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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY LEGISLATION AMENDMENT BILL 2012
CLEAN ENERGY (EXCISE TARIFF LEGISLATION AMENDMENT) BILL 2012
CLEAN ENERGY (CUSTOMS TARIFF AMENDMENT) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP
and the Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

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

Abbreviation	*Definition*
ANREU Act	*Australian National Registry of Emissions Units Act 2011*
ANREU Regulations	*Australian National Registry of Emissions Units Regulations 2011*
ARENA	Australian Renewable Energy Agency
ARENA Act	*Australian Renewable Energy Agency Act 2011*
ATO	Australian Taxation Office
The bill	References to 'the bill' are to the Clean Energy Legislative Amendment Bill 2012. Other bills are identified by their full titles.
Carbon pricing mechanism or mechanism	The carbon pricing mechanism set up by the CE Act
CE Act	*Clean Energy Act 2011*
CEFC	Clean Energy Finance Corporation
CEFC Bill	Clean Energy Finance Corporation Bill 2012
CER	Clean Energy Regulator
CER Act	*Clean Energy Regulator Act 2011*
CFI	Carbon Farming Initiative
CFI Act	*Carbon Credits (Carbon Farming Initiative) Act 2011*
Clean Energy Legislative Package	A package of Acts including: • *Clean Energy Act 2011;* • *Clean Energy (Consequential Amendments) Act 2011;* • *Clean Energy Regulator Act 2011;* • *Climate Change Authority Act 2011;* • *Clean Energy (Unit Shortfall Charge—General) Act 2011;* • *Clean Energy (Unit Issue Charge—*

Abbreviation	***Definition***
	General) Act 2011; • *Clean Energy (Charges—Excise) Act 2011;* • *Clean Energy (International Unit Surrender Charge) Act 2011;* • *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011;* • *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011;* • *Fuel Tax Legislation Amendment (Clean Energy) Act 2011;* • *Excise Tariff Legislation Amendment (Clean Energy) Act 2011;* • *Customs Tariff Amendment (Clean Energy) Act 2011.*
CNG	Compressed natural gas
CO_2-e	Carbon dioxide equivalence
Customs	Australian Customs and Border Protection Service
Customs Tariff Act	*Customs Tariff Act 1995*
DCCEE	Department of Climate Change and Energy Efficiency
DOIC	Domestic Offsets Integrity Committee
DOIP	Designated opt-in person
Excise Act	*Excise Act 1901*
Excise Tariff Act	*Excise Tariff Act 1921*
FTC	Fuel tax credit
Fuel Tax Act	*Fuel Tax Act 2006*
GST	Goods and Services Tax
JV	Joint venture
LPG	Liquid petroleum gas or (once amended) liquefied petroleum gas
LNG	Liquefied natural gas
NGER Act	*National Greenhouse and Energy Reporting Act 2007*

Abbreviation	***Definition***
NGER Regulations	*National Greenhouse and Energy Reporting Regulations 2008*
OTN	Obligation transfer number
Opt-in Scheme	The Opt-in Scheme set out in Part 3, Division 7 of the *Clean Energy Act 2011*
Registry	Australian National Registry of Emissions Units

General outline and financial impact

Background

Clean Energy Legislation Amendment Bill 2012

The Clean Energy Legislation Amendment Bill 2012 makes amendments to the CE Act, the ANREU Act, the CFI Act, the Fuel Tax Act and the NGER Act. These amendments cover:

- matters raised during the passage of the Act about which the Government made commitments to examine alternative approaches; and
- minor and technical changes.

The Clean Energy Legislative Package implements the carbon pricing mechanism for Australia to reduce carbon pollution. Legislation in the package links the carbon price to the CFI and to credible schemes overseas. The Package provides assistance to households and industry which will help households with the impact of the carbon price, support jobs, protect the competitiveness of emissions-intensive trade-exposed industries and support energy security.

Further detail about the policy context of the Clean Energy Legislative Package is set out in the Explanatory Memorandum for the Clean Energy Bill 2011.

The amendments to the CE Act make changes to the liquid fuel Opt-in Scheme in Part 3, Division 7 which alter the criteria that a person must meet in order to be declared a designated opt-in person for the purposes of the Opt-in Scheme and also impose notification and reporting requirements for persons subject to an obligation under the Scheme. The CE Act and the NGER Act are changed to amend the definition of 'carbon dioxide equivalence' so that it applies to fuels which are eligible for the Opt-in Scheme.

The bill amends provisions in the NGER Act that allow persons to nominate who has operational control of a facility when it is not clear who has operational control of that facility. 'Operational control' is a central principle used to determine who has responsibility for the emissions of a facility which is covered by the carbon pricing mechanism.

During passage of the Clean Energy Legislative Package in 2011, the Government committed to considering the coverage of gaseous fuels in a similar manner to the way in which large liquid fuel users may opt-in to the scheme. This responded to issues raised by the gaseous fuels industry in the final report of the Joint Select Committee on Australia's Clean Energy Future Legislation. Since then, the Government has consulted extensively with participants in the gaseous fuels sector to develop a new approach to coverage. This will allow greater flexibility for LPG, LNG and CNG suppliers when meeting carbon pricing liabilities.

To implement the changes requested by the gaseous fuels industry, the bill amends the CE Act and the Fuel Tax Act to reflect changes in coverage arrangements for gaseous fuels. From 1 July 2013, a carbon price will be applied to non-transport liquid petroleum gas and liquefied natural gas through the carbon pricing mechanism rather than through fuel tax arrangements. Emissions attributable to compressed natural gas will be covered by the carbon pricing mechanism, rather than by fuel tax arrangements, from 1 July 2012.

The bill amends the CFI Act to extend the timing for methodology determinations to be backdated. The CFI Act established the CFI, a carbon offsets scheme that credits abatement in the land sector. Because CFI projects must be conducted in accordance with a methodology determination, projects that seek to be backdated must also be in accordance with a backdated methodology. The amendment to backdating provisions for methodologies will ensure that existing offsets projects can transition to the CFI as originally intended.

The bill also amends the CFI Act to ensure that CFI projects have all required regulatory approvals in place before they can receive credits. It also simplifies the process of finalising methodology determinations by removing a requirement that the Domestic Offsets Integrity Committee (DOIC) publish on its website matters incorporated by reference in determinations. The explanatory material for methodology determinations will contain a description of the incorporated material and indicate how it may be obtained.

The bill amends the ANREU Act to increase the amount of time during which the CER may defer giving effect to a transfer instruction from 48 hours to five whole business days. The bill also amends the ANREU Act to make provision for conditions restricting or limiting the operation of certain accounts to apply in prescribed circumstances.

The bill amends the ARENA Act and the CER Act to provide for the sharing of relevant and appropriate information between the CEFC and ARENA and the CEFC and the CER in specified circumstances.

Clean Energy (Customs Tariff Amendment) Bill 2012 and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012

The Clean Energy (Customs Tariff Amendment) Bill 2012 and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 make amendments to the Excise Act, the Excise Tariff Act and the Customs Tariff Act. The amendments provide that, from 1 July 2012, CNG used for non-transport purposes will not be subject to the effective carbon price through the fuel tax system so that it may be covered by the carbon pricing mechanism.

Date of effect:

Clean Energy Legislation Amendment Bill 2012

Sections 1, 2 and 3 commence on the day the bill receives the Royal Assent.

Schedule 1, which makes various amendments to the CE Act, the ANREU Act and the NGER Act, commences on the later of the day after the bill receives the Royal Assent or immediately after the commencement of Part 2 of Schedule 1 to the *Clean Energy (Consequential Amendments) Act 2011*.

Schedule 2, which makes various changes to the CE Act and the Fuel Tax Act, commences on the latest of:

- the start of the day after the bill receives the Royal Assent; and
- immediately after the commencement of Schedule 1 to the *Clean Energy (Fuel Tax Legislation Amendment) Act 2011*; and
- immediately after the commencement of Schedule 1 to the bill.

Schedules 3 and 4, which deal with amendments to the CFI Act and the ANREU Act, take effect the day after the bill receives the Royal Assent.

Schedule 5, which deals with changes to the *Clean Energy Finance Corporation Act 2012*, takes effect at the same time as section 3 of that Act commences.

Clean Energy (Customs Tariff Amendment) Bill 2012 and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012

The amendments to the Excise Tariff Act and the Excise Act commence on 1 July 2012, immediately after the commencement made by the amendments contained in the *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*.

The amendments to subitem 10.19C are taken to commence immediately after the relevant amendments made by the *Excise Tariff (Taxation of Alternative Fuels) Act 2011* commence.

The amendments to the Customs Tariff Act commence on 1 July 2012, immediately after the commencement made by the amendments contained in the *Clean Energy (Customs Tariff Legislation Amendment) Act 2011*. That is, they will apply to goods that were imported on or after 1 July 2012. It also applies to goods imported before 1 July 2012 but not entered into home consumption until on or after 1 July 2012.

Proposal announced:

The Acts which make up the Clean Energy Legislative Package passed the Senate on 8 November 2011 and variously received the Royal Assent in late November and early December 2011.

The measures in the Clean Energy Legislative Package are based on the announcement on 10 July 2011 and the publication of *Securing a clean energy future: The Australian Government's climate change plan*.

On 11 October 2011, the Government announced that it would consider changes to give effect to alternative coverage of gaseous fuels under the carbon pricing mechanism. The Minister for Climate Change and Energy Efficiency said in the House of Representatives that:

> '[a] number of companies in the consultation process have also expressed interest in having liquid petroleum gas included in the carbon pricing mechanism. The government is open to considering this in a similar manner to the way in which large liquid fuel users may opt into the scheme and we will consult on options for achieving it. No amendments however are proposed in relation to this at this time.'[1]

The Government announced the approach to coverage of gaseous fuels by the carbon pricing mechanism as part of the 2012-2013 Budget on 8 May 2012, having earlier informed industry participants.

[1] *House of Representatives Hansard*, 11 October 2011 p.11433

During the public exposure period for the Package, industry stakeholders expressed a desire to manage their carbon liability for fuels under the carbon pricing mechanism instead of paying the equivalent carbon price through fuel tax arrangements. This arrangement was given effect through the Opt-in Scheme set out in Part 3, Division 7 of the CE Act.

Those amendments in the bill which make minor and technical amendments concern the operation of measures previously announced as part of the Clean Energy Legislative Package and, therefore, have not been the subject of any further specific announcements.

Financial impact:

Financial impact ($ millions): Mandatory coverage of LPG and LNG

	2011-12	***2012-13***	***2013-14***	***2014-15***	***2015-16***	***Total***
Change to administered revenue (ATO)	0.0	0.0	-75.0	-75.0	-80.0	-230.0
Change to administered revenue (DCCEE)	0.0	0.0	+75.0	+75.0	+80.0	+210.0
Total impact on fiscal balance	0.0	0.0	0.0	0.0	0.0	0.0
Total impact on underlying cash	0.0	0.0	-5.0	+15.0	+10.0	+20.0

Financial impact ($ millions): Mandatory coverage of CNG

	2011-12	***2012-13***	***2013-14***	***2014-15***	***2015-16***	***Total***
Change to administered revenue (ATO)	0.0	0.0	0.0	0.0	0.0	0.0
Change to administered revenue (DCCEE)	0.0	0.0	0.0	0.0	0.0	0.0
Total impact on fiscal balance	0.0	0.0	0.0	0.0	0.0	0.0
Total impact on underlying cash	0.0	0.0	0.0	0.0	0.0	0.0

Summary of regulation impact statement

Coverage of gaseous fuels - Regulation impact on business

Impact:

The Regulation Impact Statement (RIS) for carbon pricing mechanism coverage of non-transport gaseous fuels (LPG, LNG and CNG) is available at http://ris.finance.gov.au. The RIS was prepared by DCCEE and has been assessed as adequate by the Office of Best Practice Regulation.

Main points:

The current approach to carbon pricing coverage of non-transport LPG and LNG through the excise system would impose additional excise compliance costs for LPG and LNG suppliers. It would also increase cash carrying costs and reduce flexibility for suppliers to meet emissions obligations compared to coverage under the carbon pricing mechanism.

The current approach to carbon pricing coverage of non-transport CNG under the excise system would require up to 50 non-transport CNG producers that had not previously been participants in the excise system to install metering equipment to enable excise participation, potentially curtailing expansion and use of CNG by small producers. CNG producers would also face increased cash carrying costs and reduced flexibility to meet obligations relative to the mechanism.

On balance the advantages of reducing compliance costs and providing greater flexibility for liable entities in the sector to meet carbon pricing obligations warrant the inclusion of non-transport LPG and LNG in the carbon pricing mechanism. A mandatory approach to coverage is preferable to a voluntary opt-in approach as it would reduce the complexity of the carbon price and associated administration and compliance costs. It is expected to apply to around 10 entities.

Carbon pricing mechanism coverage of LPG and LNG should commence from 1 July 2013, as earlier commencement (from 1 July 2012) would create substantial risks that implementation agencies would have insufficient time to develop detailed systems for carbon pricing mechanism coverage and adequately test these with industry stakeholders.

Coverage of non-transport CNG under the carbon pricing mechanism is preferred as it will reduce compliance costs for small producers and reduce administrative costs for the Government relative to excise system coverage. The carbon pricing mechanism also provides greater flexibility

for CNG producers to choose whether or not to directly manage their carbon pricing obligations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Clean Energy Legislation Amendment Bill 2012, No. 2012
Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, No. 2012
Clean Energy (Customs Tariff Amendment) Bill 2012, No. 2012

These bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bills

These bills amend:

- the CE Act, to ensure that there is no double counting of CNG under the carbon pricing mechanism established by the Act, to amend the regulation-making powers dealing with administrative arrangements and eligibility requirements in relation to the Opt-in Scheme for liquid fuels, to provide for the coverage of gaseous fuels by the carbon pricing mechanism from 1 July 2013, and to make certain other minor technical amendments;

- the NGER Act, in relation to the nomination of the person who is to be taken to have operational control of a facility when two or more persons could have such control, and to make certain other minor technical amendments;

- the Fuel Tax Act, to make consequential amendments in relation to the taxation treatment of gaseous fuels covered by the carbon pricing mechanism;

- the CFI Act, to extend the backdating arrangements for methodology determinations, to remove the publication requirement in relation to the text of any materials incorporated by reference in a methodology determination, and to provide for CFI coverage to be conditional on projects obtaining all necessary regulatory approvals before Australian carbon credit units are issued in relation to a project;

- the ANREU Act, to create a regulation-making power to impose restrictions or limitations on the operation of certain Australian National Registry of Emissions Units accounts, and to increase the period of time within which the CER can defer giving effect to a transfer instruction;

- the ARENA Act, to enable the disclosure of information to the Clean Energy Finance Corporation; and

- the Excise Act, the Excise Tariff Act and the Customs Tariff Act. The amendments provide that, from 1 July 2012, CNG used for non-transport purposes will not be subject to the effective carbon price through the fuel tax system so that it may be covered by the carbon pricing mechanism.

Human rights implications

The bills variously engage the following human rights:

Rights of equality and non-discrimination

The Clean Energy Legislation Amendment Bill 2012 amends the NGER Act to enable two or more persons who might otherwise have 'operational control' of a facility to nominate one of them as the person who is to be taken to have 'operational control' of the facility for the purposes of the NGER Act and, if the facility is not a facility of a joint venture, the CE Act. The person with 'operational control' of a facility has certain reporting obligations under the NGER Act and certain liabilities for greenhouse gas emissions from the facility under the carbon pricing mechanism established by the CE Act. The Bill provides that if any of these persons is a foreign person (being an individual who is not ordinarily resident in Australia, a corporation incorporated outside of Australia, a body politic of a foreign country, or a trust where the majority of trustees are covered by any of these categories) and if any of these persons is not a foreign person, then a foreign person cannot be nominated.

The amendment replaces existing provisions dealing with the nomination of a person who is to be taken to have operational control of a facility. The main difference between the existing provisions and the new amended provisions relates to the timing of the nomination. The Bill continues the existing requirement that a foreign person not be nominated if a non-foreign person is available to be nominated.

The Clean Energy Legislation Amendment Bill 2012 thus continues the existing provision for different treatment of persons depending on their national origin.

The amendment does not prevent foreign persons from operating or being engaged in the operation of facilities in Australia or otherwise exercising their property or other rights in Australia. Rather, the amendment identifies persons who can voluntarily assume obligations and liabilities under the NGER and CE Acts. The rationale for preferring the nomination of non-foreign persons over foreign persons is that non-foreign persons are more likely to have assets in Australia and are more likely to be amenable to the enforcement of relevant obligations and liabilities under the NGER and CE Acts. The amendment, and its rationale, is therefore considered compatible with the rights of equality and non-discrimination.

Privacy and reputation

The Clean Energy Legislation Amendment Bill 2012 amends the CE Act to extend the existing provisions in relation to the OTN (Obligation Transfer Number) Register to gaseous fuel suppliers. The OTN Register is maintained by the CER and is open to public inspection. The Clean Energy Legislation Amendment Bill 2012 requires the CER to publish on the Register the following information about a gaseous fuels supplier: its name, address, contact details, Australian Business Number (ABN) and, if its willingness to accept quotations of OTNs, in cases where acceptance is not mandatory, is subject to conditions—those conditions. This mirrors the arrangements in relation to natural gas suppliers.

The listing of gaseous fuels suppliers serves two main purposes. First, it assists users of gaseous fuels to find a supplier who may be willing to accept their OTN quotation. It also provides the CER with a list of suppliers who wish to be notified of any changes to the OTN Register, such as when an OTN is cancelled, surrendered, when the name of an OTN holder changes, or when a new entry is made in the Register. This lowers compliance costs for suppliers as they will be sent up-to-date information on changes to the OTN Register. The amendment, and its rationale, is therefore considered compatible with the right to privacy.

The Clean Energy Legislation Amendment Bill 2012 also amends the NGER Act in relation to the content of the material that must be published by the CER on its website under section 24 of the NGER Act. In particular, it removes the requirement to publish a registered corporation's gross and net energy consumption, and replaces it with a requirement to publish the corporation's net energy consumption only. This helps give effect to one of the objects of the NGER Act, which is to inform the Australian public about greenhouse gas emissions, and energy production

and consumption. The amendment does not require the publication of any personal information about an individual, and is considered to be compatible with the right to privacy.

Further, the Clean Energy Legislation Amendment Bill 2012 amends the ARENA Act and the CER Act to enable the disclosure of information to the CEFC. Information can only be disclosed if the disclosure will enable or assist the CEFC to perform or exercise any of its functions or powers. Enabling the disclosure of information in these circumstances is considered to be compatible with the right to privacy.

Conclusion

The bills are compatible with human rights because, to the extent that they may limit those rights, that limitation is reasonable, necessary and proportionate.

Greg Combet

Minister for Climate Change and Energy Efficiency

Chapter 1
General amendments

Outline of chapter

1.1 Chapter 1 explains amendments to the Opt-in Scheme set out in Part 3, Division 7 of the CE Act. These amendments:

- further define the criteria that a person must meet to be declared a designated opt-in person (DOIP); and
- provide for the enforcement of reporting, record-keeping and notification requirements.

Chapter 1 also explains amendments to the NGER Act relating to:

- potential greenhouse gas emissions that allow liability to be assigned before emissions are produced; and
- nomination of operational control of a facility when it is not clear who has operational control.

This chapter covers Schedule 1.

Context of amendments

Opt-in Scheme

1.2 The Opt-in Scheme is to be set out in regulations. A person who meets the Opt-in Scheme's criteria can choose to have emissions from specified liquid fuels covered directly under the carbon pricing mechanism instead of paying an equivalent carbon price through the fuel tax system. The amendments augment the existing provisions of Part 3, Division 7 of the CE Act.

1.3 It is very easy to change the composition of GST groups and GST joint ventures, which may be the way in which persons participate in the Opt-in Scheme. This raises some practical difficulties for the operation of the Opt-in Scheme, which is not intended to operate with the same degree of flexibility as the GST system. For example, regular changes of membership within an opted-in GST group would impose

significant administrative burdens on the CER, the ATO and Customs to track changing liability under the carbon pricing mechanism. It would also present an opportunity for GST groups and joint ventures to, in effect, opt-out of the carbon pricing mechanism at any time for selected amounts of fuel, by changing the composition of the GST group or GST joint venture.

1.4 The amendments are designed to address these issues, by providing that the membership of the GST group or GST joint venture at the beginning of the relevant financial year is, in effect, 'frozen' for the year and the DOIP is liable for the emissions of that group or joint venture for that year. The GST group or joint venture is 'frozen' only for the purposes of the CE Act.

Potential greenhouse gas emissions

1.5 The concept of potential emissions is used to assign liability for emissions before they are produced. Section 7B of the NGER Act currently refers to the potential greenhouse gas emissions embodied in an amount of natural gas. However, the Opt-in Scheme assigns liability for emissions from other fuel types before the emissions are produced.

1.6 The amendments allow the concept of 'potential emissions' to be used for the purposes of the Opt-in Scheme by extending it to fuel types other than natural gas.

Nomination of operational control

1.7 Sections 11 to 11C of the NGER Act deal with the concept of 'operational control', which is used to determine who has obligations under the NGER Act to report a facility's emissions, energy use and production.

1.8 Operational control also determines who is liable for the greenhouse gas emissions from the facility under the carbon pricing mechanism. The exceptions are where the liability is transferred under a liability transfer certificate or where a designated joint venture (JV) has the facility. Liability for the emissions of a facility of a designated JV is shared between the participants in the JV on the basis of the participating percentage determination for that facility. Participating percentage determinations are made by the CER.

1.9 The person with 'operational control' of a facility is generally the person with the authority to introduce and implement operating, health and safety and environmental policies at the facility, or the person that the CER has declared to have operational control of the facility.

1.10 In some circumstances it may not be clear who has operational control of a facility, because two or more people have authority to introduce and implement the relevant policies and two or more of those people have equal authority to implement operating and environmental policies.

1.11 Currently, the persons who have equal authority to introduce and implement operating and environmental policies at a facility must together nominate one of themselves as the person with operational control of that facility.

1.12 The carbon pricing mechanism will begin with a fixed charge period from 1 July 2012 until 30 June 2015 (called 'fixed charge years'), after which the carbon price will be determined by the market ('flexible charge years'). The current provisions have the effect of requiring nomination of operational control up to twice in each fixed charge year and at least once per flexible charge year. These requirements may impose additional compliance burdens on liable entities and others. This is particularly the case for JV participants, because they are usually unrelated companies which will need to reach agreement on operational control issues. The amendments streamline the nomination process and lessen the compliance burden on business.

Publication of energy consumption

1.13 Under section 24 of the NGER Act, the CER is required to publish totals of scope 1 emissions and scope 2 emissions by 28 February. From 28 February 2014 the CER is also required to publish the totals of energy consumption for the group (i) as reported and (ii) 'adjusted in accordance with the regulations'.

1.14 The amendments streamline publication of energy consumption data through only requiring the publication of an adjusted 'net energy consumption' figure, which is intended to avoid potential confusion by users of the published data.

Summary of new law

Opt-in Scheme amendments

1.15 The amendments to the provisions in Part 3, Division 7 of the CE Act, which underpin the Opt-in Scheme, concern administrative obligations on participants in the Opt-in Scheme and the eligibility requirements for DOIPs. These amendments provide additional powers to

ensure that the Opt-in Scheme is robust, and its requirements are complied with by making reporting, record-keeping and notification obligations enforceable.

1.16 Changes to the eligibility criteria will ensure that the flexibility available to members of GST groups and GST joint ventures does not compromise the integrity of the Opt-in Scheme and the carbon pricing mechanism.

Potential greenhouse gas emissions

1.17 The amendments to the NGER Act and the CE Act concerning potential greenhouse gas emissions allow these provisions to apply to the liquid fuels covered by the Opt-in Scheme, in addition to natural gas.

Nomination of operational control

1.18 The amendments to the NGER Act concerning nomination of operational control streamline the requirements for nominating operational control, by removing any requirement for nomination to occur up to twice for each reporting year in fixed charge years and at least once for each reporting year in flexible charge years.

1.19 The amendments reduce the compliance requirements associated with making nominations by allowing a nomination to continue until such time as the CER cancels it, it is revoked by a new nomination or until it reaches its end date.

1.20 The amendments empower the CER to cancel nominations that become unnecessary or unsuitable. This is unnecessary under the current law because nominations that become unnecessary or unsuitable could be replaced each time a new nomination became due. The amendments also allow the nominators to make another nomination which replaces the original nomination. The nominators may also set an end date so that they can set a time to review their arrangement in advance.

Publication of energy consumption

1.21 The amendments to the NGER Act concerning the publication of energy consumption streamline publication of energy consumption data through only requiring the publication of a single figure for energy consumption which represents ‘net energy consumption’.

Comparison of key features of new law and current law

New law	*Current law*
Opt-in Scheme – eligibility test	
As well as meeting criteria specified in regulations, the DOIP must pass the eligibility test. A person will pass the eligibility test for the fuel for which they are opting in where the person is the entity that is entitled to the fuel tax credits (FTCs) for that fuel or where a member of a GST group or joint venture acquired, manufactured or imported the fuel in a financial year, the person was a member of that group or joint venture on 1 July of that financial year and the group or joint venture would have been entitled to the FTCs for the fuel if the acquisition, manufacture or import had taken place on 1 July of that financial year.	As well as meeting criteria specified in regulations, the DOIP must pass the eligibility test. A person will pass the eligibility test where, for the fuel for which they are opting in, they are the entity that is entitled to the FTCs for that fuel or they are a member of the GST group or joint venture that is entitled to the FTCs for that fuel.
Opt-in Scheme – notification requirement	
The Opt-in Scheme may make provision for a DOIP to notify matters to the CER.	There is no provision for the Scheme to require notification to the CER.
Opt-in Scheme – compliance with Scheme requirements	
The notification, reporting and record-keeping requirements under the Scheme are civil penalty provisions.	The notification, reporting and record-keeping requirements under the Scheme are not civil penalty provisions.
Potential greenhouse gas emissions	
The definition of potential greenhouse gas emissions will apply to designated fuels. Designated fuels include those covered by the Opt-in Scheme and natural gas.	The definition of potential greenhouse gas emissions only applies to natural gas.
Nomination of operational control	
Nominations of operational control begin on their start date and persist until they are cancelled by the CER, revoked by a new nomination or reach their end date.	Nominations of operational control must be renewed regularly because they only apply for the financial year or part of financial year for which they are made.

There is no civil penalty if a nomination is not made by the due date.	A civil penalty of 1,000 penalty units applies if a nomination is not made by the due date.
Where a nomination has been made and the facility ceases to pass the eligible nomination test, each of the nominators has an obligation to notify the CER of the cessation unless the cessation occurred because the CER declared a person to have operational control of the facility. Civil penalties apply.	There is no obligation to notify where a facility ceases to pass the eligible nomination test.
Publication of energy consumption	
The CER is required to publish 'net energy consumption' which is adjusted in accordance with the regulations.	The CER is required to publish both the totals of energy consumption as reported and energy consumption adjusted in accordance with the regulations.

Detailed explanation of new law

Preliminaries

1.22 The bill, once enacted, will be called the '*Clean Energy Legislation Amendment Act 2012*'. The bill amends other legislation, namely the CE Act, the ANREU Act, the CFI Act, the Fuel Tax Act and the NGER Act, and does not contain any substantive provisions of its own. ***[Section 1] [Section 3]***

1.23 The provisions of the bill commence at varying times, depending on the provisions concerned. These commencement arrangements are described along with the relevant provisions below. ***[Section 2]***

Amendments to the Opt-in Scheme

Eligibility test

1.24 Section 92A of the CE Act sets out the eligibility test that must be passed by a person that is the DOIP for an acquisition, manufacture or import of fuel that is covered by the Opt-in Scheme.

1.25 The existing eligibility test in subsection 92A(4) of the CE Act is replaced with a new test, which provides that, in addition to meeting the criteria to be specified in regulations, the DOIP must, for fuel acquired,

manufactured or imported in a particular financial year for which it is opting in:

- have been a member of a GST group at the start of the financial year where, if it is assumed that the fuel was acquired, manufactured or imported at the start of that financial year, the GST group would have been entitled to the fuel tax credit for that fuel; ***[Schedule 1, Part 1, item 19, new section 92A(4)(a), CE Act]*** or

- have been a member of a GST joint venture at the start of a financial year where, if it is assumed that the fuel was acquired, manufactured or imported at the start of that financial year, the GST joint venture would have been entitled to the fuel tax credit for that fuel; ***[Schedule 1, Part 1, item 19, new section 92A(4)(b), CE Act]*** or

- if neither of these criteria apply, then the DOIP must be the entity that was entitled to the fuel tax credit for the fuel. ***[Schedule 1, Part 1, item 19, new section 92A(4)(c), CE Act]***

1.26 The amendments remove the ability of members of GST groups and GST joint ventures that have opted-in to change the composition of GST groups and GST joint ventures for the purposes of changing their liabilities under the carbon pricing mechanism in a relevant financial year. This provides clarity and certainty around the liabilities of those covered by the carbon pricing mechanism. It will reduce the potential for administrative complexity and costs for opted-in liable entities and for the CER, ATO and Customs.

1.27 The effect of the amendment is to, in effect, 'freeze' the membership of the GST group or GST joint venture at the beginning of the relevant financial year for the year so that the DOIP is liable for the emissions of that group or joint venture for that year. The GST group or joint venture is 'frozen' only for the purposes of the CE Act. The provisions do not prevent changes in the group or joint venture under the GST legislation.

- It is intended that in the case of a GST joint venture, the operator of the joint venture would pass the eligibility test under the new section 92A(4)(b) if it was also a participant in the GST joint venture, or under the new section 92A(4)(c) if it is not a participant.

Notification obligation

1.28 The Opt-in Scheme may require a person to notify the CER about matters which are relevant to the Opt-in Scheme. ***[Schedule 1, Part 1, item 20, new section 92DA, CE Act]*** This means that the CER may be informed of matters which may be relevant to a person's ongoing eligibility under the Opt-in Scheme and related matters.

Compliance with reporting, record-keeping and notification obligations

1.29 Under sections 92C, 92D and new section 92DA of the CE Act, the Opt-in Scheme may impose reporting, record-keeping and notification requirements for a DOIP. These obligations allow the CER to adequately monitor the fuel use of a participant in the Opt-in Scheme and be aware of any changes that will affect the eligibility of a person to be opted-in. Record-keeping requirements will allow the CER to ensure that the fuel use of a person, and the liability of the DOIP for that fuel use, is measured correctly. These records are needed because detailed information on a person's fuel use is not required to be kept under the NGER Act.

1.30 The record-keeping and reporting requirements of the Opt-in Scheme do not duplicate other record-keeping and reporting mechanisms elsewhere in the CE Act and only cover those businesses wanting to participate in the Opt-in Scheme.

1.31 A person who is subject to these requirements is obliged to comply with them. ***[Schedule 1, Part 1, item 21, new sections 92H(1), (2) and (3), CE Act]*** Furthermore, a person must not:

- aid, abet, counsel or procure;
- induce, whether by threats or promises or otherwise;
- be in any way, directly or indirectly, knowingly concerned with; or
- conspire with others to effect,

a contravention of new sections 92H(1), (2) and (3). ***[Schedule 1, Part 1, item 21, new sections 92H(4), CE Act]***

1.32 The obligations in new sections 92H(1), (2), (3) and (4) of the CE Act are civil penalty provisions. ***[Schedule 1, Part 1, item 21, new section 92H(5), CE Act]*** Under section 253 of the CE Act the CER may apply to the court for a civil penalty order against a person who has contravened a civil penalty provision. Under section 255 of the CE Act the CER must seek the order no later than six years after the contravention. Section 252 of

the CE Act provides that the court may order a civil penalty if it is satisfied a person has contravened a civil penalty provision.

1.33 Section 9 of the CE Act provides that the CE Act applies to the Australian, state and territory governments (that is, the Crown in right of each Australian jurisdiction). However, no government is liable to a pecuniary penalty. This protection does not apply to authorities of the Crown or to administrative penalties or late payment penalties.

1.34 Under section 252 of the CE Act the maximum pecuniary penalty for contraventions of new sections 92H(1), (2), (3) and (4) of the CE Act is 10,000 penalty units (currently $1.1 million) for a corporation or 2,000 penalty units (currently $220,000) for any other person.

1.35 These are civil penalty provisions because contravening them does not involve conduct of such serious moral culpability that criminal prosecution and sanctions are warranted. Further, as most liable entities are expected to be bodies corporate, the financial disincentives to misconduct provided by civil penalties are a more proportionate and effective enforcement tool, reflecting the practice of other areas of business regulation.

1.36 There is no requirement that the CER prove the person's intention, knowledge, recklessness, negligence or any other state of mind with regard to the penalty provisions in the CE Act. ***[Schedule 1, Part 1, item 22, new section 262(1)(ra), (rb) and (rc), CE Act]*** Section 262 of the CE Act makes it clear, for the avoidance of any doubt, that it is not necessary to prove a matter concerning a person's state of mind at the time the conduct occurred. It is simply a matter of proving whether the relevant provision has been contravened. Where a person's state of mind is relevant to the issue at hand, then this is specifically dealt with in the relevant provision.

1.37 The reporting and notification requirements are continuing contravention provisions under section 263 of the CE Act. A person who contravenes these penalty provisions, which involve, for example, a requirement to do something within a particular period, commits a separate contravention on each of the days on which the person fails to comply. ***[Schedule 1, Part 1, item 23, new sections 263(2)(ga) and (gb), CE Act]*** Under section 263 of the CE Act the maximum daily penalty for a continuing contravention of new sections 92H(1), (2), (3) and (4) is 500 penalty units (currently $55,000) for a corporation) and 100 penalty units (currently $11,000) for any other person.

1.38 The level of civil penalties for a contravention of new sections 92H (1), (2), (3) and (4) of the CE Act reflects their seriousness and represents a clear and strong disincentive for non-compliance. The integrity of the Opt-in Scheme and the carbon pricing mechanism could

be compromised by liable entities failing to maintain records adequately or at all, and failing to report or notify accurately or in a timely way. For this reason, the penalties are significant.

Potential emissions embodied in a designated fuel

1.39 For the purposes of dealing with emissions embodied in a particular fuel source, section 7B of the NGER Act currently refers to the 'potential emissions embodied in an amount of natural gas'. The concept of 'potential greenhouse gas emissions' is used to assign liability for emissions before they are produced. In the CE Act, this concept has only been applied to emissions from natural gas.

1.40 The Opt-in Scheme, however, will assign liability for emissions from other specified fuel types before the emissions are produced. To allow for this, a definition of 'designated fuel' is inserted into the CE Act. This definition includes the fuels covered by the Opt-in Scheme. Sections 7, 7B and 7C of the NGER Act are amended so that the concept of potential greenhouse gas emissions is applied to designated fuels for the purposes of the NGER Scheme. ***[Schedule 1, Part 1, item 1, section 5, CE Act] [Schedule 1, Part 1, item 4, section 5, CE Act] [Schedule 1, Part 1, item 25, section 7, NGER Act] [Schedule 1, Part 1, item 32, section 7B, NGER Act] [Schedule 1, Part 1, item 33, section 7B(1), NGER Act] [Schedule 1, Part 1, item 34, section 7B(1), NGER Act] [Schedule 1, Part 1, item 35, section 7B(2), NGER Act] [Schedule 1, Part 1, item 36, section 7B(2), NGER Act] [Schedule 1, Part 1, item 37, section 7B(2), NGER Act] [Schedule 1, Part 1, item 38, section 7B(3)(c), NGER Act] [Schedule 1, Part 1, item 39, section 7B(4)(a), NGER Act] [Schedule 1, Part 1, item 40, section 7B(4)(c), NGER Act] [Schedule 1, Part 1, item 41, section 7B(5), NGER Act] [Schedule 1, Part 1, item 42, section 7B(5), NGER Act] [Schedule 1, Part 1, item 43, section 7C, NGER Act] [Schedule 1, Part 1, item 44, section 7C(1), NGER Act]***

1.41 To ensure consistency across the legislation, section 7 of the NGER Act is amended to indicate that 'designated fuel' has the same meaning as in the CE Act and to include designated fuels in the definitions of 'potential greenhouse gas emissions' and 'carbon dioxide equivalence'. ***[Schedule 1, Part 1, item 2, section 5, CE Act] [Schedule 1, Part 1, item 3, section 5, CE Act] [Schedule 1, Part 1, item 24, section 7, NGER Act] [Schedule 1, Part 1, item 25, section 7, NGER Act] [Schedule 1, Part 1, item 29, section 7, NGER Act]***

1.42 References to 'potential greenhouse gas emissions embodied in an amount of natural gas' are replaced with references to 'potential greenhouse gas emissions embodied in an amount of designated fuel' in sections 22A, 22AA and 24 of the NGER Act. This means that liable entities have reporting obligations for their use of designated fuels and the CER has obligations to publish certain information relating to designated fuels. ***[Schedule 1, Part 1, item 47, section 22A(1)(c), NGER Act] [Schedule 1, Part 1, item 48, section 22AA(1)(e), NGER Act] [Schedule 1, Part 1, item 51, section 24(1AA)(c), NGER Act]***

1.43 To provide clarity to stakeholders, the terminology of liquefied petroleum gas has been revised to be consistent with nomenclature used by industry. ***[Schedule 1, Part 1, item 5, section 5, CE Act] [Schedule 1, Part 1, item 6, section 5, CE Act] [Schedule 1, Part 1, item 14, section 30(2)(b), CE Act] [Schedule 1, Part 1, item 16, section 35(7), CE Act] [Schedule 1, Part 1, item 17, section 58, CE Act] [Schedule 1, Part 1, item 18, section 58(1)(d), CE Act]***

Nomination of operational control

1.44 For the purposes of liability under the carbon pricing mechanism and for reporting in the NGER Scheme, sections 11AA, 11AB, 11B and 11C of the NGER Act provide for the nomination of 'operational control' for facilities where two or more persons have equal authority over operational and environmental policies. In these cases, nominations are required to specify a person who has 'operational control' for the purposes of determining the entity with NGER obligations and/or a liability under the carbon pricing mechanism for a facility.

1.45 To streamline these requirements and, in particular, to remove the possibility that repeated nominations have to be made, the bill repeals sections 11AA,11AB, 11B and 11C of the NGER Act and includes new sections 11B and 11C.

1.46 New section 11B of the NGER Act applies in situations where two or more persons potentially have operational control of a facility. One of those persons can be nominated as the person with operational control of the facility if the facility passes the 'eligible nomination test'. A facility passes the test if, at a time after the start of the carbon pricing mechanism:

- two or more persons have authority to introduce and implement operating, health and safety and environmental policies; and
- it is not clear who has operational control of the facility because no particular person has the greatest authority to introduce and implement operating and environmental policies; and
- the CER has not declared that a person has operational control of the facility under section 55 or 55A of the NGER Act. ***[Schedule 1, Part 1, item 46, new section 11B(1), NGER Act]***

1.47 If the facility passes the eligible nomination test, the persons who could be taken to have operational control of the facility can jointly nominate one of them to be the nominated person for a specified amount of time.

1.48 New section 11C applies where a trust with multiple trustees has operational control of a facility, and no declaration of operational control exists for the facility under section 55 or 55A of the NGER Act. The trustees can jointly nominate one of them to be the nominated trustee for a specified amount of time. ***[Schedule 1, Part 1, item 46, new section 11C, NGER Act]***

1.49 Nomination of a person requires the nomination of a non-foreign person where possible. ***[Schedule 1, Part 1, item 46, new section 11B(4), NGER Act] [Schedule 1, Part 1, item 46, new section 11C(4), NGER Act]*** Section 7 of the NGER Act defines 'foreign person'.

1.50 A nomination must specify the start and end days of the nomination. ***[Schedule 1, Part 1, item 46, new section 11B(2), NGER Act] [Schedule 1, Part 1, item 46, new section 11C(2), NGER Act]***

1.51 The nomination may be made before or after the start day. However, the start date of the nomination cannot be in a period for which a person's obligations under the NGER Act or carbon pricing mechanism have lapsed and it cannot be after the financial year next following the financial year that the nomination is made. There are no restrictions on the end day. This means a nomination can be in force for a longer time than under previous arrangements, removing the requirement to make a nomination at least once every financial year. ***[Schedule 1, Part 1, item 46, new sections 11B(6)-(9), NGER Act] [Schedule 1, Part 1, item 46, new sections 11C(6)-(9), NGER Act]***

1.52 A nomination has no effect if, at the start day of the nomination, the facility does not pass the eligible nomination test or if the nominators are not the persons who have potential operational control. ***[Schedule 1, Part 1, item 46, new section 11B(5), NGER Act] [Schedule 1, Part 1, item 46, new section 11C(5), NGER Act]***

1.53 If a nomination is in force, liability and emissions reporting responsibilities continue to apply in the same way as under existing sections 11B and 11C of the NGER Act. That is, where the facility is a facility of a joint venture, the nomination of operational control only relates to reporting obligations under the NGER Act. Liability is determined by the participating percentage determination. If the facility is not a facility of a joint venture, the nomination relates to both reporting obligations under the NGER Act and liability under the carbon pricing mechanism. ***[Schedule 1, Part 1, item 46, new sections 11B(15) and (16), NGER Act] [Schedule 1, Part 1, item 46, new section 11C(15), NGER Act]***

1.54 The rules for liability and emissions reporting where there is no nomination in force are also unchanged, however, a person will no longer be liable for a civil penalty if that person fails to make a nomination by the due date. In these cases, where the facility is a facility of a joint

venture, each relevant person or trustee is taken to have operational control for the purposes of reporting under the NGER Act, while liability under the carbon pricing mechanism is determined by the participating percentage determination. If the facility is not a facility of a joint venture, each relevant person or trustee is taken to have operational control for the purpose of reporting under the NGER Act, while liability under the carbon pricing mechanism is shared by the relevant persons/trustees. ***[Schedule 1, Part 1, item 46, new sections 11B(17)-(19), NGER Act] [Schedule 1, Part 1, item 46, new sections 11C(16) and (17), NGER Act]***

1.55 The CER may cancel a nomination if:

- the nominated person does not have potential operational control of the facility; or
- the facility does not pass the eligible nomination test;
- the nominated person has become an externally administered body corporate or an insolvent under administration; or
- the nominated person has an unsatisfactory compliance record. ***[Schedule 1, Part 1, item 46, new section 11B(10), NGER Act] [Schedule 1, Part 1, item 46, new section 11C(10), NGER Act]***

1.56 The effect of a nomination being cancelled is that no nomination would be in place for that facility, and sections 11B and 11C set out the consequences of no nomination being made, in terms of obligations to report and liability for emissions. A nomination of another of the persons who could be taken to have operational control of the facility could be made upon an earlier nomination being cancelled by the CER. Decisions made by the CER to cancel a nomination on the grounds that the nominee has an unsatisfactory compliance record would be reviewable under section 56 of the NGER Act. ***[Schedule 1, Part 1, item 58, new section 56(aaa) and (aab), NGER Act]***

1.57 New section 11D contains a list of matters that constitute an unsatisfactory compliance record. Those matters may include acts or omissions by executive officers of a body corporate, such as where that officer breaches a provision of either the NGER Act or the CE Act. It is intended that even if that officer breached a civil penalty provision or committed an offence in another capacity before becoming an executive officer of the nominee, this would still constitute an unsatisfactory compliance record for the nominee. ***[Schedule 1, Part 1, item 46, new section 11D(1), NGER Act]*** Additional matters may be set out in the regulations so as to provide flexibility in responding to relevant compliance issues, across the range of reporting obligations, as they are experienced in the early years of the carbon pricing mechanism. These matters could, for example, include breaching a provision of climate change legislation other than the

NGER Act or CE Act. Any future proposed additions to the list of what constitutes an unsatisfactory compliance record can be the subject of focused consultation with affected persons and would be disallowable by the Parliament. ***[Schedule 1, Part 1, item 46, new section 11D(1)(f)(ii), NGER Act] [Schedule 1, Part 1, item 46, new section 11D(1)(g)(ii), NGER Act]***

1.58 Where a nomination has been made and the facility ceases to pass the eligible nomination test, the nominators have 30 days to notify the CER of the cessation, unless the cessation occurred because the CER declared a person to have operational control of the facility, or because the question of operational control is not relevant to the NGER Act or the CE Act. ***[Schedule 1, Part 1, item 46, new sections 11B(20)-(22), NGER Act] [Schedule 1, Part 1, item 57, section 30(2A), NGER Act]***

1.59 A person who fails to notify such cessation is liable for a maximum civil penalty of 400 penalty units (currently $44,000), and each day that the CER is not notified can amount to a continuing contravention. This is a civil penalty provision because contravening it does not involve conduct of such serious moral culpability that criminal prosecution and sanctions are warranted. Further, as most persons are expected to be bodies corporate, the financial disincentives to misconduct provided by civil penalties are a more proportionate and effective enforcement tool, reflecting the practice of other areas of business regulation.

1.60 The level of this civil penalty reflects the seriousness of the contravention and represents a clear and strong disincentive for non-compliance. The integrity of the carbon pricing mechanism could be compromised by a failure to notify in a timely way.

1.61 Only one nomination may be in place at any given time. A new nomination has no effect unless it is expressed to replace the original nomination. When the new nomination starts, the original nomination is revoked. ***[Schedule 1, Part 1, item 46, new sections 11B(13)-(14), NGER Act] [Schedule 1, Part 1, item 46, new sections 11C(13)-(14), NGER Act] [Schedule 1, Part 1, item 57, section 30(2A), NGER Act]***

Publication of energy consumption

1.62 Section 24 currently requires the CER to publish certain information on its website relating to scope 1 emissions, scope 2 emissions and energy consumption. In relation to energy consumption for a registered corporation's group, the CER is required to publish a total energy consumption figure as well as an adjusted energy consumption figure.

1.63 To avoid potential confusion by users of the published data, the Bill amends the publication requirements to require the CER to only

publish an adjusted 'net energy consumption' figure for a corporate group. ***[Schedule 1, Part 1, item 49, section 24(1)(c), NGER Act] [Schedule 1, Part 1, item 55, section 24(1C), NGER Act]*** As a result, the total energy consumption figure reported under parts 3 or 3F will not be required to be published.

1.64 Similarly, the discretionary publication requirements relating to group members or business units are amended to only include the publication of 'net energy consumption' for each member of the corporation's group or each business unit. ***[Schedule 1, Part 1, item 50, section 24(1A)(c), NGER Act]***

1.65 To promote consistency and comparability of published data, the publication requirements relating to data reported by reporting transfer certificate holders and liability transfer certificate holders are also amended by the Bill. The new provisions indicate that for these certificate holders, the CER is required to publish the 'net energy consumption' figure derived from the report submitted under the NGER Act. ***[Schedule 1, Part 1, item 52, sections 24(1AD)(a) and (b), NGER Act] [Schedule 1, Part 1, item 53, section 24(1AD)(c), NGER Act] [Schedule 1, Part 1, item 54, sections 24(1AD), NGER Act]***

1.66 'Net energy consumption' for the purposes of publication is calculated based on an adjustment process to be set out in the regulations. ***[Schedule 1, Part 1, item 56, sections 24(7) and (8), NGER Act]***

Application and transitional provisions

1.67 The provisions contained in Schedule 1 to the bill commence on the later of:

- the start of the day on which the bill receives the Royal Assent; and
- immediately after the commencement of Schedule 1, Part 2 to the *Clean Energy (Consequential Amendments) Act 2011* on 1 July 2012. ***[Section 2]***

1.68 The bill provides for transitional arrangements for determinations made under section 7B of the NGER Act that set out methods for determining the amount of potential greenhouse gas emissions embodied in a fuel. An existing determination does not need to be remade even though the head of power in the NGER Act under which the determination was made is being amended. ***[Schedule 1, Part 2, item 59]***

Consequential amendments

Nomination of operational control

1.69 The bill amends the definition of 'provisional emissions number' in section 5 of the CE Act to indicate that its meaning is not affected by the repeal of sections 11AA and 11AB of the NGER Act. ***[Schedule 1, Part 1, item 7, section 5, CE Act]***

1.70 The bill amends section 7 of the NGER Act to include definitions of 'externally-administered body corporate' and 'insolvent under administration'. This gives the terms the same meaning as those given in section 9 of the *Corporations Act 2001*. The terms are used in sections 11B and 11C as grounds that allow the CER to cancel a nomination of operational control. ***[Schedule 1, Part 1, item 26, section 7, NGER Act] [Schedule 1, Part 1, item 27, section 7, NGER Act]***

1.71 The bill amends the definition of 'operational control' in section 7 of the NGER Act to indicate that its meaning is not affected by sections 11AA and 11AB of the NGER Act, which have been repealed. ***[Schedule 1, Part 1, item 28, section 7, NGER Act]***

1.72 The bill amends section 7 of the NGER Act to include a definition of 'unit shortfall charge'. This gives the term the same meaning as in section 5 of the CE Act. The term is used in new section 11D of the NGER Act that sets out the meaning of 'unsatisfactory compliance record'. ***[Schedule 1, Part 1, item 30, section 7, NGER Act]***

1.73 The bill amends section 7 of the NGER Act to include a definition of 'unsatisfactory compliance record', which indicates that the term has the meaning given by new section 11D of the NGER Act. ***[Schedule 1, Part 1, item 31, section 7, NGER Act]***

1.74 The bill amends section 11 of the NGER Act, which sets out the basic rule of operational control, so that it has effect subject to new sections 11B and 11C of the NGER Act, and not sections 11AA and 11AB, which have been repealed. ***[Schedule 1, Part 1, item 45, section 11, NGER Act]***

Chapter 2
Amendments relating to gaseous fuels

Outline of chapter

2.1 Chapter 2 describes the following amendments contained in Schedules 1 and 2 to the bill:

- amendments made to the CE Act to bring about mandatory carbon pricing mechanism coverage of emissions from non-transport LPG and LNG from 1 July 2013; and
- amendments to the CE Act related to the coverage of non-transport CNG under the carbon pricing mechanism from 1 July 2012; and
- amendments to the Fuel Tax Act which ensure that fuel tax credit (FTC) entitlements will not be reduced for business use of non-transport gaseous fuels (CNG, LPG and LNG) when those fuels move into the carbon pricing mechanism; and
- amendments to the Fuel Tax Act that also ensure that when the non-transport gaseous fuels move into the carbon pricing mechanism, the agriculture, fishing and forestry industries will become entitled to a FTC equivalent to the amount of the carbon charge that is embedded in the price of the fuel.

2.2 Chapter 2 also describes amendments made by the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 to the Excise Act and the Excise Tariff Act and amendments made by the Clean Energy (Customs Tariff Amendment) Bill 2012 to the Customs Tariff Act. The amendments ensure that from 1 July 2012, CNG used for non-transport purposes will not be subject to the effective carbon price through the fuel tax system.

Context of amendments

2.3 LPG, LNG and CNG intended for use in an internal combustion engine for road transport were covered by the fuel tax system from 1 December 2011, when excise and excise-equivalent customs duty was

applied to these fuels. Non-transport LPG, LNG and CNG is not currently subject to excise.

2.4 The Clean Energy Legislative Package will apply an effective carbon price to non-transport LPG, LNG and CNG by bringing them into the excise system and applying an automatic partial remission of excise of an amount that would leave excise equivalent to the carbon price applying to LPG, LNG and CNG.

2.5 Application of an equivalent carbon price through the fuel tax system requires excise licensing for LPG and LNG importers, producers and distributors and CNG producers and has rigorous requirements for storage and movement of excisable products. The excise system also requires remission of excise regularly during the year.

2.6 On 11 October 2011, the Government announced that it would consider ways in which gaseous fuels could be covered by the carbon pricing mechanism, consistent with the treatment of liquid fuels. Inclusion of non-transport LPG and LNG in the carbon pricing mechanism provides LPG and LNG distributors and marketers with more flexibility to manage their carbon pricing obligations than the fuel tax system.

2.7 Including non-transport CNG in the carbon pricing mechanism allows the emissions obligation to be placed by default on the supplier of the natural gas from which CNG is produced rather than producers of CNG. As natural gas suppliers will already be managing much more substantial obligations for residential and commercial consumers, any additional burden for those suppliers will be negligible. Non-transport CNG may be included in the carbon pricing mechanism through changes to the excise tariff system.

2.8 The carbon pricing mechanism allows entities to access emission unit markets to discharge carbon pricing liabilities. Inclusion in the mechanism also reduces cash carrying costs associated with meeting obligations under the fuel tax system during the mechanism's fixed price period, with carbon price obligations accounted for once or twice yearly rather than the more frequent requirements of the excise system.

2.9 Inclusion of these fuels in the carbon pricing mechanism is also consistent with the general principle that wide coverage of the mechanism is desirable to maximise opportunities for least-cost emissions abatement.

Summary of new law

Commencement of coverage and transitional arrangements

2.10 Non-transport LPG and LNG will have a carbon price applied under the carbon pricing mechanism from 1 July 2013 in place of the current arrangements. The current arrangements will apply from 1 July 2012 to 1 July 2013 and involve the application of an effective carbon price to non-transport LPG and LNG through the fuel tax system.

2.11 Mandatory coverage of non-transport LPG and LNG under the carbon pricing mechanism will begin on 1 July 2013. This allows time for transitional and compliance arrangements to be carefully considered, developed and implemented. This aligns the treatment of non-transport LPG and LNG with the coverage of liquid fuels by the carbon pricing mechanism. It is also consistent with the Government's original commitment on 11 October 2011 to examine coverage of gaseous fuels.

2.12 Under the carbon pricing mechanism, the point at which excise or customs duty becomes payable (entry into home consumption, generally by the importer, manufacturer or marketer of non-transport LPG or LNG) will be the initial point of liability for emissions resulting from the use of these fuels.

2.13 Regulations made for the CE Act will be able to specify situations in which a person can quote an 'obligation transfer number' (OTN). This will allow a large end user of LPG, LNG or CNG to manage their own liability for emissions from these fuels in specified circumstances. It will also enable businesses that use these fuels as feedstock to avoid paying a carbon price in respect of fuel that does not result in emissions. To bring about coverage of non-transport LPG and LNG under the carbon pricing mechanism, these fuels will not have excise and customs duties applied.

Coverage of non-transport CNG

2.14 To correctly apply the carbon charge on non-transport CNG under the Government's Clean Energy Plan, the exemption from fuel excise or excise equivalent customs duty for non-transport use of CNG needs to be restored from 1 July 2012. Non-transport CNG will instead be subject to the carbon price directly under the carbon pricing mechanism.

2.15 Coverage of non-transport CNG from 1 July 2012 will occur because:

- CNG is produced from natural gas that is already subject to an upstream price under the carbon pricing mechanism. This allows coverage to be implemented relatively simply by removing the requirement for producers of non-transport CNG to pay carbon price equivalent excise duty; and

- some small non-transport CNG producers are not currently required to participate in the excise system, and would be required to install metering equipment to enable their participation in the excise system.

2.16 The requirement for CNG producers to pay excise or customs duty on non-transport CNG will be removed through legislative changes to excise arrangements for CNG producers and the adjustment of administrative arrangements by the ATO. The default point of liability for emissions from non-transport CNG will then rest with the natural gas supplier that supplies the gas from which the CNG is produced.

2.17 CNG producers will have the option of quoting an OTN to their supplier which will enable them to assume mechanism liabilities for the natural gas they use to create CNG. The natural gas supplier would not be able to refuse this transfer of liability.

Off-road use in agriculture, forestry and fisheries activities

2.18 An equivalent carbon price is not applied to off-road fuel use by the agriculture, forestry and fishing sectors. This policy will be continued by allowing non-transport LPG, LNG and CNG users in these industries to claim fuel tax credits which are equivalent to the amount of carbon price even when the fuel is subject to the carbon pricing mechanism and no fuel tax has been paid.

Ongoing coverage of gaseous fuels under the fuel tax system

2.19 Non-transport CNG will be covered by the carbon pricing mechanism from 1 July 2012. From 1 July 2013 non-transport LPG and LNG will move from the effective carbon price under the fuel tax system to being covered by the carbon pricing mechanism.

2.20 Bringing about coverage of non-transport CNG, LPG and LNG under the carbon pricing mechanism requires excluding non-transport CNG, LPG and LNG from excise and customs duties and as a

consequence excluding users of non-transport CNG, LPG and LNG from being able to claim FTCs for their use of the fuels.

2.21 A new FTC will be available for the agriculture, fishing and forestry industries. The FTC will be equivalent to the amount of the carbon price that is embedded in the cost of gaseous fuels acquired for non-transport use. This is consistent with the general policy that these industries should not be subject to a carbon price on the fuels acquired for non-transport use.

Comparison of key features of new law and current law

New law	*Current law*
Carbon price on non-transport LPG and LNG	
A carbon price will be applied to non-transport LPG and LNG through the carbon pricing mechanism from 1 July 2013. From 1 July 2012 to 1 July 2013 a carbon price will be applied through the fuel tax arrangements as set out in the Clean Energy Legislative Package.	A carbon price will be applied to non-transport LPG and LNG through the fuel tax arrangements from 1 July 2012.
The liable entity for non-transport LPG and LNG under the carbon pricing mechanism will generally be the person that is liable to pay customs or excise duty in respect of the LPG or LNG.	The liable entity for non-transport LPG and LNG will generally be the person that is liable to pay customs or excise duty in respect of the LPG or LNG.
Where it is not possible to identify whether LPG or LNG will be used for transport or non-transport purposes when it is entered for home consumption from excise licensed premises, the carbon price will be applied through reduced fuel tax credits.	Where it is not possible to identify whether LPG or LNG will be used for transport or non-transport purposes when it is entered for home consumption, the carbon price will be applied through reduced fuel tax credits.
Large users of LPG or LNG will be able to quote an OTN to assume direct liability under the carbon pricing mechanism where allowed by regulations.	Excise liability is not generally transferrable to end users of LPG and LNG unless they apply for an excise license.
From 1 July 2013, carbon price liabilities will be acquitted twice for each financial year during the fixed price period (by 15 June for liabilities	Carbon price liabilities will be acquitted on a weekly or monthly basis.

in respect of the first 3 quarters, and the remainder by the following 1 February), and once during the flexible price period (the following 1 February).	
Carbon price on non-transport CNG	
A carbon price will be applied to non-transport CNG through the carbon pricing mechanism from 1 July 2012.	A carbon price will be applied to non-transport CNG through the fuel tax arrangements from 1 July 2012.
The default liable entity for non-transport CNG will be the supplier of natural gas from which CNG is produced.	The liable entity for non-transport LPG and LNG will generally be the producer of CNG that is liable to pay customs or excise duty.
Producers of CNG will be able to quote an OTN to assume direct liability under the carbon pricing mechanism.	The liable entity for non-transport LPG and LNG will generally be the producer of CNG that is liable to pay customs or excise duty. Producers of CNG will be able to quote an OTN to ensure that their natural gas supplier is not also liable under the carbon pricing mechanism.
From 1 July 2012, carbon price liabilities will be acquitted twice for each financial year during the fixed price period (by 15 June for liabilities in respect of the first 3 quarters, and the remainder by the following 1 February), and once during the flexible price period (the following 1 February).	Carbon price liabilities will be acquitted on a weekly or monthly basis.
Fuel tax credits	
CNG (from 1 July 2012) and LPG and LNG (both from 1 July 2013) will be subject to the carbon pricing mechanism rather than the effective carbon price under the fuel tax system. When this occurs there will be no reductions in FTCs by a carbon reduction amount claimed by businesses when using those fuels.	As part of the application of an effective carbon price the amount of FTCs otherwise claimable by business are reduced by an amount equal to the carbon price that would otherwise apply to the emissions from that fuel. This applies to both liquid and gaseous fuels.
If the CNG, LPG or LNG is subject to the carbon pricing mechanism and is used in the agriculture, fishing or forestry industry, a fuel tax credit entitlement for the effects of the carbon pricing mechanism will be	The agriculture, fishing and forestry industries are exempted from reduction in their FTCs by the carbon reduction amount.

available to users in these industries.	

Detailed explanation of new law

Liability under the carbon pricing mechanism

2.22 The bill amends the CE Act to provide that, under the carbon pricing mechanism, a carbon price liability for emissions embodied in non-transport LPG and LNG applies to:

- an importer or reseller of LPG or LNG that enters imported LPG or LNG for home consumption;
- a manufacturer or reseller of LPG that enters domestically manufactured LPG or LNG for home consumption;
- a person that quotes an OTN for a supply of LPG or LNG. ***[Schedule 2, item 13, sections 36B-36D, CE Act]***

2.23 For LPG and LNG, liability under the carbon pricing mechanism applies to potential emissions embodied in the LPG or LNG supplied and not the actual emissions produced at the time the LPG or LNG is combusted. This is because liability generally arises before the LPG or LNG is combusted and emissions are released into the atmosphere. In practice, there is little difference between the actual emissions arising from the combustion of LPG and LNG among different non-transport customers. ***[Schedule 2, item 13, sections 36B-36D, CE Act]***

Definitions

2.24 The bill amends section 5 of the CE Act to replace the term 'liquid petroleum gas' with the term 'liquefied petroleum gas', which is the more commonly used term in the industry. It is also the term used in the *Excise Tariff Act 1921*, which sets out whether a fuel type is excisable or whether it is covered by the carbon pricing mechanism. Any references in the NGER Regulations to 'liquid petroleum gas' are to be taken as references to 'liquefied petroleum gas'. ***[Schedule 1, Part 1, item 5, section 5, CE Act] [Schedule 1, Part 1, item 6, section 5, CE Act]***

2.25 LPG and LNG are 'designated fuels' for the purposes of the CE Act and the NGER Act (see Chapter 1 above). ***[Schedule 1, Part 1, item 4, section 5, CE Act]***

2.26 The bill inserts a new definition in section 5 of the CE Act of:

- 'gaseous fuel supplier', being a person who supplies LPG, LNG or natural gas; and ***[Schedule 2, item 3, section 5, CE Act]***

- 'non-transport combustion', being combustion that does not occur in an internal combustion engine in a motor vehicle or a vessel. ***[Schedule 2, item 4, section 5, CE Act]***

2.27 The new definition of 'gaseous fuel supplier' is created as a collective term for the purposes of applying the OTN provisions of the CE Act, as OTNs will now apply for LPG and LNG, as well as to natural gas.

2.28 The CE Act defines 'taxable fuel' as having the same meaning as in the Fuel Tax Act. The bill amends the definition of 'taxable fuel' in section 5 of the CE Act to provide that it does not cover circumstances covered by paragraph (b) of the definition of 'taxable fuel' in section 110-5 of the Fuel Tax Act (as amended by item 85 of Schedule 2 to the bill). The effect of this amendment is to ensure that 'taxable fuel' fuel includes CNG, LNG and LPG subject to the carbon pricing mechanism because this fuel is excluded from the new definition of 'taxable fuel' in the Fuel Tax Act. ***[Schedule 2, item 5, section 5, CE Act]***

Liability for LPG or LNG

2.29 The bill includes a new Division 3A after Part 3, Division 3 of the CE Act which concerns the coverage under the carbon pricing mechanism of LPG and LNG for non-transport use.

LPG or LNG for non-transport use which is imported

2.30 New section 36B sets out liability for imported LPG or LNG which is intended for non-transport use. A person is liable for potential emissions embodied in LPG or LNG where:

- the LPG or LNG is imported into Australia; and

- the LPG or LNG is entered for home consumption in a financial year that begins on or after 1 July 2013; and

- customs duty is or was payable by the person on the LPG or LNG, but duty is automatically remitted because the LPG or LNG is not for use in an internal combustion engine in a motor vehicle or vessel (that is, the LPG or LNG is for non-transport use); and

- the LPG or LNG is not exempt under the regulations. ***[Schedule 2, item 13, new section 36B, CE Act]***

2.31 It is intended that the regulations could, for instance, provide an exemption for fuel (typically LPG) which is packaged in small containers for specific applications which use small volumes of fuel (such as soldering). It would not be cost effective to require importers of these products to participate in the mechanism.

LPG or LNG for non-transport use which is manufactured or produced in Australia

2.32 New section 36C of the CE Act sets out liability for LNG or LPG which is manufactured or produced in Australia and is intended for non-transport use. A person is liable for potential emissions embodied in LPG or LNG where:

- the LPG or LNG is manufactured or produced in Australia; and
- the LPG or LNG is entered for home consumption in a financial year that begins on or after 1 July 2013; and
- excise duty is or was payable by the person on the LPG or LNG, but duty is automatically remitted because the LPG or LNG is not for use in an internal combustion engine in a motor vehicle or vessel (that is, the LPG or LNG is for non-transport use); and
- the LPG or LNG is not exempt under the regulations. ***[Schedule 2, item 13, new section 36C, CE Act]***

2.33 It is intended that the regulations could, for instance, provide an exemption for fuel (typically LPG) which is packaged in small containers for specific applications which use small volumes of fuel (such as soldering). It would not be cost effective to require manufacturers of these products to participate in the mechanism.

LPG or LNG for non-transport use where an OTN is quoted

2.34 New section 36D of the CE Act sets out liability where a person quotes an OTN in relation to a supply of non-transport LPG or LNG. An OTN holder may quote an OTN in relation to a supply of LPG or LNG from a person that has a preliminary emissions number for that supply under s36B or 36C of the CE Act. The OTN holder will assume liability for potential emissions embodied in the supply of LPG or LNG. ***[Schedule 2, item 13, new section 36D, CE Act] [Schedule 2, item 13, new section 36B, CE Act], [Schedule 2, item 13, new section 36C, CE Act]***

2.35 New sections 58AA and 58AB of the CE Act provide that regulations may set out the circumstances in which the quotation of an

OTN is required or permitted for supplies of gaseous fuels. An OTN holder must give a written notice to the supplier in circumstances where the acceptance of an OTN quotation is mandatory. The Government proposes that provision will be made for large users of LPG or LNG to assume liability for direct emissions from LPG and LNG. Feedstock users of LPG or LNG would also be permitted to quote an OTN to ensure that they do not pay a carbon price on fuel that is consumed without producing emissions. Other circumstances may also be prescribed. ***[Schedule 2, item 35, new section 58AA, CE Act] [Schedule 2, item 35, new section 58AB, CE Act]***

2.36 The acceptance of an OTN quotation will be mandatory where a quotation is required under the regulations or where quotation is permitted and the conditions specified in the regulations are satisfied. ***[Schedule 2, Item 36, section 59, CE Act] [Schedule 2, item 52, section 60, CE Act]***

2.37 The bill extends the CE Act's provisions concerning the issuance, surrender, cancellation, withdrawal and quotation of OTNs for natural gas supplies to extend these to cover supplies of LPG and LNG. An explanation of the provisions of the CE Act concerning OTNs is set out in paragraphs 1.130 to 1.205 of the Explanatory Memorandum to the Clean Energy Bill 2011. ***[Schedule 2, item 14, section 40(3)(a), CE Act] [Schedule 2, item 15, section 41(1)(a), CE Act] [Schedule 2, item 16, section 43(2)(a), CE Act] [Schedule 2, item 17, section 45(8), CE Act] [Schedule 2, item 18, section 45(8)-(15), CE Act] [Schedule 2, item 19, section 47, CE Act] [Schedule 2, item 20, section 47(2), CE Act] [Schedule 2, item 21, section 47(2), CE Act] [Schedule 2, item 22, section 48(1), CE Act] [Schedule 2, item 23, section 48(1), CE Act] [Schedule 2, item 24, section 48(1)(a), CE Act] [Schedule 2, item 25, section 48(3), CE Act] [Schedule 2, item 26, section 49(a), CE Act] [Schedule 2, item 27, section 49, CE Act] [Schedule 2, item 28, section 50(a), CE Act] [Schedule 2, item 29, section 51, CE Act] [Schedule 2, item 30, section 52, CE Act] [Schedule 2, item 31, section 53(1)(a), CE Act] [Schedule 2, item 32, section 53(2)(b), CE Act] [Schedule 2, item 33, section 54, CE Act] [Schedule 2, item 34, section 55, CE Act]***

2.38 The bill also amends the CE Act provisions concerning the misuse of OTNs and bogus quotation of OTNs to extend them to cover supplies of LPG and LNG. ***[Schedule 2, item 68, section 63(1), CE Act] [Schedule 2, item 69, section 63(4), CE Act] [Schedule 2, item 70, sections 64(1) and (3), CE Act]***

Provisional and preliminary emissions numbers

2.39 New subsections 36B(1), 36B(2), 36C(1), 36C(2), 36D(1) and 36D(2) of the CE Act give rise to preliminary ENs and provisional emissions numbers (PENs) for the purposes of liability for covered emissions embodied in supplies of LPG and LNG under the CE Act. PENs are used to work out an entity's total liability under the carbon pricing mechanism, and therefore the number of eligible emissions units the entity must surrender to avoid paying a unit shortfall charge.

2.40 Each amount of non-transport LPG or LNG for which a person is liable gives rise to a preliminary emissions number (preliminary EN) for the person. A preliminary EN is equal to the amount of greenhouse gas emissions in tonnes of CO_2-e embodied in the amount of LPG or LNG imported or manufactured.[2] ***[Schedule 2, item 13, new section 36B(1), CE Act] [Schedule 2, item 13, new section 36C(1), CE Act] [Schedule 2, item 13, new section 36D(1), CE Act]***

2.41 Under sections 33, 35 and 36 of the CE Act a person's PEN is the sum of the person's preliminary ENs for the financial year. If the person has one or more PENs for imported or manufactured non-transport LPG or LNG in a financial year, the person is a 'liable entity' for that financial year (see definition of 'liable entity' in section 5 of the CE Act). Entities liable for covered emissions embodied in LPG and LNG must surrender eligible emissions units, or pay a unit shortfall charge, for each tonne of emissions for which they are liable during an eligible financial year. This includes the requirement to make a provisional surrender by 15 June in a fixed price year in respect of the first three quarters of the year or pay a unit shortfall charge. ***[Schedule 2, item 71, new section 126(7A), CE Act]***

2.42 Entities liable for covered emissions embodied in LPG and LNG have obligations to report the calculation of their liability to the CER under sections 15A, 15AA, 22A and 22AA of the NGER Act (see Chapter 1).

No double-counting – LPG and LNG

2.43 Emissions from combustion of LPG or LNG that have been subject to an obligation under new sections 36B or 36C of the CE Act will not generally form part of the direct emissions liability for a facility under Part 3, Division 2 of the CE Act, although they will count towards calculating whether the facility meets thresholds for liability. New subsections 20(12) and (13) ensure that emissions from combustion of LPG and LNG are not counted twice, once for the liable entity for import or manufacture of LPG or LNG under new sections 36B and 36C of the CE Act, and again when combusted at a covered facility. These amounts may be pro-rated if there is a change in control during the year. ***[Schedule 2, item 7, new subsections 20(12)-(13), CE Act] [Schedule 2, item 8, new subsections 21(8C)-(8D), CE Act] [Schedule 2, item 9, new subsections 22(10)-(11), CE Act] [Schedule 2, item 10, new subsections 23(9C)-(9D), CE Act] [Schedule 2, item 11, new subsections 224(8C)-(8D), CE Act] [Schedule 2, item 12, new subsections 25(7C)-(7D), CE Act]***

[2] See Chapters 1 and 4 of the Explanatory Memorandum for the Clean Energy Bill 2011 for further explanation of how a person assesses and meets liabilities for covered greenhouse gas emissions under the CE Act.

2.44 If a person quotes an OTN in relation to the supply of the LPG or LNG to a facility, the emissions will form part of the obligations of the facility, and will be netted-out from the obligations of the supplier of the LPG or LNG. This will allow direct emitters to assume liability for emissions from LPG or LNG where they meet any criteria for the quotation of an OTN for LPG or LNG. ***[Schedule 2, item 7, new subsections 20(12)-(13), CE Act] [Schedule 2, item 8, new subsections 21(8C)-(8D), CE Act] [Schedule 2, item 9, new subsections 22(10)-(11), CE Act] [Schedule 2, item 10, new subsections 23(9C)-(9D), CE Act] [Schedule 2, item 11, new subsections 224(8C)-(8D), CE Act] [Schedule 2, item 12, new subsections 25(7C)-(7D), CE Act]***

Netted-out numbers – LPG and LNG

2.45 Where a person receives a supply of LPG or LNG from a supplier that is a liable entity under new section 36B or new section 36C of the CE Act and quotes an OTN to take on liability for that supply, then the quotation will give rise to a netted-out number for the supplier. The netted-out number can be subtracted from the supplier's PEN, reducing the supplier's liability and ensuring that the emissions from the supply of LPG and LNG are not double counted. ***[Schedule 2, item 13, new section 36B(4), CE Act] [Schedule 2, item 13, new section 36C(4), CE Act]***

2.46 The regulations may also specify that a liable entity in relation to import, manufacture or production of LPG and LNG can 'net out' certain amounts of LPG and LNG from their PEN. This allows for 'fine tuning' of a supplier's liability, which addresses specific circumstances where the general rules result in liability being applied in situations when it should not, such as additional cases of double-counting. ***[Schedule 2, item 13, new section 36B(5), CE Act] [Schedule 2, item 13, new section 36C(5), CE Act] [Schedule 2, item 13, new section 36D(5), CE Act]***

Coverage of CNG

2.47 From 1 July 2012 non-transport CNG will be exempt from excise duty or excise equivalent customs duty. Non-transport CNG will be subject to the direct carbon charge under the carbon pricing mechanism and as such will not also be subject to the effective carbon price as imposed via the fuel tax system.

2.48 The fuel tax system refers to the system which imposes excise duty on domestically manufactured fuels and excise equivalent customs duty on imported fuels.

2.49 Previous amendments to the Excise Act and Excise Tariff Act were made by the *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*, so as to impose an effective carbon price on non-transport business use of CNG from 1 July 2012. Mirror amendments were also

made to the Customs Tariff Act by the *Clean Energy (Customs Tariff Amendment) Act 2011* to deal with imported CNG.

2.50 The Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 and the Clean Energy (Customs Tariff Amendment) Bill 2012 will effectively repeal these previous amendments, which were due to take effect from 1 July 2012, and restore the provisions in the Excise Act, Excise Tariff Act and Customs Tariff Act to retain the legislation on CNG as it is currently written. ***[Section 1] [Section 3]***

Amendments to the Excise Act 1901 and the Excise Tariff Act 1921

2.51 The non-transport CNG tariff rate will be removed from the Schedule to the Excise Tariff Act and the consequential amendments made to that Act by *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*. As a result, sub-item 10.19D (carbon-rated compressed natural gas) and the associated a rate of duty will no longer appear in the Schedule. ***[Schedule 1, items 2 to 9 and 13, subsections 3(1), 5(1), section 6H, and the Schedule, Excise Tariff Act]***

2.52 As part of the transitional arrangements for the taxation of transport use of CNG, amendments are scheduled to commence over the next three financial years, increasing the rate as contained in sub-item 10.19C. These amendments assumed the presence of sub-item 10.19D and referenced carbon-rated compressed natural gas. The Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 removes these amendments. ***[Schedule 1, items 10 to 12, the Schedule, Excise Tariff Act]***

2.53 The Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 restores section 77HA of the Excise Act, which deals with the concept of CNG that is exempt from excise, is restored to what was set out originally prior to the amendments made by the *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*. ***[Schedule 1, item 1, section 77HA, Excise Act]***

Amendments to the Customs Tariff Act 1995

2.54 The Clean Energy (Customs Tariff Amendment) Bill 2012 removes the reference to carbon-rated compressed natural gas and associated rate from Schedule 3 of the Customs Tariff Act and amends other schedules that have references to that item to exclude the reference. ***[Schedule 1, Part 1, items 1 to 9, Schedules 3,5,6,7 and 8, Customs Tariff Act]***

2.55 Subsection 19A(3) of the Customs Tariff Act was intended to provide the means by which changes in the duty rates calculated take into account increases in the effective carbon price over the fixed price period and the move to the floating price were inserted into the relevant

schedules. This is no longer required. ***[Schedule 1, Part 2, items 11 and 12, subsections 19A(3) to (5), Customs Tariff Act]***

No double-counting – CNG

2.56 Emissions from the combustion of non-transport CNG at a facility will be counted towards the calculation of the facility's threshold for participation in the carbon pricing mechanism, but will not give rise to an emissions liability, unless the CNG is produced at the facility and a person quotes an OTN in relation to the natural gas used to produce the CNG. ***[Schedule 1, Part 1, item 8, new section 20(10)-(11), CE Act] [Schedule 1, Part 1, item 9, new section 21(8A)-(8B), CE Act] [Schedule 1, Part 1, item 10, new sections 22(8)-(9), CE Act] [Schedule 1, Part 1, item 11, new section 23(9A)-(9B), CE Act] [Schedule 1, Part 1, item 12, new section 24(8A)-(8B), CE Act] [Schedule 1, Part 1, item 13, new section 25(7A)-(7B), CE Act]***

2.57 Non-transport CNG will be removed from coverage under the customs and excise systems by legislative changes to excise arrangements for CNG producers and the adjustment of administrative arrangements by the ATO. As non-transport CNG will no longer be subject to any duty under the Customs Tariff Act or the Excise Tariff Act, it will no longer be excluded from coverage in the carbon pricing mechanism under section 30(2) of the CE Act.

2.58 In general this will result in liability defaulting to the supplier of the natural gas that is used to produce non-transport CNG, with that supplier likely to pass through the cost of compliance with the carbon pricing mechanism in the price of natural gas supplied to the CNG producer. However, the CNG producer would also be able to quote an OTN under section 58 of the CE Act to directly assume liability for the gas used if it wished to.

2.59 In situations where an OTN is not quoted for natural gas used to produce CNG, the emissions from combustion of CNG do not give rise to a direct emissions liability. Otherwise the CNG user would face the carbon price twice, once from the price pass-through from the natural gas supplier, and a second time through the direct emissions obligations for the combustion of the CNG. However, in cases where an OTN is quoted for natural gas used to produce CNG, and the emissions from that CNG count towards a direct emissions liability, the person who quotes the OTN will be able to net-out the number from its emissions obligations to eliminate double counting. ***[Schedule 1, Part 1, item 15, new section 35(6A), CE Act]***

Treatment of non-transport LPG, LNG and CNG under fuel tax arrangements

2.60 New section 41-35 of the Fuel Tax Act will provide a general exclusion for users of CNG, LPG and LNG fuels that are subject to the carbon pricing mechanism from entitlement to claim FTCs. ***[Schedule 2, item 78, section 41-35, Fuel Tax Act]***

2.61 Whether a particular gaseous fuel is subject to the carbon pricing mechanism is set out by reference to the CE Act. Broadly, if the fuel is subject to a PEN under the CE Act then no FTCs can be claimed.

2.62 CNG will be taken to be subject to the carbon pricing mechanism if a person has a PEN for a financial year and the PEN is attributable to the supply of natural gas used to manufacture or produce the CNG. ***[Schedule 2, item 79, subsection 42A 5(3), Fuel Tax Act]***

2.63 Similarly, LPG and LNG will be taken to be subject to the carbon pricing mechanism if a person has a PEN for a financial year and the PEN is attributable to the import, manufacture or production of the LPG or LNG. ***[Schedule 2, item 79, subsection 42A-5(4), Fuel Tax Act]***

2.64 Broadly, under the CE Act, a PEN represents the emissions which give rise to a liability under the carbon pricing mechanism.

Gaseous fuels and the agriculture, fishing or forestry industries

2.65 The agriculture, fishing and forestry industries will become entitled to a FTC equivalent to the amount of the carbon charge that is embedded in the price of gaseous fuels. Subdivision 43-B of the Fuel Tax Act (which commences on 1 July 2012) defines those industries. ***[Schedule 2, item 76, section 2-1, Fuel Tax Act] [Schedule 2, item 77, subsection 41-15(1), Fuel Tax Act] [Schedule 2, item 79, section 42A-5, Fuel Tax Act] [Schedule 2, item 80, section 43-1, Fuel Tax Act]***

2.66 Where a person acquires one of the gaseous fuels and that fuel has been subject to the carbon pricing mechanism within the meaning of new subsections 42A-5(3) or (4) of the Fuel Tax Act then the person will be entitled to a FTC. The existing rule that a person must acquire the fuel for use in carrying on an enterprise and be registered for the GST to obtain a FTC operates in this situation.

Amount of FTC

2.67 In broad terms the amount of the FTC is the amount by which a FTC will otherwise be reduced by the 'carbon reduction'. The carbon reduction for all fuels is the equivalent of the carbon charge on the fuel

had the fuel been subject to the carbon charge. ***[Schedule 2, item 81, subsection 43-5(1), Fuel Tax Act] [Schedule 2, item 82, subsections 43-5(4) and (5), Fuel Tax Act] [Schedule 2, item 85, section 110-5, paragraph (a) of new definition of 'taxable fuel', Fuel Tax Act]***

2.68 The amount of the carbon reduction will be based in 2012-13, 2013-14 and 2014-15 on a carbon charge of $23.00 per tonne, $24.15 per tonne and $25.40 per tonne respectively. From 1 July 2015, the FTC carbon reduction will be based on the preceding six-month average carbon unit auction price. The average auction price used on 1 July 2015 will be for the preceding six-month forward permit auctions. For subsequent periods the average price used will be for the actual six-month period.

2.69 The new FTCs will be adjusted in the same way.

Example 2.1 Adjusting FTCs

Huey undertakes qualifying agricultural activities and qualifies for FTCs. He acquires 210 litres of LPG to use for heating a remotely sited shearing shed during the 2013-14 financial year. Huey would be entitled to a FTC credit for the amount of LPG (210 litres) times the carbon reduction for LPG for 2013-14 (3.864 cents per litre).

Rounding calculation for the FTC carbon reduction

2.70 The bill makes a technical amendment to section 43-8 of the Fuel Tax Act to ensure the carbon reduction is correctly rounded to three decimal places of a cent in all circumstances. ***[Schedule 2, item 83, subsection 43-8 (1), Fuel Tax Act] [Schedule 2, item 84, subsection 43-8 (1A), Fuel Tax Act]***

Application and transitional provisions

Clean Energy Legislation Amendment Bill 2012

2.71 The provisions in Schedule 2 of the bill will commence on the latest of:

- the start of the day after the bill receives the Royal Assent; and
- immediately after the commencement of Schedule 1 to the *Clean Energy (Fuel Tax Legislation Amendment) Act 2011*; and
- immediately after the commencement of Schedule 1 to the bill. ***[Section 2]***

2.72 CNG that has been supplied will have a PEN in respect of that supply from the beginning of the 2012-13 financial year and so there will be no FTC reductions for CNG acquired from the beginning of that year. The new FTC for the agriculture, fishing and forestry industries' use of CNG will also commence from the beginning of the 2012-13 financial year.

2.73 LPG and LNG will only have PENs when the fuel is entered into home consumption from the 2013-14 financial year. Consequently there will be FTC reductions for those gaseous fuels for the 2012-13 financial year but not beyond. The new FTC for the agriculture, fishing and forestry industries' use of LPG and LNG will also not commence until the beginning of the 2013-14 financial year.

The Clean Energy (Customs Tariff Amendment) Bill and Clean Energy (Excise Tariff Legislation Amendment) Bill

2.74 The amendments to the *Excise Tariff Act 1921* and the *Excise Act 1901* commence on 1 July 2012, immediately after the commencement made by the amendments contained in the *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*. ***[Section 2]***

2.75 The amendments to sub-item 10.19C are taken to commence immediately after the relevant amendments made by the *Excise Tariff (Taxation of Alternative Fuels) Act 2011* commence. ***[Section 2]***

2.76 The amendments to the Customs Tariff Act commence on 1 July 2012, immediately after the commencement made by the amendments contained in the *Clean Energy (Customs Tariff Legislation Amendment) Act 2011*. That is, they will apply to goods that were imported on or after 1 July 2012. They also apply to goods imported before 1 July 2012 but not entered into home consumption until on or after 1 July 2012. ***[Section 2]***

Consequential amendments

2.77 Schedule 2 to the bill includes consequential amendments to give effect to the substantive amendments set out in Schedule 2 dealing with coverage of gaseous fuels under the carbon pricing mechanism. These amendments generally ensure that appropriate references are included in provisions that allow for the administration of the carbon pricing mechanism to ensure that the coverage of gaseous fuels is included. ***[Schedule 2, item 37, section 59(2), CE Act] [Schedule 2, item 38, section 59(2), CE Act] [Schedule 2, item 39, section 59(3), CE Act] [Schedule 2, item 40, section 59(3), CE Act] [Schedule 2, item 41, section 59(3), CE Act] [Schedule 2, item 42, section***

59(3), CE Act] [Schedule 2, item 42, section 59(4), CE Act] [Schedule 2, item 43, section 59(4), CE Act] [Schedule 2, item 44, section 59(4), CE Act] [Schedule 2, item 45, section 59(4), CE Act] [Schedule 2, item 46, section 59(5), CE Act] [Schedule 2, item 47, section 59(5), CE Act] [Schedule 2, item 48, section 59(5), CE Act] [Schedule 2, item 50, section 59(7), CE Act] [Schedule 2, item 51, section 59(8), CE Act] [Schedule 2, item 53, section 60(2), CE Act] [Schedule 2, item 54, section 60(2), CE Act] [Schedule 2, item 55, section 60(3), CE Act] [Schedule 2, item 56, section 60(3), CE Act] [Schedule 2, item 57, section 60(3), CE Act] [Schedule 2, item 58, section 60(4), CE Act] [Schedule 2, item 59, section 60(4), CE Act] [Schedule 2, item 60, section 60(4), CE Act] [Schedule 2, item 61, section 60(4), CE Act] [Schedule 2, item 62, section 60(5), CE Act] [Schedule 2, item 63, section 60(5), CE Act] [Schedule 2, item 64, section 60(5), CE Act] [Schedule 2, item 66, section 60(7), CE Act] [Schedule 2, item 67, section 60(8), CE Act] [Schedule 2, item 72, section 228(1)(a), CE Act] [Schedule 2, item 73, section 262(1)(f), CE Act] [Schedule 2, item 74, section 262(1)(g), CE Act] [Schedule 2, item 75, section 262(1)(i), CE Act]

Chapter 3 Amendments relating to the Carbon Farming Initiative

Outline of chapter

3.1 Schedule 3 to the bill amends provisions of the CFI Act relating to projects approved on the condition that they obtain the necessary regulatory approvals, and removes a requirement that the Domestic Offsets Integrity Committee (DOIC) publish matters incorporated by reference in methodology determinations. It also amends the CFI Act to extend the timing for methodology determinations to be backdated.

Context of amendments

3.2 The CFI, which was set up by the CFI Act, is a carbon offsets scheme that is part of Australia's carbon market. The CFI allows farmers and land managers to earn carbon credits by storing carbon or reducing greenhouse gas emissions on the land. These credits can then be sold to people and businesses wishing to offset their emissions.

3.3 The CFI also helps the environment by encouraging sustainable farming and providing a source of funding for landscape restoration projects.

Regulatory approvals

3.4 All CFI projects are required to obtain all necessary regulatory approvals. This was an important element of addressing potential negative impacts of projects on the local environment and communities.

3.5 The CFI Act allows the CER to conditionally approve projects that have not yet obtained all regulatory approvals. This is because obtaining such approvals can be costly and time-consuming, and proponents need certainty that their project would be eligible under the CFI before making such an investment.

3.6 At present, project proponents are required to obtain the relevant regulatory approvals by the end of the first crediting period for the project. A crediting period is normally seven years, or 15 years for reforestation projects.

3.7 Proponents can report on their project and receive credits 12 months after the project commences. Proponents could therefore receive Australian carbon credit units prior to obtaining regulatory approval for their project.

3.8 The proposed amendment addresses this risk by requiring that approvals are obtained prior to the end of the first reporting period, rather than the first crediting period. This means that the approval must be obtained before credits are issued.

Publication of matters by the DOIC

3.9 The CFI Act currently requires the DOIC to publish on its website the text of any matters incorporated by reference in methodology determinations, such as an international measurement standard.

3.10 Complying with this provision could involve lengthy negotiations and some expense to secure the right to publish material on the DOIC website. This could considerably delay the finalisation of methodology determinations.

3.11 The amendment will remove the requirement for the DOIC to publish the matters. Instead, the explanatory material for methodology determinations would contain a description of the incorporated material and indicate how it may be obtained. Material that is incorporated into legislative instruments is normally dealt with in this way.

Backdating of methodologies

3.12 All CFI projects must be conducted in accordance with a methodology determination, which is a legislative instrument made by the Minister. Prior to the Minister making a methodology determination, the DOIC must provide a recommendation as to whether or not the determination meets the offsets integrity standards established within the CFI Act.

3.13 The CFI Act currently allows for methodology determinations to be expressed to have come into force on 1 July 2010, if they are made by 30 June 2012. Projects using these methodologies can be backdated to 1 July 2010, and can be issued credits for all abatement that has occurred since 1 July 2010, provided they were undertaken in accordance with the methodology and met other CFI requirements in that period.

3.14 It has taken longer than initially anticipated for methodologies to be assessed and made into methodology determinations. This is because, initially, each methodology raises new policy and technical issues.

3.15 This amendment will enable methodologies for existing abatement projects to be eligible for backdating as originally intended.

Summary of new law

Regulatory approvals

3.16 The amendment will require participants to obtain all regulatory approvals by the end of the project's first reporting period.

Publication of matters by the DOIC

3.17 The amendment removes a requirement for the DOIC to publish matters incorporated by reference in methodology determinations.

Backdating of methodologies

3.18 The amendment allows more time for submission and assessment of methodology applications that can be backdated.

Comparison of key features of new law and current law

New law	*Current law*
The CER may declare an eligible offsets project, subject to the condition that all regulatory approvals must be obtained during the first reporting period.	The CER may declare an eligible offsets project, subject to the condition that all regulatory approvals must be obtained during the first crediting period.
There will be no requirement for the DOIC to publish matters applied, adopted or incorporated by reference in methodology determinations.	The DOIC must publish on its website the text of any matters applied, adopted or incorporated by reference in methodology determinations, unless publication would infringe copyright.
A project can be declared to have commenced from a date no earlier than 1 July 2010, provided: • the application for the methodology was submitted to the DOIC on or before 30 June 2012; and	A project can be declared to have commenced from a date no earlier than 1 July 2010, provided: • the relevant methodology determination is made on or before 30 June 2012, and • the determination is expressed to

• the relevant methodology determination is made on or before 30 June 2013, and • the determination is expressed to have come into force on 1 July 2010; and • the project was undertaken in accordance with the methodology and other CFI requirements in the backdated period.	have come into force on 1 July 2010; and • the project was undertaken in accordance with the methodology and other CFI requirements in the backdated period.

Detailed explanation of new law

Regulatory approvals

3.19 The bill amends paragraphs 15(2)(e), 34(2)(a) and 168(1)(h) and subsections 28(2) and 31(1) of the CFI Act to replace "crediting period" with "reporting period" in instances where it refers to requirements to obtain regulatory approvals. These references relate to the issuance of a certificate of entitlement, the making of a project declaration conditional on obtaining a regulatory approval, varying a project declaration to remove such a condition, unilateral revocation of a project declaration if the proponent fails to obtain the approval, and the listing of any such condition on the Register of Offsets Projects. ***[Schedule 3, Item 1, section 15(2)(e), CFI Act] [Schedule 3, Item 2, section 28(2), CFI Act] [Schedule 3, Item 3, section 31(1), CFI Act] [Schedule 3, Item 4, section 34(2)(a), CFI Act] [Schedule 3, Item 6, section 168(1)(h), CFI Act]***

Publication of matters by the DOIC

3.20 The bill repeals subsections 106(10) and (11) of the CFI Act. This removes the requirement for the DOIC to publish on its website any matters applied, adopted or incorporated by reference in a methodology determination. The explanatory statements for methodology determinations will include descriptions of any matters applied, adopted or incorporated by reference, and include information on how to obtain the instrument or writing within which the matter is contained. ***[Schedule 3, Item 5, section 106, CFI Act]***

Backdating of methodologies

3.21 The bill amends subsection 122(3) of the CFI Act to provide that methodology determinations made on or before 30 June 2013 may be expressed to have come into force at the start of 1 July 2010, provided that the application for endorsement of the methodology was submitted to the

DOIC on or before 30 June 2012. This amendment allows the backdating of methodology determinations that were anticipated to be made on or prior to the originally specified date of 30 June 2012. ***[Schedule 3, Item 7, section 122, CFI Act]***

Application and transitional provisions

3.22 The provisions in Schedule 3 to the bill commence on the day after which it receives the Royal Assent. ***[Section 2]***

3.23 Transitional arrangements will apply for any projects declared eligible, subject to obtaining a regulatory approval, prior to the commencement of these provisions. Any project which, immediately before the commencement of these provisions, is subject to a requirement to obtain a regulatory approval before the end of the first crediting period will be taken to be subject to a requirement that the approval is obtained before the end of the first reporting period instead. ***[Schedule 3, Item 8, CFI Act]***

Chapter 4
Amendments relating to the Australian National Registry of Emissions Units

Outline of chapter

4.1 Chapter 4 explains amendments to the ANREU Act concerning the circumstances in which restrictions relating to the operation of a Registry account apply and the period within which the CER may defer giving effect to a transfer instruction.

Context of amendments

Amendments relating to the imposition of restrictions on the operation of Registry accounts

4.2 The ANREU Act provides the legislative basis for the Registry. The Registry tracks the location and ownership of carbon units issued under the CE Act, Australian carbon credit units (ACCUs) issued under the CFI Act, and certain international emissions units, including certain units issued in accordance with the Kyoto rules (Kyoto units). Carbon units and ACCUs can only be issued to or held by a person if the person has a Registry account.

4.3 Detailed provisions relating to the opening of Registry accounts are set out in the ANREU Regulations. Those regulations provide that the CER can only open an account for a person if satisfied that the person meets the fit and proper person criteria. In assessing whether a person meets the fit and proper person criteria, the CER has regard to a number of matters, including whether the person has been convicted of offences relating to dishonesty, whether the person has complied with the ANREU and NGER Acts, and whether the person is an externally-administered body corporate or an insolvent under administration.

4.4 Proposed amendments to the ANREU Regulations will relax the fit and proper person requirement in relation to liable entities and persons who are eligible to receive free carbon units under the CE Act. This is to ensure that liable entities are not precluded from meeting their surrender obligations under the CE Act by reason of their solvency status, for example. It is also to ensure that persons who would otherwise be eligible

to receive free carbon units under the Jobs and Competitiveness Program or in accordance with Part 8 of the CE Act are not precluded from being issued those units because of their solvency status.

4.5 The amendment to section 27 of the ANREU Act is intended to allow restrictions to be imposed on the operation of accounts opened in circumstances where the CER is not satisfied that the account holder meets the fit and proper person criteria. This is to safeguard the integrity of the Registry and protect it from abuse, whilst also ensuring that liable entities can meet their surrender obligations and persons who would otherwise be eligible to receive free carbon units can be issued those units.

Amendments relating to the deferral of transfer instructions

4.6 Section 28A of the ANREU Act confers power on the CER to defer giving effect to an instruction to transfer a unit to or from a Registry account for a period not exceeding 48 hours in certain circumstances. This section is amended to increase the time in which instructions can be deferred to five whole business days to enhance the capacity of the CER to deal with suspicious conduct.

Summary of new law

Amendments relating to the imposition of restrictions on the operation of Registry accounts

4.7 The bill amends the ANREU Act to enable regulations to identify Registry accounts that are subject to restrictions or limitations in relation to the operation of the account, including restrictions or limitations on the transfer of carbon units, ACCUs, Kyoto units or prescribed international units to or from the identified account or the issue of carbon units to the account.

Amendments relating to the deferral of transfer instructions

4.8 The bill amends the ANREU Act to increase the period within which the CER can defer giving effect to an instruction from no more than 48 hours to no later than the end of the fifth business day after the day on which the instruction was received.

Comparison of key features of new law and current law

New law	*Current law*
Regulations may restrict or limit the operation of identified Registry accounts.	There is no power to prescribe restrictions or limitations on the operation of identified accounts, other than by imposing transaction limits on accounts that are opened using less stringent identification procedures.
Instructions to transfer units can be deferred until the end of the fifth business day after the day on which the instruction was received.	Instructions can be deferred for no more than 48 hours.

Detailed explanation of new law

Amendments relating to the imposition of restrictions on operation of Registry accounts

4.9 The bill amends section 27 of the ANREU Act to provide that regulations made for the purposes of subsection 27(1) of the ANREU Act may restrict or limit the operation of certain Registry accounts, to be called 'restricted Registry accounts'. ***[Schedule 4, item 2, section 27(3A), ANREU Act]***

4.10 The regulations may prohibit, restrict or limit the transfer of carbon units, ACCUs, Kyoto units or prescribed international units to or from a restricted Registry account. The regulations may also prohibit, restrict or limit the issue of carbon units to a restricted account. The regulations could, for example, provide that an account opened for a person who did not meet the fit and proper person criteria (discussed in 4.3 and 4.3 above) is a restricted Registry account, and prohibit the transfer of units into the account if the transfer would result in the account exceeding a set number of units. ***[Schedule 4, item 2, section 27(3B), ANREU Act] [Schedule 4, item 2, section 27(3C), ANREU Act]***

4.11 As the detailed rules relating to the circumstances in which a Registry account are opened are set out in regulations, it is appropriate that the rules relating to when accounts are subject to restrictions limiting the operation of the account are also set out in regulations. This ensures that the restrictions can be appropriately tailored having regard to the content of the account opening rules.

4.12 The CER's power in section 28C of the ANREU Act to impose conditions on the operation of accounts is unaffected. The CER may still exercise this power if satisfied that it is prudent to do so to ensure the integrity of the Registry, to prevent, mitigate or minimise abuse of the Registry or to prevent, mitigate or minimise criminal activity involving the Registry. The existence of the section 28C power does not limit the content of regulations made under subsection 27(1). ***[Schedule 4, item 2, section 27(3E), ANREU Act]***

4.13 Unlike section 28C, the restrictions imposed in accordance with this amendment are not intended to rely on the exercise of the CER's discretion. Rather, prescribed restrictions are intended to apply in prescribed circumstances.

4.14 The power in section 11 of the ANREU Act to prescribe transaction limits that apply to Registry accounts opened using less stringent identification procedures is also unaffected.

4.15 New subsections 27(3A) and (3B) are not intended to limit the otherwise broad power to make regulations making further provision in relation to the Registry. ***[Schedule 4, item 2, section 27(3D), ANREU Act]***

Time period for delay in Registry transactions

4.16 The bill amends subsection 28A(2) of the ANREU Act to replace the period in which the CER can defer giving effect to a transfer instruction, currently set at 48 hours, with a period which lasts until the end of the fifth business day after the day on which the instruction was received. ***[Schedule 4, item 3, section 28A(2), ANREU Act]***

4.17 Business days are defined as they exist in the Australian Capital Territory, where the Registry will be based, and therefore do not include Saturdays, Sundays or ACT public holidays as gazetted from time to time. ***[Schedule 4, item 1, section 4, ANREU Act]***

4.18 Carbon units, ACCUs, Kyoto units and prescribed international units must be transferred within the Registry 'as soon as practicable' after an electronic instruction to transfer is received by the CER (see section 107 of the CE Act, section 156 of the CFI Act and sections 34 and 51 of the ANREU Act). International transfers will generally also need to be made as soon as is practicable.

4.19 It is expected that routine processing of transfer transactions, including checking for fraudulent transactions, could in some circumstances take up to five business days and that it will only be practicable to transfer the units once that processing has taken place. Only then will consideration be able to be given to the question of deferral

of suspicious transactions under section 28A of the ANREU Act. It is therefore necessary to extend the time in section 28A to allow for deferral of suspicious transactions while further action (such as refusal to give effect to the transfer under section 28B of the ANREU Act) is considered.

Example 4.1 Current law - Time period in which an instrument may be made

If Stephen, an account representative, engaged in trading activity late on a Friday evening, then the 48 hour period in which the CER may take action would end on the following Sunday evening. Furthermore, this sort of activity could also occur on public holiday weekends, when Stephen may seek to take advantage of a longer period.

Example 4.2 New law – Time period in which an instrument may be made

If Zali, an account representative, engaged in trading activity on Wednesday, then the five business day period in which the CER may take action would end at the end of the following Wednesday.

If Zali engaged in trading activity late on a Friday evening, then the five business day period in which the CER may take action would end at the end of the following Friday.

Application and transitional provisions

4.20 The provisions in Schedule 4 to the bill commence on the day after which it receives the Royal Assent. ***[Section 2]***

Chapter 5 Amendments relating to the Clean Energy Finance Corporation

Outline of chapter

5.1 Chapter 5 explains amendments to the ARENA Act and the CER Act concerning the sharing of information between the CEFC and ARENA, and the CEFC and the CER. This Chapter covers Schedule 5.

Context of amendments

5.2 The CEFC will make decisions concerning investments in clean energy technologies and projects. In making these decisions or concerning the ongoing efficacy of investments, the CEFC may require information about specific issues from ARENA or the CER.

5.3 The sharing of relevant and appropriate information between the CEFC and ARENA and the CEFC and the CER is limited to the circumstances spelt out in the ARENA Act and the CER Act respectively and this is not a general ability for the CEFC to obtain or request information.

Summary of new law

5.4 The bill includes a new section 73A in the ARENA Act, which provides that ARENA may disclose information to CEFC if the disclosure will enable or assist the CEFC to perform or exercise any of its functions or powers.

5.5 The bill amends section 49 of the CER Act, to add the CEFC to the list of bodies with which the CER may disclose 'protected information'. Section 49 specifies the circumstances in which the CER may disclose such information and the manner in which this may occur.

Comparison of key features of new law and current law

New law	*Current law*
ARENA may disclose information to the CEFC, if the disclosure will enable or assist the CEFC to perform or exercise any of its functions or powers.	No provision is made for the sharing of information by ARENA with the CEFC.
The CER may disclose protected information to the CEFC.	The CER may not disclose protected information to the CEFC unless the disclosure is otherwise authorised by Part 3 of the CER Act.

Detailed explanation of new law

Disclosure of information by ARENA

5.6 ARENA may disclose information to the CEFC, if the disclosure will enable or assist the CEFC to perform or exercise any of its functions or powers. This will facilitate the sharing of information between ARENA and the CEFC and ensure the two have a close working relationship. ***[Schedule 5, item 1, section 73A, ARENA Act]***

Disclosure of information by the CER

5.7 The CER may disclose protected information to the CEFC in accordance with the requirements of section 49 of the CER Act (which is described below). ***[Schedule 5, item 2, section 49(1), CER Act]***

5.8 Information obtained by the CER may be commercially sensitive. For example, it could disclose the market share of a corporation, or details of its supply arrangements. Part 3 of the CER Act, including section 49, seeks to ensure that information obtained by the CER is not disclosed unnecessarily or put to unauthorised use. Personal information collected under Part 3 of the CER Act is subject to the *Privacy Act 1988*. It should be noted that, under Information Privacy Principle 11.3, a person, body or agency to whom personal information is disclosed shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

5.9 Section 43 of the CER Act provides that it is an offence for a person who is, or has been, an official of the CER to disclose or use 'protected information' – in broad terms, information obtained in an

official capacity – unless one of a number of exceptions apply. The penalty for that offence is up to two years' imprisonment or 120 penalty units (currently $13,200), or both. This penalty is the same as applies to a similar offence in secrecy provisions (section 23) of the NGER Act.

5.10 Section 4 of the CER Act defines 'official of the Regulator' broadly, to include not only CER members and staff but also:

- public sector employees (state, territory or Commonwealth) whose services are made available to the CER in connection with the performance of its functions; and
- consultants engaged by the CER.

5.11 In broad terms, the exceptions – that is, the circumstances in which 'protected information' can be disclosed or used – include disclosure to specified bodies listed in subsection 49(1) of the CER Act. The bill amends this list to include the CEFC. ***[Schedule 5, item 2, section 49(1), CER Act]***

Application and transitional provisions

5.12 The amendments to the ARENA Act and the CER Act commence on the same day as section 3 of the CEFC Act (once enacted). Clause 2 of the CEFC Bill provides that clause 3 of that bill will commence on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day that the CEFC Bill receives the Royal Assent, they commence on the day after the end of that period. ***[Section 2]***

Chapter 6
Regulation impact statement – Carbon pricing mechanism coverage of non-transport gaseous fuels

Background

The gaseous fuels sector

Liquefied Petroleum Gas

6.1 LPG is produced either directly through the processing of crude oil and natural gas or as a by-product of the petroleum refining process. LPG is generally supplied for consumption in pressurised containers and is composed of mixtures of propane and butane, with bottled LPG used for domestic purposes usually composed solely of propane.

6.2 Key non-transport uses of LPG include residential and leisure (for uses such as heating and gas barbecues), manufacturing, materials handling (such as warehouse forklift use), and commercial.

6.3 LPG for non-transport uses is supplied by approximately 5 or 6 resellers. Of these, 3 are responsible for approximately 90 per cent of supply of non-transport LPG and 2 or 3 smaller resellers are understood to be responsible for the remainder. The supply chains by which LPG reaches the end consumer can be complex. In some rare cases, it will not be readily determinable at the marketer level whether a particular supply of LPG is ultimately used for transport or non-transport purposes (for instance, where LPG is delivered by the marketer into a tank from which LPG used for both automotive and stationary heating is withdrawn).

6.4 Transport uses of LPG were brought under the fuel tax system on 1 December 2011 to implement the longstanding plan for energy content based taxation of alternative transport fuels, but will not be subject to a carbon price. Non-transport LPG is not currently covered by the fuel tax system. However, under the Clean Energy Package it will be brought into the fuel tax system from 1 July 2012 to allow for the application of an equivalent carbon price.

6.5 In 2009-2010 approximately 800, 000 tonnes of LPG was sold into the stationary LPG market. This would result in approximately 2.4 million tonnes of carbon dioxide equivalent emissions. This would account for approximately 0.7 per cent of total estimated emissions to be covered under the carbon pricing mechanism in 2012/13.

Liquefied Natural Gas

6.6 LNG is natural gas (primarily methane) that has been cooled to approximately minus 163 degrees Celsius. LNG produced in Australia is primarily exported, with domestic LNG consumption accounting for less than one tenth of 1 per cent of Australian production. Key uses of LNG are as an industrial chemical and for electricity generation.

6.7 LNG is generally produced at large processing facilities, and sometimes from upstream supplies of natural gas that will not have been subject to coverage under the carbon pricing mechanism. There are 3 large producers of LNG for domestic non-transport consumption, and it is expected that in most cases downstream uses of supplies of LNG will be readily determinable.

6.8 Domestic LNG consumption in 2009-2010 was in the region of 35,000 tonnes, leading to approximately 105,000 tonnes of carbon dioxide equivalent emissions. Based on this level of emissions, domestic LNG consumption would account for about 3 hundredths of one per cent of total emissions estimated to be covered under the carbon pricing mechanism in 2012/13.

Compressed Natural Gas

6.9 CNG is created by compressing natural gas for storage in tanks at pressures of around 200-240 bar. Key "non-transport" uses of CNG are as fuel for forklifts and off-road mining vehicles. Non-transport CNG is generally produced for own use on-site, from supplies of natural gas that will be subject to carbon pricing mechanism coverage.

6.10 Disaggregated statistics for domestic non-transport CNG consumption are not available, but CNG consumption is expected to be lower than LNG consumption.

Current treatment of gaseous fuels under the Clean Energy Future Plan

6.11 Under the Clean Energy Future Plan, an equivalent carbon price will be applied to emissions from non-transport LPG, LNG and CNG through a reduction in fuel tax credits or through changes to excise from 1 July 2012.

6.12 Gaseous fuels are used in large part as transport fuels, and were included under the fuel tax arrangements along with liquid transport fuels that face an equivalent carbon price for certain business transport and non-transport uses. Transport gaseous fuels are already covered under the fuel tax arrangements (for the purpose of applying excise duty rather than the carbon price). As noted in the regulation impact statement for the Clean Energy Future Plan, applying a carbon price to transport fuels thorough the fuel tax system has several advantages over the use of the carbon pricing mechanism, including making use of existing business systems and avoiding the need for liable entities to deal with both the ATO and the CER.

6.13 On this basis, it was considered that it would be relatively straightforward and minimise compliance costs to use the fuel tax system to apply a carbon price to non-transport uses of gaseous fuels, which are also used for transport purposes. However, there are a number of differences between transport and non-transport supplies of gaseous fuels compared to liquid fuels. Transport gaseous fuels would be subject to coverage under the excise system irrespective of whether or not carbon pricing is applied, whereas non-transport gaseous fuels would not be subject to fuel tax system coverage in the absence of the carbon price. By comparison, liquid fuels used for both transport and non transport purposes are covered under the excise system irrespective of whether or not carbon pricing is applied.

6.14 Non-transport gaseous fuels also have a lower frequency of supply and billing in some instances. For instance, on some occasions LPG is supplied to a central tank for distribution to multiple users via a reticulated (pipeline) system for commercial use. A substantial period of time may elapse between the delivery of LPG and billing for supply after a user withdraws LPG from the reticulated system, potentially exacerbating cash carrying costs of carbon price payments relative to transport uses.

The problem

6.15 Industry stakeholders for non-transport LPG and LNG have raised compliance cost and efficiency concerns with the inclusion of non-transport gaseous fuels under the fuel tax arrangements rather than the carbon pricing mechanism.

6.16 Coverage under the fuel tax arrangements generally requires the settlement of excise returns on a weekly basis with an additional 6 days provided beyond the weekly excise period to enable suppliers to reconcile invoices issued during that week and finalise settlement. By comparison,

submission of reports and settlement of liabilities under the carbon pricing mechanism would occur twice for each year of the mechanism's fixed price period (2012-13 to 2014-15) and once for each year of the mechanism's flexible price periods (2015-16 and onwards).

Compliance costs

6.17 Coverage of non-transport LPG and LNG under the excise system imposes compliance costs for suppliers on top of the costs incurred as a result of their participation in the excise system for transport gaseous fuel. These additional costs relate to the need to submit excise returns and make payments in relation to a larger volume of supplies.

6.18 In the case of CNG an unknown but small number (estimated at up to 50) of producers of CNG for non-transport purposes that would not otherwise be required to participate in the excise system would also be required to install relatively expensive metering equipment to meet the requirements of the excise system. More importantly, industry feedback indicates that the costs of installation of this equipment would curtail expansion of production and use of CNG by small producers.

Efficiency and fairness concerns

6.19 More regular payments under the fuel tax system during the mechanism's fixed price period will result in increased cash carrying costs for suppliers of gaseous fuels relative to other non-transport energy sources, such as natural gas and electricity. In addition gaseous fuels suppliers will not have access to the flexibility in meeting emissions obligations provided by the ability to purchase units on international and domestic markets available under the carbon pricing mechanism.

6.20 These differences, relative to carbon pricing mechanism coverage, will potentially create marginal distortions affecting the competitiveness of non-transport gaseous fuels when compared with other non-transport fuels over the longer term.

Objectives

6.21 The problem being considered is the best approach to apply a carbon price to non-transport gaseous fuels. In this context, the key objectives for any approach adopted are to:

- Maximise the economic efficiency of the carbon price, and in particular to:

  - Incentivise emissions reduction at least cost by sending out a clear signal about which activities should be reduced;

  - Minimise any competitive disadvantage arising from the way in which the carbon price is applied;

- Ensure the equitable application of the carbon price;

- Minimise the compliance and transitional costs for liable entities paying the carbon price;

- Ensure the administrative simplicity and workability of the carbon price.

Options

LPG and LNG

6.22 The following options were considered for the coverage of non-transport LPG and LNG:

- Option A: Maintain the status quo of coverage under the alternative fuel tax arrangements.

- Option B: Mandatory coverage of all LPG and LNG under the carbon pricing mechanism. Under this option some supplies of LPG and potentially also LNG would remain under the fuel tax arrangements. However, this would occur in very limited circumstances, as noted above, where it is not possible for the supplier of LPG or LNG to distinguish whether the supply is going to be used for transport or non-transport purposes. For instance, this would occur where a marketer of LPG supplies LPG into a tank from which LPG is withdrawn for both transport and non-transport purposes.

- Option C: Coverage on a voluntary opt-in basis under the carbon pricing mechanism, with currently legislated fuel tax arrangements for a carbon price continuing to apply to those entities that choose not to opt-in.

6.23 Also as with Option B, some supplies of LPG and potentially also LNG would remain under the fuel tax arrangements (and could not be opted in). However, this would occur in very limited circumstances, as noted above, where it is not possible for the supplier of LPG or LNG to

distinguish whether the supply is going to be used for transport or non-transport purposes.

6.24 Because of the difficulty and associated costs in identification by LPG and LNG suppliers of the end uses of all non-transport gaseous fuel, complete mandatory coverage was not considered a viable option.

6.25 A secondary question for consideration was the date of commencement of carbon pricing mechanism coverage under options B and C, with dates of 1 July 2012 and 1 July 2013 considered.

CNG

6.26 The following options were considered for the coverage of CNG:

- Option A: Maintain the status quo of coverage under the alternative fuel tax arrangements.
- Option B: Mandatory coverage of CNG under the carbon pricing mechanism.

6.27 Opt-in coverage was not considered for CNG as the ability for individual CNG producers to opt-in or out of direct management of liabilities can be provided under mandatory carbon pricing mechanism coverage. This is possible because mandatory coverage would involve natural gas suppliers being liable for gas supplied to entities that manufacture CNG, and the existing obligation transfer number mechanism provided for in the CE Act will allow CNG producers to take on obligations from their supplier for natural gas used to produce CNG.

6.28 A similar approach to mandatory coverage is not possible for LPG and LNG as the former is not always produced from natural gas and the latter is not produced exclusively from supplies of natural gas that will be subject to carbon pricing mechanism coverage.

Impacts and analysis

LPG and LNG

6.29 The impacts for options for LPG and LNG are summarised in diagram 5.1 and set out in more detail under the headings below.

Diagram 6.1 Impacts of options for LPG and LNG Coverage

Option A: Status Quo	**Option B: Mandatory Coverage**	**Option C: Opt-in Coverage**
Advantages: • Avoiding administration costs of dual systems • Avoiding compliance costs of dual systems	Advantages: • Reduced cash carrying costs (vs Option A) • Increased flexibility in meeting obligations (vs Option A) • Reduced administrative complexity (vs Option C)	Advantages: • Reduced cash carrying costs (vs Option A) • Increased flexibility in meeting obligations (vs Option A) • Flexibility to choose between mechanism and fuel tax coverage.
Disadvantages: • Compliance cost of regular excise returns • Cash carrying costs • Reduced flexibility to meet obligations.	Disadvantages: • Mandatory carbon pricing mechanism compliance costs • Marginally increased administration cost (vs Option A)	Disadvantages: • Increased administration cost of dual systems (vs Options A & B)

Option A: maintain the status quo

6.30 The main advantage of continuing coverage of non-transport LPG and LNG solely under the alternative fuel tax arrangements is avoiding complexities and costs associated with businesses being required to participate in two systems, one for non-transport fuels (the carbon pricing mechanism) and the other for transport fuels (the fuel excise system), as would be the case for Option B.

6.31 An associated advantage is avoiding the need for the ATO and the CER to maintain and reconcile dual systems for compliance under the fuel tax arrangements and the carbon pricing mechanism. Dual systems would be required under Option C, and, to a lesser extent, Option B.

6.32 The disadvantages of maintaining the status quo are:

- Compliance costs for industry associated with submitting regular excise returns for a larger volume of supplies of LPG and LNG.

- Cash carrying costs for LPG and LNG suppliers from more regular payments under the fuel tax arrangements relative to a cash carrying advantage under the carbon pricing mechanism during the mechanism's fixed price period. For instance, one of the three large LPG suppliers, which is responsible for about 30 per cent of the sector's supply, would on this basis be required on average to make 52 weekly carbon price payments each year of approximately $300,000, but also would generally be billing their customers on a regular basis. Under the carbon pricing mechanism, it would make one payment of approximately $12 million towards the end of the financial year, and a further payment of approximately $4 million in the February next following the financial year.

- Reduced flexibility for LPG and LNG suppliers to meet obligations by purchasing emission units during the carbon pricing mechanism's flexible price period.

Table 6.1 Option A additional explanation:

Advantage/Disadvantage	***Explanation***
Reduced costs and complexity	There is no need to maintain separate systems for transport and non-transport fuels because coverage will be solely under the fuel tax arrangements.
Removed need to reconcile dual systems for compliance	As only one system is used there is no need to reconcile systems to ensure that a supply of LPG or LNG has not evaded coverage.
Compliance costs with submitting invoices and returns	More regular submission of returns and payment of obligations is required under the excise system than under the carbon pricing mechanism.
Cash carrying cost	Suppliers of LPG and LNG will only be required to pay carbon obligations once or twice per year under the carbon pricing mechanism, but payments will be required approximately weekly under the fuel tax arrangements. This will lead to higher costs associated with carrying

Advantage/Disadvantage	***Explanation***
	cash for more regular payments.
Reduced flexibility to purchase emissions units	Participants in the carbon pricing mechanism may purchase international and domestic emissions units to meet obligations during the mechanisms flexible price period. This will enable them to manage timing of payments (i.e. choosing when to buy units), and if they can purchase units cheaply than the average price paid under the carbon pricing mechanism, they may gain a price advantage over payments under the excise system.

Option B: mandatory coverage

6.33 The advantages of mandatory coverage of non-transport LPG and LNG are:

- Reduced cash carrying costs for LPG and LNG suppliers during the carbon pricing mechanism's fixed price period relative to the status quo.
- Increased flexibility to manage emissions obligations through the purchase of emissions units during the mechanism's flexible price period relative to the status quo.
- Reduced administrative complexity in comparison to Option C, associated with the ATO and the CER maintaining and reconciling dual systems for compliance under the carbon pricing mechanism and under the fuel tax arrangements.

6.34 The disadvantage of mandatory coverage is the potential compliance costs associated with carbon pricing mechanism participation. These include costs associated with managing unit obligations. A broadly analogous estimate for costs of participation of a large natural gas supplier under the previously proposed Carbon Pollution Reduction Scheme was that initial costs to set up systems for compliance would be approximately $375,000 and that ongoing costs of compliance would be approximately $291,000. To the extent that the largest LPG suppliers will already be managing carbon pricing mechanism liabilities in respect of other operations these costs will be largely mitigated. However, for smaller suppliers of LPG and LNG and those that are not participants in the carbon pricing mechanism these costs would be new.

6.35 In respect of timing of coverage, mandatory coverage from 1 July 2013 would require participation by LPG and LNG suppliers under the fuel tax arrangements for one year from 1 July 2012 to 1 July 2013, when coverage under the carbon pricing mechanism would commence. This would entail LPG and LNG suppliers facing increased cash carrying costs for one year. However, coverage from 1 July 2012 would create substantial risks that implementation agencies would have insufficient time to develop detailed systems for carbon pricing mechanism coverage and adequately test these with industry stakeholders.

Table 6.2 Option B additional explanation:

Advantage/Disadvantage	***Explanation***
Reduced cash carrying cost	Suppliers of LPG and LNG will only be required to pay carbon obligations once or twice per year under the carbon pricing mechanism, but payments will be required approximately weekly under the fuel tax arrangements. This will lead to higher costs associated with carrying cash for more regular payments.
Increased flexibility to purchase emissions units	Participants in the carbon pricing mechanism may purchase international and domestic emissions units to meet obligations during the mechanisms flexible price period. This will enable them to manage timing of payments (i.e. choosing when to buy units), and if they can purchase units more cheaply than the average price paid under the carbon pricing mechanism, they may gain a price advantage relative to payments under the excise system.
Reduced administrative complexity	It will be simpler for the CER (which is the administrator of the carbon pricing mechanism) and the ATO (which administers the excise system) to reconcile records between the carbon pricing mechanism and excise system as almost all non-transport LPG and LNG supplies will be covered under the carbon pricing mechanism with transport LPG and LNG covered under the excise system. The limited exception is cases where it is not possible to apply carbon pricing mechanism coverage

Advantage/Disadvantage	***Explanation***
	to LPG and LNG because it is not possible for the supplier of the LPG or LNG to determine whether the LPG or LNG supplied will be used for transport purposes which will not be subject to a carbon price or non-transport purposes, which are. This exception will lead to a limited requirement for the ATO to deal with non-transport LPG and LNG.
Carbon pricing mechanism compliance costs	To meet liabilities under the carbon pricing mechanism liable entities will be required to report emissions and purchase emissions units to meet assessed emissions liabilities. This will entail costs around measurement and purchasing units. As coverage will be mandatory under option B, the LPG or LNG supplier will not have the option of choosing whether or not compliance under the mechanism or excise system would be preferable.

Option C: voluntary opt-in coverage

6.36 The advantages of a voluntary opt in approach to coverage of LPG and LNG are:

- Reduced cash carrying costs for LPG and LNG suppliers during the carbon pricing mechanism's fixed price period, relative to the status quo.

- Increased flexibility to manage emissions obligations through the purchase of emissions units during the mechanism's flexible price period, relative to the status quo.

6.37 The ability to elect whether to opt-in or remain under the carbon pricing mechanism allows LPG and LNG suppliers to assess the costs and benefits of participation under each approach and adopt the one that best reflects their particular circumstances. For instance, smaller suppliers that would not otherwise expect to develop unit purchasing and liability management capabilities may elect to remain under the fuel tax arrangements whereas large suppliers that expect to have obligations under the carbon pricing mechanism for other activities might choose to opt-in to mechanism coverage.

6.38 The disadvantages of opt-in coverage are that this option would have the highest administrative complexity for the CER and the ATO as it would require dual systems for compliance under the carbon pricing mechanism and fuel tax systems and close interaction between the two agencies to reconcile these systems. Coverage under the fuel tax arrangements will apply for both the relatively limited LPG and LNG supplies that will be impracticable to cover under the carbon pricing mechanism, and for any LPG and LNG suppliers that choose not to opt-in to the carbon pricing mechanism. Introducing an opt-in element will introduce an additional element of complexity to already complex fuel tax arrangements for gaseous fuels.

6.39 Only a small number of businesses (around 8 or 9 in total comprised of 5-6 supplying LPG and 3 supplying LNG) supply non-transport LPG and LNG. In addition feedback from the three largest suppliers of LPG (which account for approximately 90 per cent of the market) is that they would participate in the carbon pricing mechanism, and it is possible that LNG suppliers and the smaller LPG suppliers would choose to participate in the carbon pricing mechanism. Given these factors the expense of setting dual systems may not be justified.

6.40 Similarly to Option A above, opt-in coverage from 1 July 2013 would require participation by LPG and LNG suppliers under the fuel tax arrangements for 1 year from 1 July 2012 to 1 July 2013, when voluntary coverage under the carbon pricing mechanism would commence. This would entail those LPG and LNG suppliers that would choose to opt in to mechanism coverage facing increased cash carrying costs for one year. However, coverage from 1 July 2012 would create substantial risks that implementation agencies would have insufficient time to develop detailed systems for carbon pricing mechanism coverage and adequately test these with industry stakeholders.

Table 6.3 Option C additional explanation

Advantage/Disadvantage	***Explanation***
Reduced cash carrying cost	Suppliers of LPG and LNG will only be required to pay carbon obligations once or twice per year under the carbon pricing mechanism, but payments will be required approximately weekly under the fuel tax arrangements. This will lead to higher costs associated with ensuring funds are available to make more regular payments.
Increased flexibility to purchase emissions units	Participants in the carbon pricing mechanism may purchase

Advantage/Disadvantage	***Explanation***
	international and domestic emissions units to meet obligations during the mechanisms flexible price period. This will enable them to manage timing of payments (i.e. choosing when to buy units), and if they can purchase units cheaply than the average price paid under the carbon pricing mechanism, they may gain a price advantage relative to payments under the excise system.
Ability to elect whether to opt-in	The ability to elect whether to opt-in under option C will allow suppliers of LNG and LPG to assess the advantages or disadvantages of participation under each of the mechanism and the excise system and choose the one that best matches their particular business needs. In particular, this may be relevant for 2-3 small participants in the LPG sector which may not be participants in the mechanism and may have relatively limited resources to manage emissions obligations under the carbon pricing mechanism.
Increase administrative complexity	It will be necessary for the CER (which is the administrator of the mechanism) and the ATO (which administers the excise system) to maintain systems and reconcile records between the carbon pricing mechanism and excise system. This will apply to supplies of LPG and LNG which are opted-in to the carbon pricing mechanism and to those limited cases where it is not possible to apply carbon pricing mechanism coverage to LPG and LNG because it is not possible for the supplier of the LPG or LNG to determine whether the LPG or LNG supplied will be used for transport purposes (which will not be subject to a carbon price) or non-transport purposes (which are subject to a carbon price). This will lead to a higher requirement for the ATO and the CER to reconcile the two systems

Advantage/Disadvantage	*Explanation*
	than under options B and C.

CNG

6.41 The impacts for options for CNG are summarised in diagram 5.2 and set out in more detail under the headings below.

Diagram 6.2 Impacts of options for CNG Coverage

Option A: Status Quo	*Option B: Mandatory Coverage of CNG*
Advantages: • Provides for direct management of carbon liabilities under the excise system if preferred	Advantages: • Removes requirements to install metering systems. • Reduced cash carrying costs • Eliminates need for small CNG producers to directly manage liabilities. • Provides flexibility in managing obligations via ability to opt-in • Reduced administrative costs
Disadvantages: • Cost of installing metering systems • Requires all CNG producers to participate in excise system • Also effectively requires all CNG producers to quote an OTN under carbon pricing mechanism • Cash carrying costs and lack of flexibility in managing obligations	Disadvantages: • Very small increase in the liabilities of natural gas suppliers under the carbon pricing mechanism.

Option A – maintain the status quo

6.42 The advantage of a retaining coverage of non-transport CNG under the fuel tax arrangements is that to the extent that any CNG producer wishes to manage its carbon pricing obligations directly it is possible that it may prefer to do so by making payments under the excise system rather than under the carbon pricing mechanism.

6.43 The disadvantages of coverage under the fuel tax arrangements are:

- The imposition of a requirement for an indeterminate number of small users to install metering equipment to enable participation in the excise system. Installation of metering equipment would be costly, and industry feedback indicates that this cost would be sufficient to stop expansion of the use of CNG.

- The requirement that all producers of CNG directly manage carbon pricing obligations through participation in the excise system (with the exception of producers of CNG for non commercial "home" use which are exempted from excise system and instead face a passed-through carbon price under the carbon pricing mechanism on the supplies of natural gas that they convert to CNG).

- To avoid incurring a 'passed through' carbon price from their natural gas supplier, CNG producers would also need to obtain and use an obligation transfer number which would also require them to register and report under the National Greenhouse and Energy Reporting Act, and to manage carbon price liability for any natural gas that is supplied to them and that is not used to manufacture CNG.

- More regular payments under the excise system and lack of flexibility to manage obligations through the purchase of emissions units.

Table 6.4 Option A additional explanation:

Advantage/Disadvantage	***Explanation***
Coverage under the excise system may be preferred	It is possible that a CNG producer may prefer to manage its obligations directly under the excise system rather than under the carbon pricing mechanism. Carbon pricing mechanism coverage involves different costs to the excise system, relating to purchasing units to meet emissions obligations and differing reporting obligations.
Installation of metering equipment	Installation of metering equipment is required under the excise system to accurately measure the amount of CNG produced. Under carbon pricing mechanism coverage the default obligation would apply to the natural gas supplier that supplied natural gas to the CNG producer.

Advantage/Disadvantage	***Explanation***
	The natural gas supplier would then pass the carbon price through to the CNG producer. Direct payment of liabilities and measurement of CNG production would not be required by the CNG producer.
Requirement to directly manage obligations	To participate in the excise system CNG producers will be required to measure, report and pay the carbon price for CNG produced approximately weekly. Under carbon pricing mechanism coverage the natural gas supplier that supplied the gas used to produce CNG would face the carbon pricing obligation and the CNG producer would simply face a higher price charged by the natural gas supplier (i.e. it would not need to directly manage its obligation by measuring, reporting and directly paying the carbon price for CNG produced).
Requirement to quote an obligation transfer number	Supplies of natural gas that are used to produce CNG will be subject to a carbon price under the carbon pricing mechanism. If CNG is covered under the current fuel tax arrangements for applying a carbon price, this would lead to the CNG facing a carbon price twice, once under the mechanism and then again under the excise system. To eliminate this double pricing, the CNG producer would be able to quote an obligation transfer number to the natural gas supplier to remove the carbon price under the mechanism. This will be an addition piece of compliance for the CNG producer and lead to extra work for the CER that administers the carbon pricing mechanism.
More regular payments and lack of flexibility to manage unit obligations	Producers of CNG would be required to make payments of the carbon price approximately weekly under the fuel tax arrangements. Under the carbon pricing mechanism only one or two payments a year will be required.

Advantage/Disadvantage	*Explanation*
	This will lead to higher costs associated with ensuring funds are available to make more regular payments. Participants in the carbon pricing mechanism may purchase international and domestic emissions units to meet obligations during the mechanisms flexible price period. This will enable them to manage timing of payments (i.e. choosing when to buy units), and if they can purchase units more cheaply than the average price paid under the carbon pricing mechanism, they may gain a price advantage relative to payments under the excise system.

Option B – "Mandatory" carbon pricing mechanism coverage

6.44 The advantages of mandatory coverage of non-transport CNG under the carbon pricing mechanism are:

- The removal of the requirement for producers of non-transport CNG to (i) register and report under the National Greenhouse and Energy Reporting Act, and (ii) install metering equipment to allow for excise system compliance and reporting.

- The removal of the requirement for non-transport CNG producers to actively manage carbon pricing obligations. The carbon pricing mechanism obligation will by default rest with the supplier of natural gas, which will pass through the carbon price to users, including CNG producers.

- Flexibility for non-transport CNG producers to opt-in to manage carbon pricing obligations. CNG producers will be able to use existing provisions of the carbon pricing mechanism to quote an obligation transfer number and directly assume obligations under the carbon pricing mechanism if they wish to do so.

- A reduction in administrative costs associated with the ATO administering and ensuring compliance for up to approximately 50 small CNG users under the excise system.

6.45 The disadvantage of mandatory coverage is that there may be a small increase in the amount of liabilities for natural gas suppliers. However, any increase in costs is likely to be negligible as the increase in liability will be tiny relative to size of obligations managed by gas suppliers for residential and commercial gas users.

Table 6.5 Option B additional explanation

Advantage/Disadvantage	***Explanation***
Removal of requirement to install metering equipment	Installation of metering equipment is required under the excise system to accurately measure the amount of CNG produced. Under carbon pricing mechanism coverage the default obligation would apply to the natural gas supplier that supplied natural gas to the CNG producer. The natural gas supplier would then pass the carbon price through to the CNG producer. Direct payment of liabilities and measurement of CNG production would not be required by the CNG producer.
Removal of requirement to directly manage obligations	To participate in the excise system CNG producers will be required to measure, report and pay the carbon price for CNG produced approximately weekly. Under carbon pricing mechanism coverage the natural gas supplier that supplied the gas used to produce CNG would face the carbon pricing obligation and the CNG producer would simply face a higher price charged by the natural gas supplier (i.e. it would not need to directly manage its obligation by measuring, reporting and directly paying the carbon price for CNG produced).
Removal of requirement to quote an obligation transfer number	Supplies of natural gas that are used to produce CNG will be subject to a carbon price under the carbon pricing mechanism. If CNG is covered under the current fuel tax arrangements for applying a carbon price, this would lead to the CNG facing a carbon price twice, once under the mechanism and then again under the excise system. To eliminate this

Advantage/Disadvantage	***Explanation***
	double pricing, the CNG producer would be able to quote an obligation transfer number to the natural gas supplier to remove the carbon price under the mechanism. This will be an additional piece of compliance for the CNG producer and lead to extra work for the Clean Energy Regulator that administers the carbon pricing mechanism, and would not be required under carbon pricing mechanism coverage.
Flexibility to opt-in to direct management of liabilities under the carbon pricing mechanism	Under carbon pricing mechanism coverage the default obligation would apply to the natural gas supplier that supplied the natural gas from which CNG is produced. The natural gas supplier would then pass the carbon price through to the CNG producer. However, the CNG producer would be able to use the existing obligation transfer number provisions of the carbon pricing mechanism to take the liability for emissions under the mechanism. In this event the CNG producer will take on the obligations to report and purchase and surrender emissions units to meet emissions obligations, and the natural gas supplier will be relieved of these obligations.
Reduction in administrative costs	Up to approximately 50 small producers of CNG that were not previously required to participate in the excise system (as non-transport CNG is not currently required to participate in the excise system) would be required to register and meet other requirements to participate in the excise system. This would lead to administration, education and enforcement costs for the ATO.

Consultation

6.46 In submissions made during the passage of the Clean Energy Bills in 2011 and in representations to Government, LPG sector businesses requested coverage under the carbon pricing mechanism instead of under the fuel tax arrangements. On this basis, the Government committed to consult on options for including gaseous fuels in the carbon pricing mechanism similar to the liquid fuels opt-in scheme, and established an industry technical working group in November 2011.

6.47 Membership of the Technical Working Group included the three largest LPG sector participants responsible for the supply of over 90 per cent by volume of non-transport LPG, and also representatives of LPG producers and distributors of transport LPG. Producers and distributors of LNG, and CNG producers were also represented on the Technical Working Group.

6.48 The key messages from the working group in relation to LPG and LNG were:

- there is broad support for the coverage of non-transport LPG and LNG in the carbon pricing mechanism, including support from participants responsible for the supply of over 90 per cent by volume of non-transport LPG for coverage under the carbon pricing mechanism from 1 July 2012;
- there was concern from some participants that adequate time should be provided to allow for the implementation of coverage and along with opportunity to identify and resolve any potential unintended impacts on transport uses of gaseous fuel, which would remain within the excise arrangements.

6.49 Engagement by CNG stakeholders in consultation was more limited, partially reflecting the more dispersed nature of CNG production. However, feedback identified:

- some concerns with compliance costs associated with the current position of excise system coverage for small scale CNG production, thereby limiting opportunities for expansion of CNG;
- a general level of comfort with carbon pricing mechanism coverage, particularly to the extent that this may reduce some of the administrative and compliance costs associated with excise participation.

Conclusion

LPG and LNG

6.50 On balance the advantages of coverage of non-transport LPG and LNG under the carbon pricing mechanism of reducing compliance costs and providing greater flexibility for liable entities in the sector to meet carbon pricing obligations warrant the inclusion of non-transport LPG and LNG in the Carbon Pricing Mechanism. Therefore, Option A (the status quo) is not preferred.

6.51 On balance a mandatory approach is preferable to a voluntary approach to coverage as it would reduce the complexity of the carbon price and associated compliance and administration costs. On this count Option B (and also Option A) is superior to Option C.

6.52 Mandatory coverage requires that liable LPG and LNG suppliers assume the costs of managing emissions unit obligations and participating in the carbon pricing mechanism. However, most liable entities for LPG and LNG will already be managing liabilities under the carbon pricing mechanism. From the perspective of the Government, mandatory coverage has advantages in reducing administrative complexities and costs compared to an opt-in coverage.

6.53 Conversely opt-in coverage may reduce overall compliance for a small number of smaller LPG suppliers (two or possibly three), by providing them with flexibility to assess which approach is best for their particular business circumstances. However, it is not clear whether the smaller LPG suppliers would chose to remain under the fuel tax arrangements and this flexibility comes at a significant cost in the form of increased administrative complexity and cost for the Government. Therefore given the uncertainty surrounding the use of the opt-in scheme and the administration costs associated with its provision regardless of its use, on balance Option B is preferred overall.

6.54 Regarding timing of coverage, the significant risks associated with implementing coverage by 1 July 2012 outweigh the cash carrying costs for LPG and LNG suppliers for one year of coverage under the fuel tax arrangements. The preferred timing option (for either mandatory or voluntary opt-in coverage) is for coverage to commence from 1 July 2013.

CNG

6.55 There are clear advantages to Option B (coverage of non-transport CNG under the carbon pricing mechanism) in terms of reduced compliance costs for small producers, and reduced administrative costs for

the Government relative to the status quo. Moving to mandatory coverage under the carbon pricing mechanism also provides greater flexibility for CNG producers to choose whether or not to directly manage their carbon pricing obligations.

6.56 The preferred option is Option B.

Implementation and review

6.57 Amendments to the CE Act would be required for carbon pricing mechanism coverage of non-transport LPG and LNG (whether on an opt-in or mandatory basis), along with the development of detailed implementing regulations.

6.58 For mandatory coverage the primary implementing agency would be the CER. However, the ATO would retain responsibility for administering the continuation of the excise arrangements for those limited supplies of LPG and LNG that would not be subject to coverage under the carbon pricing mechanism.

6.59 For opt-in coverage the ATO would retain a larger role in relation to the fuel tax arrangements commensurate with the potentially higher level of coverage. In either case systems and procedures will be developed to clarify the interaction between the CER and the ATO on the administration of carbon pricing arrangements for LPG and LNG.

6.60 The additional burden for the CER would be small, as the number of additional entities responsible for LPG and LNG will be small (at around 8 or 9 in total) and most will already be participants in respect of other emissions.

6.61 The implementing agency for the coverage of CNG will be the Clean Energy Regulator. Legislative arrangements for coverage of CNG will be initially implemented via legislative changes to excise arrangements for CNG producers and the adjustment of administrative arrangements by the ATO.

6.62 The additional burden for the Clean Energy Regulator would be small, as the default liability for CNG will rest with natural gas suppliers that will already be liable entities under the carbon pricing mechanism, and the number of CNG producers that might wish to quote an obligation transfer number to directly take on obligations under the scheme is likely to be small (as it is estimated there are up to 50 non-transport CNG producers, and only a small proportion of these are likely to wish to

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Item 79, subsection 42A-5(4), Fuel Tax Act	2.63
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Item 81, subsection 43-5(1), Fuel Tax Act	2.67
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Schedule 3

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Schedule 4

Bill reference	*Paragraph number*
Item 1, section 4, ANREU Act	4.17
Item 2, section 27(3B), ANREU Act	4.10
Item 2, section 27(3C), ANREU Act	4.10
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Item 3, section 28A(2), ANREU Act	4.16

Schedule 5

Bill reference	*Paragraph number*
Item 1, section 73A, ARENA Act	5.6
Item 2, section 49(1), CER Act	5.7, 5.11

Clean Energy (Customs Tariff Amendment) Bill 2012

Bill reference	*Paragraph number*
Section 1	2.50
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Schedule 1, Part 1, items 1 to 9, Schedules 3,5,6,7 and 8, Customs Tariff Act	2.54
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Clean Energy (Excise Tariff Legislation Amendment) Bill 2012

Bill reference	*Paragraph number*
Section 1	2.50
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