor must notify the transferee that, because this rule applies, the acquirer is treated as purchasing the unit for consideration and the amount of that consideration. Failure to notify the acquirer at, or as soon as practicable after, the time of transfer is an offence under section 8C of the TAA 1953. ***[Schedule 2, item 28, subsections 420-40(4) and (5)]***

Expenditure incurred in ceasing to hold a registered emissions unit

2.71 An entity can deduct expenditure to the extent that the entity incurs it in ceasing to hold a registered emissions unit. The expenditure is deductible in the year the entity ceases to hold the unit, ensuring that the timing of the deduction is matched to the income year in which the unit leaves the entity's rolling balance account. ***[Schedule 2, item 28, section 420-42]***

2.72 This expenditure (for example, transaction costs incurred in disposing of units) would otherwise have been deductible under the general deduction provision, section 8-1. A specific rule has been included because Division 420 is intended to cover most (but not all) issues about acquiring, holding and disposing of registered emissions units.

Deductibility of the top-up charge

2.73 Under the carbon pricing mechanism, entities will be charged a top-up amount by virtue of the *Clean Energy (International Unit Surrender Charge) Act 2011* where they dispose of an eligible international emissions unit and the cost of that unit is below the carbon pricing mechanism floor price – see section 124 of the main bill.

2.74 To avoid doubt, this top-up charge is made specifically deductible in the income year in which an entity pays the amount. ***[Schedule 2, item 28, section 420-43]***

Accounting for registered emissions units held at the start or end of the income year

2.75 A key feature of the rolling balance treatment is that a taxpayer must bring to account any difference between the value of the registered emissions units they held at the start and the value of the

registered emissions units they held at the end of the income year. ***[Schedule 2, item 28, subsection 420-45(1)]***

2.76 Any excess of the value at the end of the income year over the value at the start of the income year is included in the taxpayer's assessable income. ***[Schedule 2, item 28, subsection 420-45(2)]***

2.77 Any excess of the value at the start of the income year over the value at the end of the income year is deductible. ***[Schedule 2, item 28, subsection 420-45(3)]***

Value of registered emission units at the start of the income year

2.78 The value of a registered emissions unit held by a taxpayer at the start of an income year is defined to be the same amount at which it was taken into account under the registered emissions provisions at the end of the last income year. In this context if the unit was not taken into account under this Subdivision at the end of the last income year (for example, due to an error by the taxpayer in completing their income tax return that can no longer be corrected) the value of the unit is a nil amount. ***[Schedule 2, item 28, section 420-50]***

Value of registered emissions units at the end of the income year

2.79 A taxpayer has a choice between three methods:

- the FIFO cost method,
- the actual cost method
- the market value method

in valuing the registered emissions units it holds at the end of an income year. The taxpayer makes the choice for the first income year where it holds registered emissions units at the end of the income year. This choice allows taxpayers to select the method that best suits their business practices. ***[Schedule 2, item 28, section 420-51, subsections 420-55(1) and (2) and 420-57(1) and (2)]***

2.80 A choice must be made before a taxpayer lodges their income tax return for the income year for which they can make a choice. The choice is made by applying the chosen method in the income tax return that is lodged. A choice is irrevocable for the income year for which it is made. ***[Schedule 2, item 28, subsections 420-55(4) and (5) and 420-57(7) and (8)]***

2.81 If the taxpayer fails to make a choice the default valuation method is the FIFO cost method. Default choice rules like this are commonly included in the income tax law to prevent a possible problem in assessing a taxpayer that fails to make a choice. Under either the FIFO cost or actual cost methods, unrealised gains on units are not assessed and unrealised losses are not deducted. ***[Schedule 2, item 28, subsection 420-55(3)]***

2.82 A taxpayer's chosen method continues to apply for later income years. However, a taxpayer will be able to change their choice of valuation method once at any time during the fixed charge period ending with the 2014-15 income year. If a taxpayer changes methods it must value any units it holds at the end of a later income year according to the same method. ***[Schedule 2, item 28, subsections 420-57(3), (4) and (5)]***

Example 2.6

Company A first holds registered emissions units at the end of the 2012-13 income year. It values those units using the FIFO cost method under Subdivision 420-D. For the 2013-14 income year, it values the units it holds at the end of the income year at FIFO cost. For the 2014-15 income year it chooses to value the units it holds at the end of the income year at market value.

2.83 After the 2014-15 income year, a taxpayer will be able to change its valuation method at any time after it has used a particular method for the four most recent income years they held an emissions unit at the end of the year (the income years may not be consecutive). Allowing for this ongoing periodic change of valuation method, while preventing a direct change from the FIFO cost method to the actual cost method, provides for changing business circumstances while limiting the opportunities for tax arbitrage. Tax arbitrage opportunities may arise from the exploitation of differences between what units the FIFO cost method treats as on hand at the end of the income year and what units the actual cost method treats as on hand at the end of the income year and also any differences between the cost and market value of units. ***[Schedule 2, item 28, subsections 420-57(5) and (6)]***

Example 2.7

The 2016-17 income year is the first income year for which Company B holds registered emissions units at the end of the income year. It values those units using the actual cost method under Subdivision 420-D. For that year and for each of the following 3 income years the company values all the units it holds at the end of the income year using the actual cost method. Company B can choose to adopt the market value or FIFO method from the 2020-21 income year.

Cost of a registered emissions unit

2.84 The cost of a registered emissions unit is a defined term. The cost of a registered emissions unit that is not issued to you free of charge and is not an ACCU is the total of expenditure you incurred in becoming the holder of the unit that you can deduct under section 420-15. ***[Schedule 2, item 58, definition cost of a registered emission unit, subsection 995-1(1), item 28, section 420-60]***

2.85 This cost would typically not be limited to the price paid for a unit but would also cover transaction costs (for example, a brokerage fee) incurred in becoming the holder of a registered emissions unit.

2.86 Consequently, while there is a degree of 'absorption costing' required, the range of costs that should be included in the opening value of the unit would ultimately depend on the degree of nexus between the cost and the act of holding the emissions unit. For example, in most circumstances the general overhead costs of a business would not have a sufficient nexus to the holding an emissions unit. The deductibility of those overhead costs would fall for consideration under the ordinary deduction provisions.

2.87 The cost of a free carbon unit or a unit issued under the Carbon Farming Initiative is its market value just after you started to hold it. This is explained in more detail below under 'Valuation of free carbon units and units issued under the Carbon Farming Initiative'.

2.88 In working out the cost of emissions units on hand at the end of an income year for income tax purposes taxpayers who want to use historic cost have a choice of applying the FIFO cost method or the actual cost method.

First-in, first-out

2.89 FIFO is an accounting method commonly used in accounting for fungible items on an historic cost basis. Certain categories of registered emissions units are essentially fungible in that one unit can replace another. For example carbon units of the current or a past vintage and can be used interchangeably to prevent or reduce a shortfall. Similarly carbon units with different future vintages would form separate categories of fungible items.

2.90 The FIFO cost method is used to determine the value of the units still on hand at the end of an income year. Rather than requiring that a taxpayer trace each unit actually sold, transferred, relinquished or surrendered the FIFO method treats units within the same category as having been disposed of in the order in which they were acquired. That is units in the same category, for example the same future vintage, are treated as being disposed of in the same order as they are acquired. ***[Schedule 2, item 28, section 420-52]***

2.91 The FIFO rule does not apply beyond income tax. For example, the rule does not affect the operation of the Registry accounts in the National Registry of Emissions Units. ***[Schedule 2, item 28, section 420-52]***

Actual cost

2.92 The actual cost method is a version of historic cost that requires the tracking of individual emissions units, when they were

acquired and for what cost, and the specific emissions units that are on hand at the end of the income year. This method depends on the Registry and takes into account the cost of the actual units that a taxpayer holds at the end of the income year in the rolling balance. This method is possible because each emissions unit on the Registry will have a unique identification number. This method is called the actual cost method in the legislation but is also often referred to as the specific identification method. ***[Schedule 2, item 28, section 420-53]***

Market value method

2.93 The market value method entails valuing the emissions units on hand at the end of the income year at their market value at that time. Market value is a defined term in the ITAA 1997. Market value generally has its ordinary meaning but that ordinary meaning is affected by Subdivision 960-S. ***[Schedule 2, item 28, section 420-54]***

Valuation of free carbon units and units issued under the Carbon Farming Initiative

Cost of free carbon units issued as part of an assistance measure

2.94 If the Authority issues a unit free of charge to a taxpayer under the main bill and that taxpayer still holds that unit at the end of an income year, the general rule is that the cost of the unit is its market value just after the taxpayer began to hold it. ***[Schedule 2, item 28, subsection 420-60(1)]***

2.95 This reflects what it would have cost the taxpayer to buy a unit at that time and, therefore, provides a neutral treatment between free units and purchased units which does not distort a taxpayer's choice to surrender or sell the free unit. It is also consistent with the ordinary treatment of Government assistance (like a cash grant) received by a taxpayer in relation to carrying on its business, which is that the amount is assessable income in the year it is derived (for ordinary income) or received (for statutory income).

2.96 There is an exception in limited circumstances where a taxpayer holds carbon units at the end of an income year that were allocated free of charge to the taxpayer under the Jobs and Competitiveness Program in respect of EITE industries.

Free carbon units issued under the Jobs and Competitiveness Program

2.97 A free carbon unit issued to an entity in accordance with the Jobs and Competitiveness Program is valued at zero at the end of an income year in specified circumstances. This valuation rule was referred to in the CPRS White Paper as a 'no-disadvantage rule'. For the rule to apply, all of the following conditions must be satisfied:

- the entity holds the unit at the end of the relevant income year;

- the entity held the unit at all times from when the Authority issued it to the entity until the end of that income year; and
- the relevant income year ends on or before the last day for surrendering units for the financial year of that particular vintage – ending 1 February after the end of the vintage year.

[Schedule 2, item 28, section 420-58]

2.98 This no-disadvantage rule is designed to minimise any timing disadvantage that an entity in an EITE industry might arguably suffer by bringing to account the value of the free carbon unit as income during the no-disadvantage period where it receives a free carbon unit and still holds it in the circumstances described.

2.99 Under this 'no-disadvantage rule' applies the units have a nil value at the end of the income year regardless of whether the taxpayer has chosen to value all the units it holds under the FIFO cost method, the actual cost method or the market value method. ***[Schedule 2, item 28, section 420-58]***

2.100 However, where an entity holds a free carbon unit at the end of an income year that ends after last day for surrendering units for the financial year of that particular vintage, the free carbon unit is valued at cost or market value depending on the choice of valuation method that the taxpayer makes. The cost of a free unit in those circumstances under both the FIFO cost and actual cost methods is its market value immediately after it began to be held, in accordance with the general rule for valuing at cost units issued free of charge. ***[Schedule 2, item 28, subsections 420-60(1) and (2)]***

2.101 EITE industries are different from coal-fired electricity generators as EITEs entities compete on the world market. The aim of the annual assistance is to minimise the impact of the carbon pricing mechanism on decisions of EITE entities on whether to continue to produce in Australia. Coal-fired electricity generators are being provided with transitional assistance which is not expected to influence their production decisions. Free carbon units issued to coal-fired electricity generators, if held at the end of the income year, are included in assessable income for that year, consistent with the approach to taxing industry assistance generally.

Example 2.8

In August 2016 the Authority issues 1 million free carbon units with a 2016-17 vintage to an EITE entity. The market value of a unit at issue (as per the secondary market) is $21.

In October 2016 the entity sells 400,000 of the free carbon units for $22 each. The entity has an emissions liability for the 2016-17 emissions year and surrenders 400,000 units in June 2017 and a further 100,000 in December 2017 to avoid a unit shortfall penalty (for not surrendering sufficient units by the due date, 1 February 2018).

The entity sells the remaining 100,000 units in July 2018 for $25 each.

For income tax, the entity has a standard income year ended 30 June and has chosen to value all units held at the end of an income year at actual cost.

For simplicity this example concentrates on the group of free carbon units with a 2016-17 vintage and ignores any other units acquired, held or surrendered by the entity.

Income tax treatment

Income year ended 30 June 2017: the proceeds of selling units (400,000 @ $22 = $8.8 million) are assessable income. The surrender of units has no effect on taxable income because none of the units were held at the start of the income year and no amount is included in assessable income. The remaining 200,000 units held at year end are valued at zero in the rolling balance under the no disadvantage rule. The net effect on taxable income is an increase of $8.8 million.

Income year ended 30 June 2018: The surrender of units has no effect on taxable income because the opening balance is zero and no amount is included in assessable income. At year end last surrender date for the 2016-17 emissions year (1 February 2018) has passed. Consequently, the remaining 100,000 units held at year end are valued in the rolling balance at their deemed cost, the market value at the date of issue (100,000 @ $21 = $2.1 million). The net effect on taxable income is an increase of $2.1 million.

Income year ended 30 June 2019: the proceeds of selling units (100,000 @ $25 = $2.5 million) are assessable income. The entity deducts the decline in the value of units held in the rolling balance (100,000 @ $21 = $2.1 million). Therefore, the net effect on taxable income is an increase of $400,000.

Valuation of units issued under the Carbon Farming Initiative

2.102 ACCUs issued under the CFI will receive the same treatment as free eligible emission units provided under the carbon pricing mechanism. The cost of an ACCU issued under the CFI is the market value of the unit immediately after the taxpayer began to hold the unit. The value of the ACCUs for the purposes of applying the rolling balance account treatment is then determined according to the valuation method chosen by the taxpayer. ***[Schedule 2, item 28, subsection 420-60(3)]***

Interactions of emissions units provisions with the rest of the income tax law

No deduction for unit shortfall charge

2.103 Unit shortfall charge imposed under the carbon pricing mechanism is not a penalty. As such, unit shortfall charge is an amount that taxpayers may seek to deduct under the general deductibility provisions of the income tax law. A new provision is

inserted to make an amount of unit shortfall charge an amount that is specifically not deductible under the income tax law. This ensures that the entity liable to the unit shortfall charge bears the full cost of the charge. ***[Schedule 2, item 8, section 26-18]***

Anti-overlap rules

2.104 Division 420 covers most, but not all, issues about the acquisition, holding and disposing of registered emissions units. One matter it does not cover is the deductibility of any expenses incurred in holding emissions units. Those expenses are covered by the ordinary deduction provisions, especially the general deduction provision, section 8-1. Similarly, interest expenses incurred in financing the acquisition of registered emissions units are considered under the general deduction provision.

2.105 Where Division 420 covers an issue, it generally has priority over the rest of the income tax law in working out the income tax treatment of the acquisition, holding and disposing of units. Subdivision 420-E contains detailed rules to give effect to this object and sets out exceptions to the general primacy of Division 420. Those detailed rules specifically cover:

- expenditure an entity incurs in becoming the holder of registered emissions unit ***[Schedule 2, item 28, section 420-65]***
- an amount an entity is entitled to receive because it ceases to hold a registered emissions unit. ***[Schedule 2, item 28, section 420-70]***

2.106 Expenditure incurred in becoming the holder of, or ceasing to hold, a registered emissions unit is generally deducted under Division 420 and not under the other provisions of the income tax law. Nor is that expenditure taken into account in working out the amount of a net profit or loss that is assessable or deductible respectively outside Division 420. However, for expenditure relating to acquiring free carbon units and ACCUs there are special rules that are discussed above under the heading 'Deductions for expenditure incurred in obtaining a unit'. ***[Schedule 2, item 28, subsections 420-65(1), (2), (3), (4) and (6)]***

2.107 The assessability of an amount that an entity is entitled to receive because it ceases to hold a registered emissions unit is considered primarily under Division 420 and not under other provisions of the income tax law. Nor is the amount receivable taken into account in working out the amount of a net profit or loss that is assessable or deductible respectively outside Division 420. This does not affect the operation of the residence and source rules in sections 6-5 and 6-10, which are central assessable income provisions that all amounts of ordinary and statutory income must satisfy to be assessable income. ***[Schedule 2, item 28, subsections 420-70(1) and (2)]***

2.108 Division 420 also has priority in the treatment of free carbon units or ACCUs. Contrary to the normal treatment, the value of free carbon units or ACCUs received is not assessed as ordinary income or as a bounty or subsidy received in relation to carrying on a business (under section 15-10). Rather, the value of any of these units held at the end of an income year is taken into account (under Subdivision 420-D) in working out any change in the value of units held over the income year. ***[Schedule 2, item 28, subsections 420-70(3) and (4)]***

Carbon Farming Initiative

2.109 As discussed above under 'Deductions for expenditure incurred in obtaining a unit', expenditure incurred in establishing an offsets project under the CFI is not deducted under Division 420. Those expenditures will continue to be considered for deduction under the provisions that ordinarily apply to those activities, for example, the general deduction provision (section 8-1) and capital allowance provisions (Division 40). ***[Schedule 2, item 28, subsections 420-15(4)]***

Free carbon units issued under the Jobs and Competitiveness Program and to coal-fired electricity generators

2.110 Free carbon units issued under the Jobs and Competitiveness Program and to coal-fired electricity generators are essentially Government assistance and not the result of expenditure by the entity receiving free units. Any expenditure that might be considered to be incurred in becoming the holder of these units is considered under the ordinary deduction provisions and not under Division 420. ***[Schedule 2, item 28, subsection 420-15(3)]***

Gifts

2.111 Whether a taxpayer is entitled to a deduction for a gift of a registered emissions unit to a deductible gift recipient is determined under the rules about deductions for gifts in Division 30. ***[Schedule 2, item 28, subsection 420-65(5)]***

Capital gains and losses

2.112 Consistent with the priority given to Division 420, any capital gain or capital loss that a taxpayer makes from a registered emissions unit or from the right to a free carbon unit is disregarded. Amendments are also made to clarify that certain CGT roll-overs do not apply to registered emissions units because the tax treatment is provided exclusively by Division 420, similar to the exclusion of trading stock from the relevant roll-overs. ***[Schedule 2, item 17, section 118-15 and items 18 to 25]***

Trading stock

2.113 To make it completely clear that the trading stock provisions do not apply to registered emissions units (even where they might

otherwise be trading stock), registered emissions units are expressly excluded from the definition of trading stock. ***[Schedule 2, items 10 and 68, section 70-12 and definition trading stock subsection 995-1(1)]***

Taxation of financial arrangements

2.114 Division 230 defines 'financial arrangement' and sets out the methods under which gains and losses from financial arrangements will be brought to account for income tax purposes.

2.115 Registered emissions units are exempt from Division 230 and as such, Division 230 will not apply to the acquisition, holding and disposal of registered emissions units. To avoid any doubt as to whether a registered emissions unit is a financial arrangement, Division 230 is amended so that registered emissions units are exempt from the Division. ***[Schedule 2, item 26, section 230-481]***

2.116 Division 230 may apply to derivatives of registered emissions units (for example, an option in relation to a unit) where the derivatives satisfy the relevant conditions (including relevant thresholds for the entity that has the derivative). As derivatives of units are one of many types of derivatives, the normal rules that apply to derivatives also apply to them.

Foreign residents - whether they are taxable in relation to registered emissions units

2.117 Proposed Division 420 applies to registered emissions units held by both Australian and foreign residents. For foreign residents the application of Division 420 is subject to the terms of any relevant double tax treaty between Australia and the taxpayer's country of residence.

2.118 Under the core income tax rules, foreign residents are subject to Australian income tax on the ordinary and statutory income that they derive from Australian sources or that is included in a taxpayer's assessable income on some basis other than having an Australian source.

2.119 Registration of an emissions unit on the Australian register is to be treated as founding an Australian source because registration on the Australian register is a clear and verifiable link to Australia. Further, in most cases the ultimate use of a carbon unit is to acquit an Australian emissions liability. However, in the absence of a specific source rule, it is uncertain whether, in all cases, income arising from dealing in registered emissions units would have a source in Australia under the common law.

2.120 To ensure that amounts Division 420 includes in assessable income have an Australian source, the proceeds from selling units, increases in the rolling balance over an income year and amounts

assessable upon disposals unrelated to gaining assessable income will be treated as having an Australian source and, therefore, as assessable income of a foreign resident. ***[Schedule 2, item 28, subsections 420-25(3), 420-40(6) and 420-45(4)]***

Some foreign residents are not taxable in relation to registered emissions units

2.121 However, for a resident of a country with which Australia has a tax treaty, the deemed source rules are subject to the treaty terms. Australia's taxing rights may be limited by the relevant tax treaty to circumstances where a foreign resident's units are connected to a permanent establishment in Australia. Where Australia has no taxing right, a foreign resident would not maintain a rolling balance account for their units or be able to claim a deduction for the cost of acquiring units. To ensure that the law achieves this result, specific rules provide that if the proceeds of selling a registered emissions unit would not have been assessable income in Australia when a taxpayer started to hold a unit, a taxpayer cannot deduct expenditure incurred in buying the unit or a decrease in the value of any units they hold. These rules extend to where a taxpayer is deemed to acquire a registered emissions unit, for example on importation of an international emissions unit. These rules may also apply to the case where a Government owned entity is privatised. ***[Schedule 2, item 28, subsections 420-15(5) and 420-45(5)]***

Changes in whether an entity is taxable in Australia in relation to registered emissions units

2.122 An entity may be taxable in Australia in relation to registered emissions units when it acquires a unit but becomes non-taxable before it stops holding the unit. This could result, for example, where an entity changes its residence from Australia to a country with which Australia has a double tax treaty. The entity is treated as having sold the unit to someone else for its market value just before the time when the entity ceased to be taxable in Australia in relation to registered emissions units (called the *taxable status cessation time*) and to have repurchased it for the same amount at the taxation status cessation time. Consequently, the market value will be assessable income under section 420-25 and the unit is subsequently ignored in accounting for registered emissions units held at the start and end of an income year (unless the entity becomes taxable again). ***[Schedule 2, item 28, section 420-41]***

2.123 Similarly, an entity that is not taxable in Australia in relation to registered emissions units when it acquires a unit might become taxable before it stops holding the unit. This could result, for example, where an entity changes its residence from a country with which Australia has a double tax treaty to Australia or in the case where a Government owned entity is privatised. The entity is treated as having bought the unit from someone else for its market value and as starting

to hold the registered emissions unit at the time immediately after the entity started to be taxable in Australia (called the *taxable status commencement time*). If the entity still holds the unit at the end of an income year after the entity becomes taxable, the unit is taken into account as a registered emissions unit held at the end of that income year and also at the start of the next income year. The cost of the registered emissions unit is its deemed acquisition cost, being its market value at the date the entity became taxable. ***[Schedule 2, item 28, section 420-22]***

2.124 Changes in taxability in relation to registered emissions units are not expected to be common. However, these rules have been included to make the treatment clear. They ensure that only a gain or loss that accrues while the entity is taxable in Australia, and only that gain or loss, is brought to account for tax purposes under Division 420, which is consistent with the scheme of the Division. The rules are designed to also produce that result where there is more than one change in taxability, for example a taxable entity becomes non-taxable but later becomes taxable again.

Consolidated groups of entities

Consequences when an entity joins a consolidated group — Interaction with the 'hold' rules

2.125 The consolidation rules apply to treat a group of eligible wholly owned entities as a single entity for income tax purposes. Under the single entity rule (section 701-1 of the ITAA 1997), subsidiary members lose their individual income tax identity on entry to a consolidated group and are treated as parts of the head company.

2.126 As a result of the single entity rule, the head company of a consolidated group will be treated as holding the registered emissions units that a subsidiary member brings into the group. The head company will cease to hold the subsidiary member's registered emissions units from the time the subsidiary member leaves the group.

2.127 Similarly, the subsidiary member is taken not to hold its registered emissions units from the joining time. It begins to hold its registered emissions units from the leaving time.

2.128 Broadly, the consolidation rules would have the effect that a registered emissions unit is an asset of the head company under the single entity rule. The tax cost setting rules will apply to the emissions unit as though the head company held the emissions unit from the start of the income year in which the subsidiary member joins the consolidated group.

2.129 If an entity that holds registered emissions units joins a consolidated group or multiple entry consolidated group (MEC group) part way through an income year, it treats the period in its income year

before the joining time as if it were an income year that ends at the joining time (section 701-30 of the ITAA 1997). To ensure a tax neutral outcome for an entity that ceases to hold a registered emissions unit because it joins a consolidated group or MEC group, the value of the registered emissions unit at that time will be taken to be equal to:

- if the unit was held by the joining entity at the start of the income year — the value of the unit at the start of the income year; or
- otherwise — the expenditure incurred by the joining entity in becoming the holder of the unit.

[Schedule 2, items 35-38, section 701-35]

2.130 However, if the entity becomes an eligible tier 1 company of a MEC group, section 701-35 will not apply to set the value of registered emissions units held by the joining entity at a tax neutral amount. ***[Schedule 2, items 52 and 53, subsection 719-165]***

2.131 As a consequence of fixing the value of the registered emissions unit at the end of the income year in which the joining time occurs under subsection 701-35(5), no election would be available under Subdivision 420-D to value the registered emissions unit at that time.

2.132 Under the consolidation tax cost setting rules, registered emissions units held by a joining entity will be reset cost base assets. However, the tax cost setting amount will not exceed the greater of the market value of the registered emissions units and the joining entity's terminating value for the units. ***[Schedule 2, items 41-44, section 705-40]***

2.133 The terminating value for a registered emissions unit held at the joining time will be:

- if the unit was held by the joining entity at the start of the income year — the value of the unit at the start of the income year; or
- otherwise — the expenditure incurred by the joining entity in becoming the holder of the unit.

[Schedule 2, item 40, subsection 705-30(1A)]

2.134 For the purpose of applying Division 420, if the head company of a consolidated group or MEC group acquires a joining entity that holds a registered emissions unit:

- the head company will be taken to have held the unit at the start of the income year in which the joining time occurs; and
- the value of the unit at the start of the income year will be the tax cost setting amount for the unit. ***[Schedule 2, item 39, subsection 701-55(3A)]***

2.135 However, where the same registered emissions unit has its tax cost set more than once in an income year, the head company will include the last tax cost setting amount as the value of the unit at the start of the income year in which the joining time occurs. ***[Schedule 2, items 29 and 30, subsection 701-10(5) and paragraph 701-10(5)(a)]***

2.136 The head company will value the registered emissions units at the end of the income year based on the choice that it has made for valuing registered emissions units. This choice will override any choice made by the joining entity. ***[Schedule 2, item 51, item 2 of the table in subsection 715-660(1)]***

2.137 The head company's four-year election period is not reset simply because an entity holding registered emissions units joins the consolidated group. This situation is analogous with an entity buying more units in a particular income year —the act of buying additional units does not impact on an entity's four-year election period.

2.138 If there is more than one joining entity the head company's choice will override any choice previously made by the joining entities. However, where the head company has not yet made a choice, the head company will not be bound by the joining entities choices and is able to make a new choice in relation to the method used to value the registered emissions units. If a choice is made, the four-year election period will apply from the time the head company makes the 'new' valuation choice. ***[Schedule 2, item 51, item 2 of the table in subsection 715-660(1)]***

Transactions within a consolidate group

2.139 In the case of a consolidated group, the single entity rule would disregard any transaction within the consolidated group for income tax purposes. Therefore, any movement of registered units within a consolidated group will not trigger a taxing point in Division 420.

Example 2.9

The 2016-17 income year is the first income year for which Company B (head company of a consolidated group) holds registered emissions units at the end of the income year. It values those units using the actual cost method under Subdivision 420-D.

In 2017-18 income year, Company C (subsidiary member) joins the consolidated group with 100 carbon units. In the 2015-16 income year, Company C elected to value its units at market value.

Because of the interaction of Division 420 and the consolidation rules, in 2017-18 income year, Company B will be taken to hold the 100 carbon units actually acquired by Company C and they will be valued using actual cost method (Company B's valuation method automatically overrides Company C's valuation method).

Company B's election to use actual cost method is not 'reset' by the act of Company C joining the consolidated group. If Company B did not have a valuation choice in force, Company B would not be bound by Company C's previous choice to use market value.

Consequences when an entity leaves a consolidated group

2.140 When an entity that holds registered emissions units leaves a consolidated group or MEC group, the units will be taken to be an asset of the head company at the end of the income year in which the leaving time occurs, but not at the start of the next income year. The value of the registered emissions unit at that time will be taken to be equal to:

- if the unit was held by the head company at the start of the income year — the value of the unit at the start of the income year; or
- otherwise — the expenditure incurred by the head company in becoming the holder of the unit.

[Schedule 2, items 31-34, section 701-25]

2.141 As a consequence of fixing the value of the registered emissions unit at the end of the income year in which the leaving time occurs under subsection 701-25(5), no election would be available under Subdivision 420-D to value the registered emissions unit at that time.

2.142 The leaving entity will be able to choose the valuation method for registered emissions units that it holds at the end of the income year in which the leaving time occurs. In this regard, as a consequence of the amendments to subsection 715-660(1), the leaving entity can ignore the exit history rule and can therefore make a fresh choice in relation to the valuation method for registered emissions units (section 715-700).

Consequential amendments

2.143 Consequential amendments will ensure that the following provisions apply to registered emissions units in the same way that they apply to trading stock:

- section 701-58, which adjusts the tax cost setting amount for an asset the head company does not hold under the single entity rule; ***[Schedule 2, item 39A, section 701-58]***
- sections 705-57, 705-163 and 705-240, which adjust the tax cost setting amount where there has been a loss of pre CGT status of membership interests in a joining entity;
- section 713-225, which adjusts the way in which the tax cost setting amounts are worked out for partnership cost setting

interests ***[Schedule 2, items 45-50, sections 705-57, 705-163, 705-240 and 713-225];***

- sections 715-910 and 715-920 which ensure the tax-neutral treatment for registered emissions units is switched off for certain consolidated group restructures. ***[Schedule 2, items 51B to 51E, sections 715-910 and 715-920];***
- section 701A-7 of the *Income Tax (Transitional Provisions) Act 1997* which is an integrity measure to prevent registered emissions units held by certain subsidiary members from receiving an uplift in tax value as a result of the tax cost setting mechanism. ***[Schedule 2, items 72A, sections 701A-7 of the Income Tax (Transitional Provisions) Act 1997]***

Pay As You Go instalments

2.144 Currently, instalment income primarily includes ordinary income that is assessable. Proceeds from ceasing to hold units (or from being taken to have ceased to hold them) would mainly be ordinary income. One possible exception is for units acquired for the purpose of resale at a profit. In such cases the proposed rules include gross proceeds in the taxpayer's assessable income, whereas the net gain or loss would be brought to account under the tax law's ordinary income principles.

2.145 The PAYG instalment provisions are amended so that instalment income includes all amounts included in assessable income from ceasing to hold (or from being taken to cease to hold) units. This will remove uncertainty about whether the proceeds of sales or otherwise from ceasing to hold units are instalment income, while furthering the aim of the PAYG instalment provisions of efficiently collecting liabilities to the Commonwealth. Income from an increase in the value of units on hand, and deductions from a decrease in the value of units on hand, will not be taken into account in determining instalment income. The PAYG instalment provisions will thus operate similarly for units under Division 420 and for trading stock. ***[Schedule 2, item 73, subsection 45-120(5) of the TAA 1953]***

Goods and Services tax

2.146 Schedule 2 creates Subdivision 38-S of the GST Act that provides that supplies of eligible emissions units will be GST-free. However, the normal GST rules will apply to transactions involving financial derivatives of eligible emissions units and the payment of grants of government assistance and other transactions under the carbon pricing mechanism. ***[Schedule 2, item 1, Subdivision 38-S of the GST Act 1999]***

2.147 The term 'eligible emissions unit' has the same meaning as in the Clean Energy Bill 2011. ***[Schedule 2, item 2, section 195-1 of the GST Act 1999]***

2.148 Registered emissions units that are not eligible emissions units will be subject to the normal GST rules.

Consequential amendments

2.149 Amendments that govern how the provisions in Division 420 about registered emissions units interact with the rest of the income tax law are discussed above under the heading 'Interactions of emissions units provisions with the rest of the income tax law'. Other consequential amendments are explained below.

Inclusion of definitions

2.150 The amendments to the taxation law discussed in this chapter have necessitated the inclusion of various new definitions in the taxation law and the amendment of some others. The substantive effects of these changes are discussed in the course of this chapter. The definitions included (or amended) are in the:

- ITAA 1997 ***[Schedule 2, items 54-71, subsection 995-1(1)]***
- GST Act 1999 ***[Schedule 2, item 2, subsection 195-1 of the GST Act 1999]***

Amendment of checklists

2.151 The amendments to the taxation law discussed in this chapter have necessitated the amendment of various checklists in the ITAA 1997. ***[Schedule 2, items 4, 5, 6 and 7, sections 10-5, 12-5 and subsection 20-30(1) of the ITAA 1997]***

Application and transitional

2.152 The amendments to the GST Act in Part 1 of Schedule 2 will commence on the later of the following:

- the day after the Treasurer announces by notice in the Gazette that the States, the Australian Capital Territory and the Northern Territory have agreed to the amendments to make eligible emissions units GST-free; and
- the day section 3 of the main bill commences.

[Section 2]

2.153 The notice announcing the agreement of the States and Territories is not a legislative instrument. ***[Section 2]***

2.154 While the agreement of the States and Territories has been sought, not all jurisdictions have responded.

2.155 The amendments to the tax law in Part 2 of Schedule 2 are to commence from the same time as section 3 of the main bill. This ensures that as soon as the carbon pricing mechanism starts, the tax amendments can apply. The application of the tax amendments is not tied to any particular income year of the taxpayer. ***[Section 2]***

2.156 Sections 3 to 312 of the main bill commence on a single day to be set by proclamation. However, a proclamation must not specify a day that occurs before all of the Acts listed in Item 2 of the table in section 2 of the main bill receive the Royal Assent. This qualification is designed to ensure that the bills comprising the legislative package for the carbon pricing mechanism commence together. ***[Clause 2 of the main bill]***

Application of income tax provisions

2.157 Taxpayers are able to hold accounts on the Registry prior to the carbon pricing mechanism commencing and these accounts continue to exist when the carbon pricing mechanism commences. Division 420 of the ITAA 1997 only applies to registered emissions units that a taxpayer start to hold (or is taken to start to hold) after Division 420 commences, ensuring that there is no retrospective application. ***[Schedule 2, item 72, section 420-1 of the Income Tax (Transitional Provisions) Act 1997]***

Kyoto units held on the National Registry when the carbon pricing mechanism commences

2.158 Taxpayers have been able to hold and trade Kyoto units on the Registry from 30 September 2009 and are able to hold ACCUs issued under the CFI Act from the commencement. The Registry was initially established under the executive power of the Commonwealth and has subsequently been continued in existence by the Registry Act. Before the carbon pricing mechanism commences, the existing income tax provisions apply to these taxpayers.

2.159 Division 420 provides a common income tax treatment of emissions units regardless of the purpose of the emissions unit holder in acquiring or holding them. A taxpayer that holds a Kyoto unit or an ACCU on the Registry immediately before Division 420 commences automatically has the units transferred to the new tax regime under Division 420. ***[Schedule 2, item 72, section 420-5 of the Income Tax (Transitional Provisions) Act 1997]***

2.160 The deemed sale and re-purchase will occur at cost, regardless of whether the asset was held on capital or revenue account when the carbon pricing mechanism legislation commences. This

deemed sale and re-purchase at cost ensures that there is neither taxation of unrealised gains nor deductions for unrealised losses when the legislation commences. ***[Schedule 2, item 72, section 420-5 of the Income Tax (Transitional Provisions) Act 1997]***

Do not remove section break.

The Conservation Tillage Refundable Tax Offset

Outline of chapter

3.1 Schedule 2 to the Clean Energy (Consequential Amendments) Bill 2011 amends the *Income Tax Assessment Act 1997* (ITAA 1997) to provide a refundable tax offset (RTO) for certain new depreciating assets used in conservation tillage farming practices.

Context of amendments

3.2 The carbon pricing mechanism will not apply to agricultural emissions.

3.3 The Government's Clean Energy Future Plan includes an ongoing Carbon Farming Futures program ($429 million over the first six years) to help farmers and landholders benefit from carbon farming. Carbon Farming Futures will support research, measurement approaches and action on the ground to reduce emissions or store carbon, including support for conservation tillage equipment. The RTO forms part of the Carbon Farming Futures program.

3.4 Action to reduce greenhouse gases can improve farm productivity. Increasing soil carbon, for example, can improve soil structure and productivity, water use efficiency, soil biological activity and nutrient cycling. With improved soil quality, farmers will find it easier to cope with impacts of climate change such as higher temperatures and lower rainfall.

3.5 No-tillage farming encompasses practices whereby a crop is sown into untilled soil using narrow or knife points to minimise disturbance to soil and zero-till practices where a crop is sown with one pass with a disc seeder.

3.6 No-tillage practices aim to reduce soil disturbance, minimise damage to soil structure, increase nutrient availability and reduce water loss. With less than 20 per cent soil disturbance, the effect is improved soil structure and fertility. Stubble retention can also reduce soil surface temperature and evaporation losses, improving conservation of moisture for plant growth.

3.7 No-tillage practices also provide protection against wind erosion, particularly in dry seasons, and help to protect against land

degradation. These practices can also help reduce the impacts of droughts and other severe climatic conditions, as they can help with water retention in the soil.

Summary of new law

3.8 A taxpayer will be entitled to an RTO of 15 per cent of the cost of an eligible asset that:

- they held during the income year;
- they started to use or had installed ready for use during the income year in the course of carrying on a primary production business; and
- had not previously been used or installed ready for use by the taxpayer or any other taxpayer (that is, the seeder must be new).

3.9 Only the following assets will be eligible for the RTO:

- Tine machines fitted with minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out.
  - Minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out, being, narrow points, knife points or inverted 'T' points.
- Disc openers with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out.
- Disc/tine hybrid machine with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out and minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out.
- Disc/blade hybrid machine with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out and blades designed to achieve minimum soil disturbance and less than full cut-out.

3.10 The RTO will be available for assets which the taxpayer starts to use or has installed ready for use between 1 July 2012 and 30 June 2015 and will be claimable in the 2012-13, 2013-14 and 2014-15 income years.

3.11 A taxpayer will not be entitled to claim the RTO unless they hold a Research Participation Certificate evidencing that they have participated in research into the carbon sequestration properties of soil. Taxpayers will meet this participation requirement by filling out a survey.

Detailed explanation of new law

Refundable tax offset for conservation tillage

3.12 An entity is entitled to the 'conservation tillage offset' in the 2012-13, 2013-14 or 2014-15 income years if the entity meets certain eligibility criteria. The conservation tillage offset will be claimed through the entity's income tax return. ***[Schedule 2, item 27, paragraphs 385-175(1)(b) and (g)]***

3.13 The conservation tillage offset is a refundable tax offset subject to the common rules for tax offsets under Division 63 of the ITAA 1997 and the rules about refundable tax offset under Division 67 of the ITAA 1997. ***[Schedule 2, item 9]***

3.14 An entitlement to claim the conservation tillage offset in respect of an asset does not affect an entity's ability to claim deductions for the decline in value of that asset under Division 40 of the ITAA 1997.

The asset must be an eligible no-till seeder

3.15 The conservation tillage offset is available for 15 per cent of the cost of a depreciating asset that is an eligible no-till seeder. The concept of a depreciating asset is defined in section 40-30 of the ITAA 1997. The cost of a depreciating asset is worked out in accordance with Subdivision 40-C of the ITAA 1997. ***[Schedule 2, item 27, paragraph 385-175(1)(a) and section 385-180]***

3.16 An eligible no-till seeder (comprising the combination of cart and tool) is any of the following:

- Tine machines fitted with minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out.
  - Minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out, being, narrow points, knife points or inverted 'T' points.
- Disc openers with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out.
- Disc/tine hybrid machine with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out and minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out.
- Disc/blade hybrid machine with single, double or triple discs designed to achieve minimum soil disturbance and less than full cut-out and blades designed to achieve minimum soil disturbance and less than full cut-out.

[Schedule 2, item 27, section 385-235]

3.17 The asset may be capable of existing in other forms, for example a tine machine may be fitted with wide points rather than narrow points. However, the asset must meet the definition of an eligible no-till seeder at the point it is installed ready for use or starts to be used in order to be eligible for the conservation tillage offset.

3.18 The conservation tillage tax offset is claimed in respect of individual assets. An entity can claim the conservation tillage tax offset in respect of more than one asset provided the eligibility criteria are satisfied in respect of each one.

3.19 An eligible no-till seeder must be new – that is, it must not have been previously used, or installed ready for use by the entity or any other entity. An asset will not have been previously installed ready for use if it was held as trading stock or held it ready for sale. ***[Schedule 2, item 27, subsection 385-175(2)]***

The asset must be used in carrying on a primary production business

3.20 The entity must hold the eligible no-till seeder at the particular time in the income year that the entity either:

- starts to use the eligible no-till seeder to carry on primary production business (without previously having the asset installed ready for use); or
- has the eligible no-till seeder installed ready for use to carry on a primary production business.

[Schedule 2, item 27, paragraphs 385-175(1)(c) and (d)]

3.21 That particular time must not occur before 1 July 2012 or after 30 June 2015. ***[Schedule 2, item 27, paragraphs 385-175(1)(e)]***

3.22 Who holds a depreciating asset is determined in accordance with the table in section 40-40 of the ITAA 1997.

3.23 Under section 995-1 of the ITAA 1997 an entity carries on a primary production business if (among other things) they 'carry on a business of cultivating and propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things) in any physical environment.'

An entity must hold a Research Participation Certificate

3.24 An entity must have been issued with a 'Research Participation Certificate' for the income year in which they claim the conservation tillage tax offset. ***[Schedule 2, item 27, paragraph 385-175(1)(f)]***

3.25 The Agriculture Secretary must issue the entity with a Research Participation Certificate for the income year if the entity has applied for the certificate and the Agriculture Secretary is satisfied that the entity has completed a 'conservation tillage survey' during the income year. ***[Schedule 2, item 27, subsections 385-190(1) and (2)]***

3.26 Under section 995-1 of the ITAA 1997, the Agriculture Secretary is the Secretary of the Agriculture Department being the department that:

- deals with matters arising under section 1 of the *Farm Household Support Act 1992*; and
- is administered by the Agriculture Minister (the Minister responsible for administering section 1 of the *Farm Household Support Act 1992*).

3.27 The Research Participation Certificate requirement ensures that the conservation tillage offset supports the Government's research efforts and the development of the methodologies in respect of the carbon sequestration properties of soil. This will help to identify opportunities to reduce emissions and to generate Australian Carbon Credit Units under the Carbon Farming Initiative.

The conservation tillage survey

3.28 An entity will participate in research by completing the ***conservation tillage survey*** – a survey conducted by the Agriculture Secretary relating to farming practices and climate change. ***[Schedule 2, item 27, subsections 385-190(3) and (4)]***

3.29 The survey is expected to seek information about matters such as the entity's use of the eligible non-till seeder and associated benefits, their current farming system and management practices, as well as information around soil condition and soil management.

3.30 The information collected via the survey will be used to create a data set for further agricultural research, for research into soil carbon sequestration, and for useful information on the sustainability and impacts of farming practices.

3.31 Entities completing the survey may agree to be approached regarding additional research activities at a later time under the Carbon Farming Futures program. However, a claim for the conservation tillage offset is not conditional on the entity agreeing to be involved in any additional research activities. Subsequently declining to be involved in any additional research activities will not lead to the conservation tillage offset being clawed back from the entity.

Applying for a Research Participation Certificate

3.32 An entity may apply to the Agriculture Secretary for a Research Participation Certificate for an income year. The application must be in writing in a form approved by the Agriculture Secretary. ***[Schedule 2, item 27, section 385-185]***

A Research Participation Certificate may be denied or revoked

3.33 The Agriculture Secretary may decide not to issue a Research Participation Certificate. The Agriculture Secretary may also revoke a certificate if the Secretary is satisfied that the issue of the certificate was obtained by fraud or misrepresentation. ***[Schedule 2, item 27, section 385-195 and subsection 385-200(1)]***

3.34 Where a certificate is denied or revoked, the Agriculture Secretary must issue the entity with a written notice. That notice is to include the reasons for the decision not to issue a certificate or to revoke a certificate. ***[Schedule 2, item 27, section 385-195 and subsection 385-200(2)]***

3.35 The written notice must also include a statement indicating the entity's ability to apply to the Administrative Appeals Tribunal either for a review of the decision or for a request of a statement related to the decision. This review mechanism is provided in light of the importance of a Research Participation Certificate to an entity's claim. ***[Schedule 2, item 27, sections 385-210 and 385-215]***

3.36 Once a certificate is revoked, it is taken never to have been issued. However, this does not apply in respect of a review of a decision to revoke a Research Participation Certificate by a court or the Administrative Appeals Tribunal. ***[Schedule 2, item 27, subsections 385-200(3) and (4)]***

3.37 If a certificate issued to an entity is revoked after the time the entity has lodged its income tax return for the income year, then the entity's tax assessment can be amended to give effect to the revocation at any time during the 4-year period starting immediately after the revocation is made. ***[Schedule 2, item 27, section 385-220]***

Worked examples

3.38 The following worked examples are intended to illustrate how an entity may go about satisfying the eligibility criteria and claiming a conservation tillage tax offset.

Example 3.1 Conservation Tillage Offset

Fred carries on a business of primary production.

On 10 July 2012, Fred goes into his local farm equipment and supplies store and buys a new tine machine fitted with narrow points.

The tine machine fitted with narrow points has a cost as a depreciating asset of $100,000.

On 10 August 2012, the tine machine with narrow points is delivered to Fred's property and is ready to be hooked up to Fred's tractor (at that point the asset is installed ready for use).

After completing the research survey, Fred is issued a Research Participation Certificate by the Agriculture Secretary for the 2012-13 income year.

Fred owns the asset and therefore 'holds' the asset according to section 40-40 of the ITAA 1997.

Fred will be entitled to the conservation tillage offset for the 2012-13 income year. Fred is entitled to claim a $15,000 refundable tax offset as part of his 2012-13 tax return.

For the 2012-13 income year Fred's tax bill is $10,000 (he has no other outstanding tax liabilities). However, the $15,000 refundable tax offset will mean that Fred's tax payable is reduced to zero and he is entitled to a refund of $5,000.

Example 3.2 Conservation Tillage Offset

John is carrying on a business of primary production.

On 1 December 2013, John has his local farm supplier deliver his new disc opener to his property. The new disc opener has a cost as a depreciating asset of $90,000. The disc opener needs substantial modifications before it can be hooked on to his older model tractor and used for the next sowing season.

On 2 July 2014, John makes the modifications to the disc opener which allow it to be hooked onto his tractor and starts sowing for the season (at this point in time the disc opener is installed ready for use).

After completing the research survey, John is issued a Research Participation Certificate by the Agriculture Secretary for the 2014-15 income year.

John owns the asset and therefore 'holds' the asset according to section 40-40 of the ITAA 1997.

John will be entitled to claim a conservation tillage offset of $13,500 as part of his tax return for the 2014-15 income year.

For the 2014-15 income year John is in a tax loss position. John will therefore receive a refund of $13,500 in respect of the conservation tillage offset (assuming he has no other outstanding tax liabilities).

Example 3.3 Research Participation Certificate

In August 2012, Sally completes the survey which details the eligible no-till seeder that she has bought and also contains information about her farming practices and information gathered in past soil testing about the nutrients in her soil.

Following completion of the survey Sally applies in writing in the approved form to the Agriculture Secretary for a Research Participation Certificate. The Agriculture Secretary is satisfied that Sally has completed the survey so must issue her with a Research Participation Certificate.

On 1 May 2013, Sally is issued with a Research Participation Certificate for the 2012-13 income year. Sally meets all of the other requirements to claim the conservation tillage offset.

Sally claims the conservation tillage offset in her income tax return for the 2012-13 income year.

In August 2013, the Agriculture Secretary decides to revoke Sally's Research Participation Certificate on grounds of serious misrepresentation.

Sally's assessment can be amended to give effect to the revocation of the certificate within four years of the date of revocation.

Sally may apply to the Administration Appeals Tribunal for review of the Agriculture Secretary's decision to revoke the certificate to be reviewed.

Information sharing and other administrative arrangements

3.39 The Agriculture Secretary and the Commissioner of Taxation (the Commissioner) each perform functions in respect of the conservation tillage offset. The bill includes provisions that enable them to share information and facilitate the smooth administration of the offset.

Information the Agriculture Secretary must give the Commissioner

3.40 The Agriculture Secretary must give the Commissioner notice of the issuance or revocation of a certificate within 30 days of issuing or revoking the certificate. The notice to the Commissioner of Taxation will be accompanied by a copy of the certificate and specify:

- the income year for which the certificate was issued;
- the date on which the certificate was issued;
- the name of the entity;
- the entity's Australian Business Number or Australian Company Number (if they have one); and
- any other information the Agriculture Secretary considers should be reported to the Commissioner.

[Schedule 2, item 27, section 385-205]

3.41 Requiring the Agriculture Secretary to supply information to the Commissioner ensures that the Commissioner has the relevant, up-to-date information when assessing a taxpayer's claim for the conservation tillage offset.

Information the Commissioner may request of the Agriculture Secretary

3.42 The Commissioner may request that the Agriculture Secretary issue an evidentiary certificate as to whether a specified asset is an eligible minimum-till seeder. While not conclusive or binding on the Commissioner, an evidentiary certificate would be prima facie evidence of the asset's status in any legal proceedings. ***[Schedule 2, item 27, section 385-225]***

The Agriculture Secretary's power of delegation

3.43 The Agriculture Secretary has the power to, by writing, delegate any of his or her functions and powers in relation to the conservation tillage offset to an SES employee, or acting SES employee, in the Agriculture Department. ***[Schedule 2, item 27, section 385-230]***

3.44 This power of delegation is intended to facilitate the efficient and effective administration of the offset.

Application and transitional provisions

3.45 These amendments to the tax law are to apply from the same time as section 3 of the Clean Energy Bill 2011 (the main bill).

3.46 Sections 3 to 312 of the main bill commence on a single day to be set by proclamation. However, a proclamation must not specify a day that occurs before all of the Acts listed in Item 2 of the table in section 2 of the main bill receive the Royal Assent. This qualification is designed to ensure that the bills comprising the legislative package for the carbon pricing mechanism commence together – see clause 2 of the main bill.

3.47 As the conservation tillage offset is only available for three years, these amendments will be automatically repealed on 1 July 2015. ***[Schedule 2, items 74-77]***

Amendments to the Australian National Registry of Emissions Units Act 2011

Outline of chapter

4.1 This chapter provides explanatory material on those amendments to be made to the *Australian National Registry of Emissions Units Act 2011* consequential to the Clean Energy Bill 2011.

Context of amendments

4.2 Efficient electronic registries are essential for the implementation of and the tracking of emissions units which may be issued to and traded by a range of businesses and individuals.

4.3 The Australian National Registry of Emissions Units has been established as Australia's national registry for Kyoto units and will serve as a registry for Australian carbon credit units under the *Carbon Credits (Carbon Farming Initiative) Act 2011*. The Government proposes to modify the Registry so that it can be used to ensure accurate accounting of the issuance, holding, transfer, ownership, cancellation, surrender, and relinquishment of carbon units under the carbon pricing mechanism.

4.4 Effective security and anti-fraud measures are required to safeguard the integrity of the Registry. Misuse of the Registry could undermine public and stakeholder confidence and could result in financial losses to businesses that rely on a secure system to meet legislative and contractual obligations. The Government has proposed to amend the Act to provide safeguards against fraud and crime to ensure the integrity of the Registry, and the programs it supports.

4.5 Once the Clean Energy Bill 2011 commences, the Clean Energy Regulator will subsume the functions of the Carbon Credits Administrator and be responsible for maintaining the Registry. Combining carbon pricing mechanism, CFI and Kyoto Protocol functions in one registry will avoid duplication in account opening and operating procedures, and keep implementation and transaction costs down.

Summary of new law

4.6 Amendments will provide the Clean Energy Regulator with the power to make the following administrative decisions in relation to Registry accounts:

- defer giving effect to a transfer instruction;
- refuse to give effect to a transfer instruction;
- impose conditions restricting or limiting the operation of Registry accounts; and
- suspend Registry accounts.

4.7 To support the Carbon Farming Initiative from its scheduled commencement, these amendments will initially be applied to Australian carbon credit units, Kyoto units and prescribed international units. From commencement of the carbon pricing mechanism on 1 July 2012, the safeguards will be extended to carbon units.

4.8 These complement measures in the *Carbon Credits (Carbon Farming Initiative) Act 2011*, other measures in this bill, and the Clean Energy Bill 2011, which provide additional legislative safeguards against fraudulent activities.

4.9 A person will be able to voluntarily cancel carbon units and Australian carbon credit units held in their Registry account, to make an individual contribution towards reducing emissions.

4.10 The Regulator will be able to publish on its website, or in the Liable Entities Public Information Database, information about voluntarily cancelled carbon units and Australian carbon credit units.

Detailed explanation of new law

Amendments commencing on Royal Assent, or the day section 3 of the Australian National Registry of Emissions Units Act 2011 commences (whichever is the later)

Terminology for international emissions units

4.11 Amendments to the *Australian National Registry of Emissions Units Act 2011* are needed to ensure the Registry can account for a range of possible market mechanisms in other countries to which Australia will link. To provide for future developments in international carbon markets, 'non-Kyoto international emissions units' will be categorised as 'prescribed international units'. ***[Schedule 4, item 8]*** This amendment will create a single category that will be able to encompass a broad range of international emissions units.

4.12 Amendments include bulk amendments to the *Australian National Registry of Emissions Units Act 2011* to repeal references to 'non-Kyoto international emissions units' and substitute with references to 'prescribed international units'. ***[Schedule 4, items 1-7, 9, 10, 12-15, 17-18, 22, 26-29, 31-41, 43-46, 48-60]***

Ownership of international emissions units

4.13 The Clean Energy Bill 2011 provides that the registered holder of a carbon unit is the legal owner of the unit. Amendments to the *Australian National Registry of Emissions Units Act 2011* are required to ensure that international units, including those eligible to be surrendered for compliance under the carbon price mechanism, are not treated inconsistently with units issued under Australian law.

4.14 Regulations may provide that if there is an entry for a Kyoto unit or a prescribed international unit in a person's Registry account, then that person is the legal owner of the unit, subject to the requirements of the Act. ***[Schedule 4, item 24] [Schedule 4, item 30]*** The regulations would protect a bona fide purchaser of Kyoto or prescribed international units if they purchased the units for value and without knowledge of any defects in the registered holder's title to the affected units. Defects in title might arise, for example, if a Kyoto unit was transferred in error and sold on by an unintended recipient before the error is detected, or transferred fraudulently in cases such as where evidence of a transmission by operation of law is false, or there is unauthorised access to a Registry account.

4.15 The transmission of registered prescribed international units by force of law is of no force until the units are registered in the Registry. ***[Schedule 4, item 47]***

4.16 A regulation making power will provide the flexibility to deal with different types of international units without conferring upon those units any characteristics that were not explicit in the treaties or arrangements that gave rise to them.

4.17 Regulations may make provision for, or in relation to, the registration, in the Registry, of equitable interests in Kyoto units and prescribed international units. Security interests in relation to Kyoto units and prescribed international units would be registered in the Personal Property Securities Register in accordance with the *Personal Properties Securities Act 2009*. ***[Schedule 4, item 25] [Schedule 4, item 42]***

4.18 Similar amendments have been made for Australian carbon credit units issued under the Carbon Farming Initiative, discussed in chapter 5.

4.19 Further amendments will ensure the Administrator cannot correct the Registry to alter the registration of legal interest in Australian carbon credit units, or make a correction that is contrary to regulations

specifying the ownership of Kyoto or prescribed international units. ***[Schedule 4, item 16]*** Amendments will also ensure that the Federal Court cannot issue an order that alters a registration of legal interests in Australian carbon credit units, or that is contrary to the regulations specifying the ownership of Kyoto units or prescribed international units. ***[Schedule 4, item 19]*** These amendments will reinforce the intention of the provisions in the CFI Act and the *Australian National Registry of Emissions Units Act 2011* relating to legal ownership of Australian carbon credit units, Kyoto units and prescribed international units.

Defer giving effect to a transfer instruction

4.20 Amendments will enable the Carbon Credits Administrator to delay acting on an instruction to transfer Australian carbon credit units, Kyoto units, or prescribed international units to or from a Registry account for up to 48 hours, if the Administrator considers that the instruction is suspicious or fraudulent ***[Schedule 4, item 23, new section 28A]***

4.21 The deferral period will provide the Administrator with time to make inquiries, perform set procedures or to take other appropriate action, as required, to ensure the integrity of the Registry and protect, mitigate or minimise abuse or criminal activity involving the Registry. For example, the Administrator could use this power in conjunction with the power to refuse to carry out an instruction to transfer units, or to suspend a Registry account.

4.22 As a decision by the Administrator to defer acting on an instruction would only have effect for up to 48 hours, such a decision would not be a reviewable decision.

Refuse to give effect to a transfer instruction

4.23 Amendments will allow the Administrator to refuse to carry out an instruction to transfer Australian carbon credit units, Kyoto units, or prescribed international units to or from a Registry account if the Administrator has reasonable grounds to suspect the instruction is suspicious or fraudulent. ***[Schedule 4, item 23, new section 28B]*** This will provide the Administrator with an opportunity to halt suspicious or fraudulent transactions before they are carried out to completion in order to ensure the integrity of the Registry and protect, mitigate or minimise abuse or criminal activity involving the Registry.

4.24 As this provision is intended to prevent fraudulent or criminal activity, the Administrator will not be required to notify the person who gave the instruction until after the refusal has been given effect.

4.25 To provide for procedural fairness, this notification will also inform the person of their right to request the Administrator to proceed with the transfer. If the person submits such a request, they must set out the reasons why the Administrator should carry out the transfer. If the

Administrator requires further information in relation to the request, it may request that the person provide such information.

4.26 The Administrator must then decide whether to continue or revoke its initial refusal to complete the transfer. The Administrator must take steps to ensure its decision is made within seven days of receiving the request or, if further information was required, within seven days of receiving the information. The Administrator must notify the person of the outcome of its final decision as soon as practicable after making that decision.

4.27 A decision by the Administrator to refuse to give effect to a transfer instruction will be a reviewable decision. ***[Schedule 4, item 61]*** If a person is dissatisfied with such a decision, the person may apply, within a period of 28 days, to have the Administrator reconsider the decision. The Administrator must reconsider the decision within 90 days and either affirm, vary or revoke the decision. If the Administrator has affirmed or varied the decision, a person may make an application to the Administrative Appeals Tribunal to review the decision.

Suspending or restricting Registry accounts

4.28 Amendments will allow the Administrator to temporarily suspend the operation of a Registry account, without prior notice, if the Administrator suspects that Registry rules are being abused by an account holder or someone else, or identifies suspicious or fraudulent trading through an account. ***[Schedule 4, item 23, new section 28D]*** The Administrator could impose a suspension by halting all transfers to and from the account or preventing the issue of any Australian carbon credit units to that account. A suspension could not prevent an account holder from relinquishing Australian carbon credit units under section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

4.29 The suspension period will enable the Administrator to consult with the account holder to determine the facts in relation to the suspicious account activity and decide on an appropriate response. The Administrator might decide to unilaterally close the account, impose conditions restricting or limiting account transactions, or lift all blocks on the account.

4.30 The preventative nature of this provision means the Administrator will not be obligated to inform an account holder before suspending their account. This is because prior notification would allow suspicious transactions to continue before a suspension or restriction or took effect.

4.31 Further amendments will allow the Administrator to impose restrictions on Registry accounts. ***[Schedule 4, item 23, new section 28C]*** Conditions imposed on Registry accounts by the Administrator could be applied so as to restrict or halt the transfer of Australian carbon credit

units, Kyoto units, or prescribed international units to or from accounts, or in some other way.

4.32 As soon as practicable after either suspending or restricting a Registry account, the Administrator must notify the person who gave the instruction of the limits imposed on their account. To provide for procedural fairness, the notice must also inform the person of their right to request that the Administrator restore the operations of their account by either revoking or varying its decision. ***[Schedule 4, item 23, new sections 28C and 28D]***

4.33 A request by the person must set out the reasons why the Administrator should revoke or vary its initial decision to suspend or restrict the account. The Administrator may, upon receiving a request, require the person to provide additional supporting information.

4.34 The Administrator must then decide whether to continue, revoke or vary its initial decision to suspend or restrict the account. The Administrator must take steps to ensure its decision is made within seven days of receiving the request or, if further information was required, within seven days of receiving the information. The Administrator must inform the person of its final decision as soon as practicable after making that decision.

4.35 A decision by the Administrator not to revoke or vary the suspension of, or restrictions imposed on, a Registry account will be a reviewable decision. ***[Schedule 4, item 61]*** If a person is dissatisfied with any such decision, the person may apply to have the Administrator reconsider the decision. If the Administrator affirms or varies its decision, a person may make an application to the Administrative Appeals Tribunal to review the decision.

4.36 These amendments will also enable a Registry account holder to request that the Administrator suspend or restrict their Registry account. ***[Schedule 4, item 23, new sections 28C and 28D]*** This would enable account holders to halt the operation of their account if they noticed suspicious or unauthorised trades in their account or were concerned about potential account breaches.

Other amendments

4.37 Amendments to the *Australian National Registry of Emissions Units Act 2011* are needed to reflect amendments to the *Electronic Transactions Act 1999.* ***[Schedule 4, item 11]*** As well, the Regulator may certify and supply a copy of or extract from the Registry. Amendments will ensure this provision is consistent with the *Evidence Act 1995.* ***[Schedule 4, items 20-21]***

Amendments commencing on the same date as section 3 of the *Clean Energy Act 2011*

Clean Energy Regulator

4.38 The Clean Energy Regulator will take over the functions of the Administrator of the Carbon Farming Initiative on commencement of the Clean Energy Bill 2011.

4.39 Amendments include bulk amendments to the *Australian National Registry of Emissions Units Act 2011* to repeal references to the Administrator and substitute with references to the Regulator. ***[Schedule 1, Part 1, items 5, 6, 7, 13, 15, 43, 44, 45, 46]*** (note that item 46 does not amend occurrences of 'Administrator' or 'Administrator's' in bold italic font).

Amendments commencing on 1 July 2012

Establishing a registry for carbon units

4.40 Amendments to the *Australian National Registry of Emissions Units Act 2011* are needed to enable the Registry to be used as the registry for carbon units issued under the carbon pricing mechanism. ***[Schedule 1, Part 2, item 237]*** Carbon unit is defined by reference to the Clean Energy Bill 2011. ***[Schedule 1, Part 2, items 229-230]***

4.41 Amendments are needed to enable existing provisions in the Act to be applied to carbon units, or provide for the treatment of carbon units in processes performed in relation to the Registry. ***[Schedule 1, Part 2, items 238, 240-242]*** For example, regulations may provide that the Regulator may not close a Registry account at the request of an account holder if there are carbon units in the account. ***[Schedule 1, Part 2, item 240]*** If the Regulator unilaterally closes an account, any carbon units in that account will be cancelled. ***[Schedule 1, Part 2, item 241]***

4.42 Amendments are needed to ensure that Kyoto Protocol rules are applied in relation to the operation of the carbon pricing mechanism. Consistent with this, regulations may provide that, if there is an entry for a Kyoto unit in a specified Commonwealth Registry account, such as a retirement account, a cancellation account or a replacement account, the unit cannot be surrendered under the carbon pricing mechanism. ***[Schedule 1, Part 2, item 239]***

4.43 Further amendments will ensure the Regulator cannot correct the Registry to alter the registration of legal interests in carbon units, and that the Federal Court cannot issue an order to alter the registration of legal interests in carbon units in the Registry. ***[Schedule 1, Part 2, item 242A]*** ***[Schedule 1, Part 2, item 242B]*** These amendments have been made to reinforce the intention of the provisions in the Clean Energy Bill 2011 relating to legal ownership of carbon units.

Applying safeguards to the carbon pricing mechanism and carbon units

4.44 Amendments are needed to extend the scope of the provisions for the Regulator to prevent suspicious or fraudulent trading on the Registry, in Schedule 4, to apply to the carbon pricing mechanism and any carbon units issued under it. ***[Schedule 4, item 23, new sections 28A-28D]*** For example, amendments will empower the Regulator to defer giving effect to an instruction to transfer carbon units for up to 48 hours, without prior notice. ***[Schedule 1, Part 2, items 244-245]***

4.45 Amendments will also enable the Regulator to refuse to give effect to an instruction to transfer carbon units, without prior notice. ***[Schedule 1, Part 2, items 246-248]***

4.46 Amendments will enable the Regulator to apply conditions restricting or limiting, or fully suspending, the operation of a Registry account for a specified period despite any other provision in the Clean Energy Bill 2011. ***[Schedule 1, Part 2, items 249-252]*** Amendments will also ensure that a suspension imposed on a Registry account would not prevent an account holder from surrendering eligible emissions units if the account holder had a liability under the carbon pricing mechanism, or relinquishing carbon units under section 210 of the Clean Energy Bill 2011. ***[Schedule 1, Part 2, item 251]***

Voluntary cancellation of carbon units and Australian carbon credit units

4.47 Amendments provide that a person will be allowed to buy carbon units and surrender them voluntarily, regardless of whether they have obligations under the carbon pricing mechanism; however those units must not be issued in a fixed charge year or have a fixed charge. ***[Schedule 1, Part 2, item 256]*** Fixed charge year and fixed charge is defined by reference to the Clean Energy Bill 2011.

4.48 From 1 July 2012, amendments to the *Australian National Registry of Emissions Units Act 2011* will provide for the voluntary cancellation of Australian carbon credit units. ***[Schedule 1, Part 2, item 256]***

Publication of information about voluntarily cancelled carbon units and Australian carbon credit units

4.49 Amendments provide that the Regulator will publish on its website, information about voluntarily cancelled carbon units and Australian carbon credit units including the name of the person who cancelled the unit and the total number of units cancelled. ***[Schedule 1, Part 2, items 253-254]***

4.50 In addition, if there is an entry for a person in the Liable Entities Public Information Database kept by the Regulator (under section 261 of the Clean Energy Bill 2011) and that person voluntarily cancels a carbon unit, a Australian carbon credit unit, a Kyoto unit or a prescribed international unit, the Regulator will enter the total number of each type of

voluntarily cancelled units in the Information Database. ***[Schedule 1, Part 2, item 255]***

4.51 From 1 July 2012, amendments to the *Australian National Registry of Emissions Units Act 2011* will provide for the publication of information about voluntarily cancelled Australian carbon credit units. ***[Schedule 1, Part 2, item 256]***

Disclosure of information held in the Registry

4.52 Section 26 of the *Australian National Registry of Emissions Units Act 2011* places conditions on the use and disclosure of information obtained from the Registry. Amendments will provide these conditions will not apply if the information is relevant to the holding of carbon units in the Registry, or the exercise of rights attached to carbon units. ***[Schedule 1, Part 2, item 243]***

Other amendments

4.53 For consistency, the same definitions are applied for some terms as in the Clean Energy Bill 2011. ***[Schedule 1, Part 2, items 229-236, 252]***

Amendments to the Carbon Farming Initiative

Outline of chapter

5.1 This chapter provides explanatory material on amendments to be made to the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Context of amendments

5.2 The Carbon Farming Initiative (CFI) is a key component of the Government's plan for a clean energy future. The CFI legislation fulfils the Australian Government's commitment to develop legislation to give farmers, forest growers and landholders access to domestic voluntary and international carbon markets. This will begin to unlock the abatement opportunities in the land sector which currently makes up 23 per cent of Australia's emissions.

5.3 The legislation underpinning the CFI is the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act), the *Australian National Registry of Emissions Units Act 2011* and the *Carbon Credits (Consequential Amendments) Act 2011*.

5.4 The Clean Energy Bill 2011 establishes a link between the carbon price mechanism and the CFI to increase incentives for land and waste sector abatement.

Summary of new law

5.5 The amendments ensure that the CFI complements the carbon price mechanism, assist existing activities to transition to the CFI and address some related technical implementation issues.

Detailed explanation of new law

Amendments commencing on Royal Assent, or the commencement of section 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, whichever is the later

References to foreign registries

5.6 Amendments remove references to 'foreign non-Kyoto registry' and substitute with references to 'foreign registry'. This matches similar amendments in the *Australian National Registry of Emissions Units Act 2011*. ***[Schedule 5, items 1-3]***

References to Electronic Transactions Act 1999

5.7 The amendment removes the reference to sections 14(3) and (4) of the *Electronic Transactions Act 1999* from section 7(6) of the CFI Act, and replaces it with a reference to section 14A of that Act. This reflects amendments made to that Act. ***[Schedule 5, item 4]***

Prescribed non-CFI offsets schemes

5.8 Section 27(4)(n) of the CFI Act operates to prevent offsets projects from being covered by both the CFI and a prescribed non-CFI offsets scheme. If a project proponent seeks to be covered by the CFI, it must first exit the prescribed non-CFI offsets scheme and seek a determination under section 95 of the CFI Act (sections 23(1)(e) and 92). This determination will increase the relinquishment requirements in relation to sequestration projects by the number of credits issued to the project while covered by the prescribed non-CFI offsets scheme. This ensures that permanence obligations are carried over from the previous scheme.

5.9 Section 27(4)(n) is repealed and other consequential amendments are made. The effect of this is that a project can be covered by both the CFI and a prescribed non-CFI offsets scheme. Prescribed non-CFI offsets schemes, for these purposes, will include the Commonwealth Government's Greenhouse Friendly Initiative and the NSW and ACT Governments' Greenhouse Gas Reduction Scheme (GGAS). Other international and voluntary carbon offset schemes and government programs that fund greenhouse gas abatement could also be prescribed. ***[Schedule 5, items 9, 11-12, 16]***

5.10 The amendments ensure that there is no double counting of abatement generated by a project while covered by both the CFI and a prescribed non-CFI offsets scheme. If a project was or is covered by a prescribed non-CFI offsets scheme, the unit entitlement in relation to the project will be reduced by the number ascertained in accordance with the regulations. The regulations will require the project proponent to report any abatement credited or otherwise accounted for under a prescribed non-CFI offsets scheme since the commencement of CFI coverage. The

project proponent's unit entitlement will be reduced by reference to any amount so reported. ***[Schedule 5, items 5-8]***

5.11 The amendments also deal with the carrying over of permanence obligations in relation to sequestration projects transitioning into the CFI from certain other offsets schemes. The Government has indicated that it will enforce permanence obligations in relation to the Greenhouse Friendly Initiative and GGAS, thus facilitating the winding up of those schemes. ***[Schedule 5, item 10] [Schedule 5, item 17]***

5.12 Landfill legacy emissions avoidance projects that are or were covered by a specified prescribed non-CFI offsets scheme will be exempted from the regulatory additionality test in section 41(1)(b) of the CFI Act. This removes a potential obstacle to the transition of Greenhouse Friendly and GGAS landfill projects into the CFI. Regulatory additionality will instead be taken into account in landfill methodologies by assuming a specified percentage of emissions from landfills are reduced for regulatory purposes. This will achieve administrative simplicity and certainty for the industry. ***[Schedule 5, item 15]***

Regulatory additionality

5.13 One requirement for eligibility to participate in the CFI is that the offsets project passes the additionality test (section 27(4)(d)). The additionality test is set out in section 41(1) of the CFI Act. There are two aspects to the test:

- The project must be of a kind specified in the regulations (the positive list) (section 41(1)(a)); and
- The project must not be required to be carried out by or under a law of the Commonwealth, a State or a Territory (regulatory additionality) (section 41(1)(b)).

5.14 The amendment enables regulations to carve out exceptions to the regulatory additionality test. The regulations will ensure that projects are not disqualified from participation in the CFI because of requirements arising out of arrangements voluntarily entered into by the project proponent, such as requirements arising out of a conservation covenant. It is not intended that projects will be disqualified merely because responsibilities voluntarily assumed by the project proponent are backed up by legislative requirements. ***[Schedule 5, item 13]***

Transitional arrangements in relation to the Interim Domestic Offsets Integrity Committee

5.15 Section 254 of the CFI Act establishes the Domestic Offsets Integrity Committee (the statutory DOIC). The statutory DOIC has a number of functions under the CFI Act, the main one being the assessment and endorsement of proposals for methodology determinations. Prior to the commencement of the CFI Act, an interim

DOIC was established administratively, and given the mandate to assess and endorse proposals in the pre-commencement period. Sections 131 and 132 of the CFI Act operate to ensure that:

- If an application was made to the Interim DOIC for the endorsement of a proposal, but the Interim DOIC neither endorses nor refuses to endorse the proposal, then, following commencement of the CFI Act, the application is taken to have been made to the statutory DOIC (section 131). The statutory DOIC must then consider the application afresh.
- If an application was made to the Interim DOIC for the endorsement of a proposal, and the Interim DOIC endorses it, then, following commencement of the CFI Act, the endorsement is taken to have been made by the statutory DOIC (section 132). The Minister can then proceed to make a determination giving effect to the proposal in accordance with section 106.

5.16 The amendment addresses the situation where an application for the endorsement of a proposal has been received by the Interim DOIC, and the Interim DOIC has commenced the assessment of the proposal—including by publishing the proposal on the Department's website and inviting public submissions— but has not yet endorsed the proposal prior to commencement of the CFI Act. The amendment operates to deem the actions taken by the Interim DOIC to have been taken by the statutory DOIC. The effect of this is that the statutory DOIC will not be required to duplicate the consultation already undertaken by the Interim DOIC, but can, in effect, pick up where the Interim DOIC leaves off. In particular, if the Interim DOIC has completed 30 days of public consultation in relation to a proposal, the statutory DOIC will not be required to undertake any further period of public consultation. ***[Schedule 5, items 18-19]***

5.17 The amendment also addresses the pre-commencement actions of the Interim DOIC in relation to the positive list (i.e. the regulations made for section 41(1)(a) of the CFI Act). The Minister is required to request the statutory DOIC to advise the Minister about the projects that should be included in the positive list: section 41(2). The Minister has requested the Interim DOIC for such advice in relation to the initial set of activities to be included in the positive list on scheme commencement. The amendment ensures that this request fulfils the Minister's obligations. Activities will be added to the positive list over time, as new abatement activities are identified or methodologies are developed, and the statutory DOIC will be consulted in relation to the addition of those activities. ***[Schedule 5, item 14]***

Ownership of Australian carbon credit units

5.18 The Clean Energy Bill 2011 expressly provides legal interests in carbon units to their registered holder. Amendments to the CFI Act are

required to provide similar certainty about ownership of Australian carbon credit units.

5.19 If there is an entry for an Australian carbon credit unit in a person's Registry account, then that person is the legal owner of the unit, subject to the requirements of the *Australian National Registry of Emissions Units Act 2011*. ***[Schedule 5, items 20-22]***

5.20 The transmission of Australian carbon credit units by force of law is of no force until the units are registered in the Registry. ***[Schedule 5, item 22A]***

5.21 This would protect a bona fide purchaser of Australian carbon credit units if they purchased the units for value and without knowledge of any defects in the registered holder's title to the affected units. Defects in title might arise, for example, if an Australian carbon credit unit was transferred in error and sold on by an unintended recipient before the error is detected, or transferred fraudulently in cases such as where evidence of a transmission by operation of law is false, or there is unauthorised access to a Registry account.

5.22 Regulations may provide that legal interests in Australian carbon credit units are subject to any equitable interests that might be registered in relation to them in the Registry. Security interests in relation to Australian carbon credit units would be registered in the Personal Property Securities Register in accordance with the *Personal Properties Securities Act 2009.* ***[Schedule 5, item 23]***

5.23 Similar amendments have been made for Kyoto units and prescribed international units, discussed in chapter 4.

Publication of concise description of the characteristics of Australian carbon credit units

5.24 Section 162 of the CFI Act provides for the publication of a concise description of the characteristics of Australian carbon credit units by 31 December 2011. The amendment provides for the concise description to be published within 6 months of scheme commencement, and ensures that the Administrator has sufficient time to publish the required information following scheme commencement. ***[Schedule 5, item 24]***

Membership of the DOIC

5.25 The amendment increases the number of DOIC members who can be Commonwealth Scientific and Industrial Research Organisation officers from one to a maximum of two. This helps ensure that the DOIC can include sufficient members with the appropriate level and breadth of technical expertise. ***[Schedule 5, items 25-26]***

Disclosure of protected information to certain persons and bodies

5.26 Section 276 of the CFI Act enables the Administrator to disclose protected information to certain persons and bodies. The Australian Carbon Trust Limited, referred to in section 276(1)(b), has changed its name to Low Carbon Australia. The amendment reflects this change. ***[Schedule 5, item 27]***

5.27 The amendment also adds the Australian Transaction Reports and Analysis Centre (AUSTRAC) to the list of bodies to which protected information may be disclosed. This will enable the Administrator to disclose information to AUSTRAC to enable AUSTRAC to compile and analyse information in relation to markets for Australian carbon credit units, for instance. ***[Schedule 5, item 27]***

Disclosure of publicly available information

5.28 Section 280 of the CFI Act provides that entrusted public officials may disclose protected information if it is already publicly available. The amendment limits this to the disclosure of information that has already been lawfully made available to the public. This is to ensure that the section does not authorise the further disclosure of information that has been unlawfully disclosed. ***[Schedule 5, item 28]***

Amendments commencing at the same time as section 3 of the *Clean Energy Act 2011* commences

5.29 The Clean Energy Regulator will take over the functions of the Administrator of the Carbon Farming Initiative on commencement of the Clean Energy Bill 2011. Bulk amendments are made to replace the term 'Administrator' with 'Regulator' to reflect this. ***[Schedule 1, Part 1, items 51-88, 88A, 89-97, 99]*** These do not include amendments of occurrences of "Administrator" or "Administrator's" in bold italic font.

Amendments commencing on 1 July 2012

Voluntary cancellation of carbon units and Australian carbon credit units

5.30 Part 14 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* provides for the voluntary cancellation of Australian carbon credit units until the carbon pricing mechanism commences, at which point the Part will be repealed. ***[Schedule 1, Part 2, item 257-258]*** These provisions are now included in the *Australian National Registry of Emissions Units Act 2011*, along with provisions for the voluntary cancellation of carbon units, and are discussed in chapter 4.

Publication of information about voluntarily cancelled carbon units and Australian carbon credit units

5.31 Division 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* provides for the publication of information about voluntarily cancelled Australian carbon credit units until the carbon pricing mechanism commence and the Division is repealed. ***[Schedule 1, Part 2, item 258]*** These provisions are now included, along with provisions for the publication of information about voluntarily cancelled carbon units, in the *Australian National Registry of Emissions Units Act 2011* discussed in chapter 4.

Reviews of the Carbon Farming Initiative

5.32 The Climate Change Authority will also undertake reviews of the *Carbon Credits (Carbon Farming Initiative) Act 2011*. Consequently, amendments are made which reflect this change.

5.33 The Authority must make provision for public consultation and provide a copy of the report to the Minister. ***[Schedule 1, Part 2, item 258A]***

5.34 The Authority must publish a copy of the report on its website at the time it is provided to the Minister. ***[Schedule 1, Part 2, item 258A]***

5.35 The Authority may include recommendations to the Commonwealth Government in its review. If recommendations are made that the Government should take a particular action, the Authority must analyse the costs and benefits of that action. ***[Schedule 1, Part 2, item 258A]***

5.36 The Authority is not prohibited from taking other matters into account when formulating a recommendation. ***[Schedule 1, Part 2, item 258A]***

5.37 Any report containing recommendations must include the reasons for those recommendations. ***[Schedule 1, Part 2, item 258A]***

5.38 If recommendations are made, the Minister must, on behalf of the Government, prepare a response to each of the recommendations as soon as practicable after receiving the report and then table copies of the response in each House of the Parliament within 6 months of receiving the report. The Government's response may have regard to the views of the Authority and any other person the Minister considers relevant. It is expected that the document will outline the Government's reasons for each response. ***[Schedule 1, Part 2, item 258A]***

Amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Outline of chapter

6.1 This chapter describes the amendments made by the consequential amendments bill to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Ozone Act). Complementary amendments will be made by separate amendment bills to the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (Import Levy Act) and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (Manufacture Levy Act). The amendments to these Acts will provide that the importers and manufacturers of the Kyoto Protocol synthetic greenhouse gases (SGGs), namely, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6), will be subject to an equivalent carbon charge by way of the existing levy structure under the Ozone Act. Further policy context and background to these changes is set out in the explanatory memorandums for the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011 (Import Levy Amendment Bill) and the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 (Manufacture Levy Amendment Bill).

6.2 This chapter also describes a number of complementary amendments to the Ozone Act including making SF_6 a controlled substance and the introduction of an ozone depleting substance (ODS)/SGG equipment licence.

Context of amendments

6.3 The Ozone Act gives effect to Australia's obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and under the United Nations Framework Convention on Climate Change (UNFCCC). The Ozone Act currently places obligations on importers and manufacturers of two SGGs covered under the Kyoto Protocol, namely HFCs and PFCs, which have been introduced by industry as replacements for ODSs that have been or are being phased out under the Montreal Protocol.

6.4 A third Kyoto Protocol SGG, SF_6, has not to date been regulated under the Ozone Act.

6.5 These three SGGs represent a small but rapidly growing source of emissions. These gases are often used to replace ODSs that are being phased out under the Montreal Protocol. Accordingly, in order to minimise the compliance costs for the importers and manufacturers of these substances, the existing levy structure under the Ozone Act, rather than the carbon pricing mechanism, will be used to apply the carbon charge to the import and manufacture of these substances. The carbon charge will only be applied to a Kyoto Protocol SGG which contributes to Australia's international emissions reduction obligations. These specific SGGs are those defined as a 'greenhouse gas' under the NGER Act and the NGER regulations.

Summary of new arrangements

6.6 The amendments to the Ozone Act, the Import Levy Act and the Manufacture Levy Act give effect to a number of different key policies:

- The application of the carbon charge to the import and manufacture of SGGs, using the existing levy structure under the Ozone Act.
- The inclusion of SF_6 as a controlled substance under the Ozone Act. This will place reporting obligations on importers and manufacturers of this greenhouse gas.
- The introduction of an ODS/SGG equipment licence to replace the existing pre-charged equipment licence. This new licence will cover the import of a broader range of equipment or products which contain a SGG.

Comparison of key features of new law and current law

New law	***Current law***
The application of the carbon charge to the import and manufacture of SGGs (including the import of equipment containing SGGs).	No carbon charge.
Licensing and reporting obligations apply to importers and manufacturers of ODSs, including hydrochlorofluorocarbons (HCFCs), and HFCs, PFCs	Licensing and reporting obligations apply to importers and manufacturers of ODSs, including HCFCs, and HFCs and PFCs. No obligations apply to SF_6.

New law	*Current law*
and SF_6.	
Importers of air-conditioning or refrigeration equipment that contains an HCFC and importers of equipment and products containing HFCs, PFCs and SF_6 will be required to hold an ODS/SGG equipment licence.	Importers of refrigeration and air conditioning equipment containing an HFC or HCFC refrigerant are required to hold a pre-charged equipment licence.
The Minister will be able to disclose information to the Regulator.	Regulator not established.

Application of the carbon charge to the import and manufacture of synthetic greenhouse gases

6.7 The Import Levy Act and the Manufacture Levy Act are amended by the Import Levy Amendment Bill and the Manufacture Levy Amendment Bill, respectively. These amendments apply the carbon charge to the import and manufacture of SGGs and the import of SGG equipment. The carbon charge component will be in addition to the existing licence levies which currently apply to the import and manufacture of SGGs and the import of pre-charged equipment (which is redefined as either ODS or SGG equipment; see below). The operation of these amendments, and further policy context and background, is discussed in greater detail in the explanatory memorandums for the Import Levy Amendment Bill and the Manufacture Levy Amendment Bill. In summary, the carbon charge is imposed by providing that the licence levies for the import and manufacture of SGGs and the import of SGG equipment is determined by regulations in two components: one component reflecting the carbon charge and the other component reflecting the existing licence levy.

6.8 The effect of these arrangements, generally put, is that an importer or manufacturer of SGGs, as well as an importer of SGG equipment, will be subject to a carbon charge which equates with the liability that the importer or manufacturer would have incurred if they were liable entities under the mechanism and had been responsible for an equivalent amount of carbon dioxide emissions under the main bill.

Ozone Protection and SGG Account

6.9 Amendments to section 65C of the Ozone Act also provide that any amounts of the levy which relate to the carbon charge component of the levy are not to be credited to the Ozone Protection and SGG Account but will instead be credited to consolidated revenue. Existing

arrangements regarding the crediting of the Account will otherwise remain unchanged. ***[Schedule 1, Part 2, items 445-448]***

Payment and reporting requirements

6.10 Reflecting that the application of the carbon charge to these arrangements will significantly increase the quarterly licence levies required from importers and manufacturers of SGGs, and the importers of SGG equipment, section 69 of the Ozone Act is amended to provide that a licence levy is due and payable at the end of 60 days, rather than the present 15 days, after the end of the quarter to which it relates. Provision is also made for a licensee to seek an extension of this time period upon application to the Minister (or his or her delegate). The provisions dealing with the imposition of interest upon overdue licence levies remain unchanged. ***[Schedule 1, Part 2, item 449]***

6.11 Similar to the existing reporting arrangements, an importer, exporter or manufacturer of SGGs, as well as an importer of ODS or SGG equipment, will be required, under new section 46A, to provide quarterly reports to the Minister, in accordance with the regulations, before the 15th day after the end of each quarter. A person who fails to comply with the requirement commits a strict liability offence. ***[Schedule 1, Part 2, items 442-442B]***

Refund arrangements for exported SGG and SGG equipment

6.12 Reflecting equivalent arrangements under the mechanism in the main bill, importers and manufacturers of SGG, as well as importers of SGG equipment, will be able to apply for the remission or refund of the carbon charge component of any levy paid, when the SGG or SGG equipment, for which the levy has been paid, is exported within 12 months of import or manufacture (or such longer period as is prescribed in the regulations), either by the licensee or a third party purchaser. An application for a refund or remission of the levy may be made with respect to the whole or a part of the levy paid (for example, when only a portion of the SGG for which levy has been paid is exported within 12 months). An application for a refund or remission of levy must be made to the Minister (or his or her delegate) and accompanied by such information and documents as are specified in the regulations. The regulations may require verification by statutory declaration of any statements made in an application.

6.13 Provision is also provided for the regulations to authorise, importers and manufacturers of SGG, as well as importers of SGG equipment, to assign their right, under these provisions, to receive a remission or refund of the carbon charge component of any levy paid to a third party. This will allow greater flexibility in administrative arrangements regarding the appropriate refund or remittal of the carbon charge component when importers or manufacturers have passed this cost on to a third party. ***[Schedule 1, Part 2, item 450]***

Civil Penalties

6.14 Reflecting equivalent provisions in the main bill (see section 252 of the main bill), the maximum pecuniary penalty under the civil penalties regime in the Ozone Act, for the unlicensed import, export or manufacturer of SGGs and the unlicensed import of ODS or SGG equipment will be increased to 2,000 penalty units for an individual and 10,000 penalty units for a body corporate. ***[Schedule 1, Part 2, items 426, 444]***

Scheduling of sulfur hexafluoride (SF_6)

6.15 Schedule 1 of the Ozone Act lists those substances to which that Act applies. Parts I to VIII apply to substances listed under the Montreal Protocol, while Parts IX and X list HFCs and PFCs, respectively, which are substances covered under the UNFCCC and Kyoto Protocol. Entities that import or manufacture scheduled substances have obligations to report the quantity and composition of their imports and, in certain cases, to pay levies consistent with the Import Levy Act and the Manufacture Levy Act.

6.16 SF_6 is a potent greenhouse gas listed under the Kyoto Protocol. To ensure that importers and manufacturers of SF_6 can be identified for the purpose of applying the carbon charge to SF_6, it is being included within Schedule 1 of the Ozone Act. To this end, 'Part XI — Sulfur hexafluoride' is added at the end of Schedule 1. This Part only contains SF_6. ***[Schedule 1, Part 2, item 451]***

6.17 Section 7, which defines terms used throughout the Ozone Act, is amended to include a definition of sulfur hexafluoride as 'the substance referred to in Part XI of Schedule 1, whether alone or in a mixture'. Moreover, the definition of SGG is amended so that it refers to 'an HFC, a PFC or sulfur hexafluoride'. ***[Schedule 1, Part 2, items 421, 422]***

6.18 Section 3, which defines the objectives of the Ozone Act, is also amended to put beyond doubt that the controls on the manufacture, import, export and uses of SGG contained within this Act also give effect to Australia's obligations under the Kyoto Protocol. ***[Schedule 1, Part 2, items 415B-416B, 450A]***

Introduction of the ODS/SGG equipment licence

6.19 Currently, importers of refrigeration and air conditioning equipment pre-charged with an HFC or an HCFC refrigerant are required to hold a 'pre-charged equipment licence'. Reflecting the application of the carbon charge to equipment containing SGG, the new definitions of 'ODS equipment' (contained in new section 8C) and 'SGG equipment' (contained in new section 8D) will replace the current definition of 'pre-charged equipment' in the Ozone Act. The new definition of ODS equipment will include air-conditioning or refrigeration equipment that contains an HCFC refrigerant. The new definition of SGG equipment will

include any equipment or products that contain an HFC, a PFC or SF_6. Under the new definition, an example of the kind of equipment which contains an SGG is fire protection equipment. However, to allow some flexibility in these arrangements, appropriate types of equipment and products, which would otherwise be SGG equipment under the Ozone Act, may be excluded from this definition by way of regulation or a legislative instrument made by the Minister. Unless sooner revoked, however, any such legislative instrument made by the Minister ceases to be operative 12 months after it is registered under the *Legislative Instruments Act 2003*. ***[Schedule 1, Part 2, items 417, 423]***

6.20 An importer of an equipment or product that includes one of these ODS or SGGs (unless the SGG equipment is excluded by regulation or legislative instrument made by the Minister under new section 8D of the Ozone Act) is required to hold an 'ODS/SGG equipment licence'. This requirement is implemented by the substitution of a new subsection 13(6A). ***[Schedule 1, Part 2, items 418, 425]***

6.21 New paragraph 13(6A)(b), however, provides that a person is not required to hold an ODS/SGG equipment licence if the equipment imported has been kept by the person, or by a member of the person's household, wholly or principally for private or domestic use *and* the equipment, or class of equipment, is prescribed by regulation or legislative instrument made by the Minister (see also subsection 13(3) of the *Legislative Instruments Act 2003* which permits legislative instruments to specify matters or things by referring to a class, or classes, of matters or things). Any such regulation or legislative instrument may also specify conditions that will need to be satisfied by the importer for any specified equipment to fall within this exemption. For example, the regulations could specify that a person who imports a motor vehicle would not be required to hold an ODS/SGG equipment licence for any ODS and/or a SGG contained in the vehicle (such as in the vehicle's air-conditioning system), on the condition that for 12 months before import, it has been owned or used for private or domestic use by the person.

6.22 Consequentially, references to 'pre-charged equipment' and 'pre-charged equipment licences' in the Ozone Act have been replaced with references to 'ODS equipment' or 'SGG equipment' and 'ODS/SGG equipment licences'. Other sections will be repealed to take account of the new definition. ***[Schedule 1, Part 2, items 419-420, 425, 427-441]***

6.23 Section 9 currently provides an exemption from the definition of 'scheduled substance' for scheduled substances, including SGGs, when contained in manufactured products in certain circumstances. This exemption recognises that it is normally not practical to monitor the imports of these products. Section 9 is amended so that it no longer applies to SGGs. This is to ensure that this provision does not inadvertently exclude types of SGG equipment which should be subject to regulation under the Ozone Act. If appropriate, certain types of

equipment and products, which would otherwise be SGG equipment under the Ozone Act, may still be excluded from this definition by way of regulation or a legislative instrument made by the Minister under new section 8D of the Ozone Act. ***[Schedule 1, Part 2, items 424A-424B]***

Disclosure of information

6.24 To aid the Regulator in the exercise of its powers, including monitoring the contribution of SGGs to Australia's overall emissions, the Ozone Act is amended so that the Minister is able to disclose information collected under that Act to the Regulator. ***[Schedule 1, Part 1, item 194]***

Definitions

6.25 A number of existing definitions in the Ozone Act are also amended to provide greater clarity. ***[Schedule 1, Part 2, items 416A, 420A-420C]***

Amendments to other legislation

7.1 This chapter addresses amendments to be made to the following Acts and Regulations consequential to the Clean Energy Bill 2011 and other Bills contained in the Clean Energy Legislation Package:

- *Renewable Energy (Electricity) Act 2000*
- *Financial Management and Accountability Regulations 1997*
- *Competition and Consumer Act 2010*
- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001*
- *Evidence Act 1995*
- *Anti-Money Laundering and Counter Terrorism Financing Act 2006*
- *Taxation Administration Act 1953.*

7.2 Amendments to the *Renewable Energy (Electricity) Act 2000* are needed to clarify the inspections process for small generation units in relation to the process for registering certificates, including small-scale technology certificates, to enable the Climate Change Authority to conduct reviews under that Act, and as a consequence of the establishment of the Clean Energy Regulator.

7.3 Amendments to the *Financial Management and Accountability Regulations 1997* are needed as a consequence of the establishment of the Clean Energy Regulator, and the Climate Change Authority. Amendments to the NGER Act relating to the transfer of functions are described in Chapter 1 of this explanatory memorandum.

7.4 Amendments to the *Trade Practices Act 1974* and the *Australian Securities and Investments Commission Act 2001* are needed to ensure appropriate exchange of information between regulators.

7.5 Amendments to the *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001* are needed to implement the decision to make carbon units financial products.

7.6 Amendment of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* is needed to address the risk of money laundering through trading in carbon units.

7.7 An amendment to the *Evidence Act 1995* will allow quarterly reports by manufacturers, importers and exporters of SGGs, ODS equipment and SGG equipment to be classified as Commonwealth documents.

7.8 An amendment to the *Taxation Administration Act 1953* provides for appropriate exchange of information between the Australian Taxation Office and the Regulator.

Detailed explanation of new law

Renewable Energy (Electricity) Act 2000

7.9 The Clean Energy Regulator, established by the proposed *Clean Energy Regulator Act 2011*, will administer the *Renewable Energy (Electricity) Act 2000*. References to the Renewable Energy Regulator and his or her staff are therefore deleted and references to the new Regulator and its staff substituted. ***[Schedule 1, Part 1, item 195, 199-204, 207-212]***

7.10 A new definition of 'official of the Regulator' is also included. ***[Schedule 1, Part 1, item 196]***

7.11 The Clean Energy Regulator Bill includes provisions relating to secrecy (Part 3). For this reason, overlapping provisions (and relevant definitions) in the *Renewable Energy (Electricity) Act 2000* are repealed. ***[Schedule 1, Part 1, item 197-198, 205-206]***

Reviews

7.12 With the establishment of the Climate Change Authority by the proposed *Climate Change Authority Act 2011*, reviews of the *Renewable Energy (Electricity) Act 2000* will now be undertaken by the Authority. References to the appointment of a person to undertake the reviews and to that person are therefore removed and replaced with references to the new Authority and its staff. ***[Schedule 1, Part 2, item 451A]*** Consistent with the Government's intent that the Renewable Energy Target will be consistent with the operation of the carbon pricing mechanism, the Authority's recommendations must not be inconsistent with the objects of the *Renewable Energy (Electricity) Act 2000*.

7.13 In order to achieve consistency with other reviews undertaken by the Authority, provisions providing for the procedure of the reviews and subsequent report have been inserted. ***[Schedule 1, Part 2, item 451A]***

7.14 The Authority must publish the report of a review on its website at the time of providing it to the Minister. ***[Schedule 1, Part 2, item 451A]***

7.15 A report of a review may set out recommendations to the Government but in formulating a recommendation that the Government should take particular action, the Authority must analyse the costs and

benefits of the proposed action. This requirement, however, does not prevent the Authority from taking into account other matters when formulating a recommendation. Consistent with the Government's policy that the Renewable Energy Target is complementary to the carbon pricing mechanism, the Authority, in undertaking the reviews, must not make recommendations that are inconsistent with the objects of the *Renewable Energy (Electricity) Act 2000***.** The Authority must set out its reasons for any recommendations in its report. ***[Schedule 1, Part 2, item 451A]***

7.16 If recommendations are made, the Minister must, on behalf of the Government, prepare a response to each of the Authority's recommendations as soon as practicable after receiving the report and must table copies of the response in each House of the Parliament within 6 months of receiving the report. The Government's response may have regard to the views of the Authority and any other person the Minister considers relevant. It is expected that the document will outline the Government's reasons for each response. ***[Schedule 1, Part 2, item 451A]***

Small generation units

7.17 Schedule 3 of the Bill commences the day after the Bill receives Royal Assent. It clarifies the close relationship between the inspections process for small generation units provided for under section 23AAA of the *Renewable Energy (Electricity) Act 2000* and the process for registering certificates, including small-scale technology certificates (STCs), under section 26 of that Act. The inspection scheme for installations of small generation units has an important role as part of the quality assurance framework for registration of STCs. For example, the information and intelligence gained through inspections would be used to inform pre-registration assessments by the Office of the Renewable Energy Regulator as part of determining whether STCs, created on-line by applicants for particular small generation units, are eligible for registration.

7.18 Reports of inspections of new installations of small generation units in accordance with regulations made under section 23AAA may include, without limitation, conclusions, recommendations or other material relevant to the certificate registration process set out under section 26. The note clarifies that the inspections may be relevant to determining whether or not certificates are eligible for registration under section 26, as well as providing an indication of the effectiveness of the certificate registration process. ***[Schedule 3, Item 2]***

7.19 In determining the eligibility of a certificate under section 26, the Renewable Energy Regulator must have regard to relevant conclusions, recommendations or other material in the inspection reports provided in accordance with regulations made under section 23AAA , without limiting matters that may be considered in this determination. ***[Schedule 3, Item 3]***

7.20 A fee prescribed by regulations made under subsection 26(3A) for the registration of a certificate must be reasonably related to the expenses incurred by the Commonwealth in:

- executing the Renewable Energy Regulator's functions and powers under section 26;
- carrying out inspections provided for under subsection 23AAA to the extent they are relevant to the Renewable Energy Regulator in executing the functions and powers under section 26; and
- preparing inspection reports provided for under section 23AAA to the extent they include conclusions, recommendations or other material relevant to the Renewable Energy Regulator in executing the functions and powers under section 26.

7.21 Fees prescribed by regulations in relation to certificate registration are not to be a tax. ***[Schedule 3, Item 4]***

Registration of persons

7.22 Section 11 of the *Renewable Energy (Electricity) Act 2000* provides for approval or refusal by the Regulator of an application for registration under that Act. An application must be refused if the applicant has previously been registered, but properly made applications must be approved. Sections 30 and 30A of the *Renewable Energy (Electricity) Act 2000* provide for the suspension of registration only in relation to offences, civil penalties or improperly obtained registration under that Act.

7.23 The amendments allow, in addition, the Regulator to refuse an application on a ground to be specified in regulations. The Regulator may also suspend a person's registration, by written notice, for any period the Regulator determines, on a ground to be specified in regulations. ***[Schedule 3, Item 1] [Schedule 3, Item 5]***

7.24 It is anticipated that grounds for refusal or suspension could include objective evidence that the person was not, or was no longer, a fit and proper person. It is envisaged that such grounds could, for example, include the applicant not being accredited under a specified industry scheme, or has contravened other legislation such as the *Corporations Act 2001* or the *Competition and Consumer Act 2010*. Affected persons may seek internal reconsideration of these decisions by the Regulator, followed by review by the Administrative Appeals Tribunal under section 66.

7.25 These provisions apply to applications made after the commencement of the item (the day after Royal Assent). ***[Schedule 3, Item 6]***

7.26 These changes are not intended to make the Regulator responsible for the marketing, contractual or financial arrangements of

persons involved in the installation or generation of renewable energy. These issues are properly regulated outside the *Renewable Energy (Electricity) Act 2000* by other Commonwealth, State or Territory regulators.

Financial Management and Accountability Regulations 1997

7.27 The *Financial Management and Accountability Act 1997* sets out the financial management, accountability and audit obligations of agencies that are financially part of the Commonwealth. In particular, this Act requires agencies to manage public resources efficiently, effectively and ethically. It also requires that proper accounts and records be maintained for the receipt and expenditure of public money.

7.28 The agencies subject to this Act are prescribed in the Financial Management and Accountability Regulations 1997.

7.29 The Clean Energy Regulator, which is established by the proposed *Clean Energy Regulator Act 2011,* will administer the *Renewable Energy (Electricity) Act 2000*, the NGER Act, the proposed *Clean Energy Act 2011* and the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

7.30 The Climate Change Authority is established by the proposed *Climate Change Authority Act 2011*.

7.31 Both bodies are prescribed in Part 1 of Schedule 1 of the *Financial Management and Accountability Regulations 1997*. ***[Schedule 1, Part 1, item 104] [Schedule 1, Part 2, item 261]***

7.32 The reference in these Regulations to the Renewable Energy Regulator will be deleted. ***[Schedule 1, Part 1, item 105][***

Competition and Consumer Act 2010

7.33 The Regulator and the Climate Change Authority are to be included in the list of agencies to which the Australian Energy Regulator can disclose information, and the list of agencies to which the Australian Competition and Consumer Commission can disclose certain information if the Chair is satisfied that it would enable or assist them to perform their functions. ***[Schedule 1, Part 1, item 100-102] [Schedule 1, Part 2, items 258B, 258C, 258D]***

7.34 This is important in ensuring the appropriate exchange of information between Commonwealth agencies. Disclosure by the Regulator to the Australian Energy Regulator and the Australian Competition and Consumer Commission will be regulated by clause 48 of the Clean Energy Regulator Bill 2011.

Evidence Act 1995

7.35 Reports under section 46 of the Ozone Act are regarded as Commonwealth documents for the purposes of the *Evidence Act.* The amendment allows reports required under proposed section 46A to be treated in the same way. ***[Schedule 1, Part 2, item 260A]***

Australian Securities and Investments Commission Act 2001 Corporations Act 2001

Financial products

7.36 Carbon units are to be financial products for the purposes of Chapter 7 of the *Corporations Act 2001* ***[Schedule 1, Part 2, item 259-260]*** and Division 2, Part 2 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). ***[Schedule 1, Part 1, item 47]***

7.37 They will not, however, be financial products for the purpose of paragraph 12BAB(1)(g) of the ASIC Act. ***[Schedule 1, Part 1, item 48]*** In brief, this states that a person provides a financial service if they provide a service that is otherwise supplied in relation to a financial product.

7.38 These amendments will provide a strong regulatory regime to reduce the risk of market manipulation and misconduct. Appropriate adjustments to the regime to fit the characteristics of units and avoid unnecessary compliance costs will be made.

Disclosure of information

7.39 The Regulator and the Climate Change Authority will be added to the list of agencies to which the Australian Securities and Investments Commission (ASIC) may disclose information. ***[Schedule 1, Part 1, item 49] [Schedule 1, Part 2, item 256A]***

7.40 This means that ASIC will, for example, be able to disclose information that it possesses about wrongdoing in connection with trading of carbon units which is also of significance to the Regulator as the operator of the Registry.

Anti-Money Laundering and Counter Terrorism Financing Act 2006

7.41 Item 33 of the table of designated services at section 6 of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* is to be amended to include, in the capacity of agent of a person, acquiring or disposing of carbon units where the acquisition or disposal is in the course of carrying on a business of acquiring or disposing of units in the capacity of an agent. ***[Schedule 1, Part 1, items 1-3]***

7.42 The phrase 'carbon unit' is defined by reference to its meaning in the main bill. ***[Schedule 1, Part 1, item 1]***

7.43 The purpose of this amendment is, particularly, to address the risk of money laundering through trading in carbon units. An example of

a person subject to Item 33 is a broker carrying on a business in carbon unit trading, who acquires carbon units on behalf of a client.

Taxation Administration Act 1953

7.44 The Regulator is to be included in the list of agencies to which a taxation officer can disclose information, for the purposes of seeking verification of information provided under the *Fuel Tax Act 2006*, or for the administration of the *Clean Energy Act 2011* or associated provisions. This will allow appropriate information exchange in relation to the Opt-In Scheme in the main bill. ***[Schedule 1, Part 1, item 212A]***

Transitional and application provisions

Outline of chapter

8.1 The purpose of this chapter is to describe the transitional and application provisions included in the Clean Energy (Consequential Amendments) Bill 2011, and other provisions which have not been addressed elsewhere.

Context of amendments

8.2 The context of the amendments included in this bill is described in the General Outline segment of this explanatory memorandum.

8.3 The context of the particular consequential amendments covered by this chapter is provided below.

Summary of new law

8.4 The provisions addressed in this chapter relate to:

- the transition of functions from the Renewable Energy Regulator, the Carbon Credits Administrator and the Greenhouse and Energy Data Officer (GEDO) to the proposed Clean Energy Regulator (the Regulator)
- the transition of functions from the Renewable Energy Regulator and the Department of Climate Change and Energy Efficiency (DCCEE) to the proposed Climate Change Authority
- application of amendments to the NGER Act
- transitional arrangements for amendments to the Ozone Act
- transitional arrangements for accounts established in the Australian National Registry of Emissions Units (National Registry) prior to commencement of the legislation.

Detailed explanation of new law

Transitional provisions which commence at the same time as the main bill

8.5 The transfer of functions from the Renewable Energy Regulator, the Carbon Credits Administrator and the GEDO to the Regulator requires various transitional provisions. These:

- attribute functions performed by the Renewable Energy Regulator, the GEDO and the Carbon Credits Administrator before the commencement of the provisions to the Regulator ***[Schedule 1, Part 1, items 214-215, item 215A]***
- make a similar provision in relation to investigations by the Ombudsman ***[Schedule 1, Part 1, item 218]***
- substitute the Regulator in proceedings to which the Renewable Energy Regulator, the Carbon Credits Administrator or the GEDO was a party ***[Schedule 1, Part 1, item 216]***
- address the transfer of records from the Renewable Energy Regulator, the Carbon Credits Administrator and the GEDO to the Regulator ***[Schedule 1, Part 1, item 217]***
- ensure that references in appropriate instruments to the GEDO, the Carbon Credits Administrator or the Renewable Energy Regulator can be read as references to the Regulator ***[Schedule 1, Part 1, item 222]***
- enable certain staff members transferring from the Office of the Renewable Energy Regulator (ORER) or DCCEE to start their employment with the Regulator, or the Climate Change Authority, on the same terms and conditions as they had prior to their transfer. ***[Schedule 1, Part 1, item 223][Schedule 1, Part 1, item 225]***

Terms and conditions of employment of employees transferring to the Regulator or to the Authority

8.6 The Regulator will take over the functions of the GEDO, the Carbon Credits Administrator and the Renewable Energy Regulator. Employees responsible for assisting with these functions may be transferred from DCCEE and ORER to the Regulator under a determination made by the Public Service Commissioner under section 72 of the *Public Service Act 1999*. Employees may be transferred in the same way from DCCEE and ORER to the Climate Change Authority.

8.7 Transferring employees will start their employment with the Regulator or Authority on the same terms and conditions as for their previous employment.

8.8 Employees covered by a collective or enterprise agreement (at present non-SES employees) will continue to be covered by that agreement until the Regulator or Authority negotiates a new enterprise agreement in accordance with the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.* ***[Schedule 1, Part 1, item 223(2); item 225(2)]***

8.9 Employees covered by a determination made under subsection 24(1) of the *Public Service Act 1999* (generally only SES employees) will continue to be covered by that determination ***[Schedule 1, Part 1, item 223(3); item 225(3)]***

8.10 Without these provisions, the agreements and determinations would cease to apply to the employees when they transferred to the Regulator or Authority. These provisions ensure a smooth transition of terms and conditions of employment and allow the Regulator and the Authority and their employees time to negotiate new terms and conditions.

Terms and conditions of employment for new employees of the Regulator and the Authority

8.11 The effect of the provisions for transferring employees will be that there at least two collective or enterprise agreements operating for transferring employees of the Regulator and the Authority. No agreement would apply to a new employee. The provisions ensure that the Regulator or CEO of the Authority can determine that one of the agreements covers a new employee if the new employee would have been covered by the agreement had they been employed at the same level in the Department or ORER before the Regulator or the Authority commenced (generally non-SES employees). As for transferring employees, new employees would remain covered by the agreement only until the Regulator or Authority negotiated a new enterprise agreement. ***[Schedule 1, Part 1, item 223(5); item 225(5)]***

8.12 It is expected that the Chair of the Regulator or the CEO of the Authority would generally determine that a new non-SES employee was to be covered by the same agreement that covered transferring employees who worked in the area in which the new employee was transferred.

8.13 The Regulator or the CEO of the Authority could also make determinations under subsection 24(1) of the Public Service Act 1999 for new employees. It is expected that they would use this power to cover employees who could not be covered by an agreement (generally SES employees).

8.14 As the DCCEE designated agreement will cover employees in DCEEE, the Regulator and the Authority, the provisions specify that the designated agreement in each agency will be treated as separate agreements for the purposes of the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.* This

means that the terms and conditions for the Regulator's or Authority's employees will not be affected if DCCEE amends or terminates its designated agreement and vice versa. ***[Schedule 1, Part 1, item 227]***

Regulations

8.15 The amendments include a regulation-making power to allow the Governor-General to make regulations providing for transitional arrangements for transferring employees. ***[Schedule 1, Part 1, items 224 and 226]***

Other transitional arrangements commencing at the same time as section 3 of the main bill

8.16 Information obtained by the Renewable Energy Regulator, the Carbon Credits Administrator and the GEDO before commencement will be subject to the secrecy provisions in the current legislation — that is, the legislation prior to repeal of the secrecy provisions in their individual Acts. ***[Schedule 1, Part 1, items 219, 220, 220A]***

8.17 Judicial notice will continue to be taken of the signature of the Renewable Energy Regulator and documents or certificates signed by the Renewable Energy Regulator prior to the commencement of Item 221 and will still be able to be produced as evidence. ***[Schedule 1, Part 1, item 221]***

8.18 In addition, there is power to make regulations in relation to transitional matters arising out of the amendments made by Part 1. ***[Schedule 1, Part 1, item 228]***

Application and transitional provisions which commence on 1 July 2012

8.19 Amendments to the NGER Act relating to registration and reporting by liable entities will apply in relation to the financial year beginning on 1 July 2012 and subsequent years. ***[Schedule 1, Part 2, item 452]***

8.20 The amendment to section 31 of the NGER Act (which relates to the power of a Court to order a person to pay a pecuniary penalty for contravening a civil penalty provision) applies in relation to proceedings instituted on or after 1 July 2012. ***[Schedule 1, Part 2, item 453]***

8.21 The amendments to sections 47 and 48 of the NGER Act (which relate to the liability of executive officers) apply in relation to a contravention of a civil penalty provision that occurs on or after 1 July 2012. ***[Schedule 1, Part 2, item 454]***

8.22 The Register maintained under section 16 of the NGER Act is continued. ***[Schedule 1, Part 2, item 455]***

8.23 The amendments to section 13 of the Ozone Act (which relate to the unlicensed import of ODS/SGG equipment) apply in relation to imports that occur on or after 1 July 2012. ***[Schedule 1, Part 2, item 456]***

8.24 The amendments to section 65AC of the Ozone Act (which increase the maximum pecuniary penalty for contravening certain civil penalty provisions) apply in relation to a contravention that occurs on or after 1 July 2012. ***[Schedule 1, Part 2, item 457]***

8.25 The amendments to section 69 of the Ozone Act (which changes the date that quarterly licence levies are due and also gives the Minister the discretion to extend this period) apply in relation to levies due for the quarter that begins on 1 July 2012. The existing time period for the due payment of licence levies remains for the levies due for the quarter that began on 1 April 2012. ***[Schedule 1, Part 2, item 458]***

8.26 Licensees under the Ozone Act who hold a pre-charged equipment licence that was in force immediately before 1 July 2012 are deemed to hold an ODS/SGG equipment licence under the Ozone Act as amended by this bill. ***[Schedule 1, Part 2, item 459]***

8.27 Section 46 of the Ozone Act (dealing with the reports required of manufacturers, importers and exporters of scheduled substances) still applies, as if this section had not been amended by this bill, in relation to the quarter commencing 1 April 2012. ***[Schedule 1, Part 2, item 460]***

8.28 In addition, there will be power to make regulations in relation to transitional matters arising out of the amendments made by Part 2. ***[Schedule 1, Part 2, item 461]***

Commencement provisions

8.29 Sections 1 to 3 of the bill commence on Royal Assent. ***[Clause 2]***

8.30 The provisions in Part 1 of Schedule 1 commence at the same time as section 3 of the main bill.

8.31 Part 1 of Schedule 2 commences at the same time as section 3 of the Clean Energy Bill 2011. ***[Clause 2]***

8.32 Providing that certain amendments commence at the same time as section 3 of the main bill ensures that the relevant amendments apply as soon as the Clean Energy Regulator is established. ***[Clause 2]***

8.33 Sections 3 to 312 of the main bill commence on a day to be decided by Proclamation. However, those sections do not commence at all if the Acts listed in Item 2 of the table in section 2 of the main bill do not receive the Royal Assent on or before the 28th day after the main bill receives the Royal Assent. This qualification is designed to ensure that the bills comprising the legislative package for the scheme commence together (see clause 2 of the Clean Energy Bill 2011).

8.34 Schedule 3 commences the day after the bill receives Royal Assent. ***[Clause 2]***

8.35 Schedule 4 commences on Royal Assent, or the day section 3 of the *Australian National Registry of Emissions Units Act 2011* commences. ***[Clause 2]***

8.36 Schedule 5 commences on Royal Assent, or the day section 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* commences. ***[Clause 2]***

8.37 Part 2 of Schedule 1 commences on 1 July 2012. ***[Clause 2]***

8.38 The commencement and application provisions relating to the amendments to the taxation legislation included in Schedule 2 of the consequential amendments bill are addressed in Chapters 2 and 3 of this explanatory memorandum.

Formal provisions

8.39 The short title of the proposed Act is the Clean Energy (Consequential Amendments) Bill 2011. ***[Clause 1]***

8.40 The substantive amendments are included in Schedules 1 to 5. ***[Clause 3]***

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Items 29 and 30, subsection 701-10(5) and paragraph 701-10(5)(a)	2.135
Items 31-34, section 701-25	2.140

Items 35-38, section 701-35	2.129
Item 39, subsection 701-55(3A)	2.134
Item 39A, section 701-58	2.143
Item 40, subsection 705-30(1A)	2.133
Items 41-44, section 705-40	2.132
Items 45-50, sections 705-57, 705-163, 705-240 and 713-225	2.143
Item 51, item 2 of the table in subsection 715-660(1)	2.136, 2.138
Items 51B to 51E, sections 715-910 and 715-920	2.143
Items 52 and 53, subsection 719-165	2.130
Items 54-71, subsection 995-1(1)	2.150
Item 58, definition cost of a registered emission unit, subsection 995-1(1), item 28, section 420-60	2.84
Item 63, definition international emissions unit, subsection 995-1(1)	2.42
Item 72, section 420-1 of the Income Tax (Transitional Provisions) Act 1997	2.157
Item 72, section 420-5 of the Income Tax (Transitional Provisions) Act 1997	2.159, 2.160
Items 72A, sections 701A-7 of the Income Tax (Transitional Provisions) Act 1997	2.143
Item 73, subsection 45-120(5) of the TAA 1953	2.145

Schedule 3: Amendments relating to renewable energy certificates

Bill reference	***Paragraph number***
Item 1	7.23
Item 2	7.18
Item 3	7.19
Item 4	7.21
Item 5	7.23
Item 6	7.25

Schedule 4: Amendments relating to the Australian National Registry of Emissions Units

Bill reference	***Paragraph number***
Items 1-7, 9, 10, 12-15, 17-18, 22, 26-29, 31-41, 43-46, 48-60	4.12

Item 8	4.11
Item 11	4.37
Item 16	4.19
Item 19	4.19
Items 20-21	4.37
Item 23, new sections 28A-28D	4.44
Item 23, new section 28A	4.20
Item 23, new section 28B	4.23
Item 23, new sections 28C and 28D	4.32, 4.36
Item 23, new section 28C	4.31
Item 23, new section 28D	4.28
Item 24	4.14
Item 25	4.17
Item 30	4.14
Item 42	4.17
Item 47	4.15
Item 61	4.27, 4.35

Schedule 5: Amendments relating to the Carbon Farming Initiative

Bill reference	***Paragraph number***
Items 1-3	5.6
Item 4	5.7
Items 5-8	5.10
Items 9, 11-12, 16	5.9
Item 10	5.11
Item 13	5.14
Item 14	5.17
Item 15	5.12
Item 17	5.11
Items 18-19	5.16
Items 20-22	5.19
Item 22A	5.20
Item 23	5.22
Item 24	5.24

Items 25-26	5.25
Item 27	5.26, 5.27
Item 28	5.28

Formal provisions

Bill reference	***Paragraph number***
Clause 1	8.39
Clause 2	8.29, 8.31, 8.32, 8.34, 8.35, 8.36, 8.37
Clause 3	8.40