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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY AMENDMENT (INTERNATIONAL EMISSIONS TRADING
AND OTHER MEASURES) BILL 2012

CLEAN ENERGY (CHARGES-EXCISE) AMENDMENT BILL 2012

CLEAN ENERGY (CHARGES-CUSTOMS) AMENDMENT BILL 2012

EXCISE TARIFF AMENDMENT (PER-TONNE CARBON PRICE EQUIVALENT)
BILL 2012

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS (IMPORT LEVY)
AMENDMENT (PER-TONNE CARBON PRICE EQUIVALENT) BILL 2012

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS
(MANUFACTURE LEVY) AMENDMENT (PER-TONNE CARBON PRICE
EQUIVALENT) BILL 2012

CLEAN ENERGY (UNIT ISSUE CHARGE-AUCTIONS) AMENDMENT BILL
2012

EXPLANATORY MEMORANDUM

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

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
AIU	Australian-issued international unit
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
ANREU Regulations	<i>Australian National Registry of Emissions Units Regulations 2011</i>
The bill	References to ‘the bill’ are to the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012
Carbon pricing mechanism or mechanism	The carbon pricing mechanism set up by the CE Act
CE Act	<i>Clean Energy Act 2011</i>
CE (Charges-Customs) Act	<i>Clean Energy (Charges-Customs) Act 2011</i>
CE (Charges-Excise) Act	<i>Clean Energy (Charges-Excise) Act 2011</i>
CE (IUSC) Act	<i>Clean Energy (International Unit Surrender Charge) Act 2011</i>
CE (Unit Issue Charge-Auctions) Act	<i>Clean Energy (Unit Issue Charge-Auctions) Act 2011</i>
CER	Certified Emission Reduction unit
CFI	The Carbon Farming Initiative
The amendment bills	The package of bills including the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, the Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012, the Clean Energy (Charges-Excise) Amendment Bill 2012, the Clean Energy (Charges-Customs) Amendment Bill 2012, and the Clean Energy (Unit Issue Charge-

Abbreviation	Definition
	Auctions) Amendment Bill 2012
Clean Energy Legislative Package	The package of Acts including: <ul style="list-style-type: none"> • <i>Clean Energy Act 2011;</i> • <i>Clean Energy (Consequential Amendments) Act 2011;</i> • <i>Clean Energy Regulator Act 2011;</i> • <i>Climate Change Authority Act 2011;</i> • <i>Clean Energy (Unit Shortfall Charge-General) Act 2011;</i> • <i>Clean Energy (Unit Issue Charge-General) Act 2011;</i> • <i>Clean Energy (Charges-Excise) Act 2011;</i> • <i>Clean Energy (International Unit Surrender Charge) Act 2011;</i> • <i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011;</i> • <i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011;</i> • <i>Fuel Tax Legislation Amendment (Clean Energy) Act 2011;</i> • <i>Excise Tariff Legislation Amendment (Clean Energy) Act 2011;</i> • <i>Customs Tariff Amendment (Clean Energy) Act 2011;</i> • <i>Clean Energy Legislation Amendment Act 2012.</i>
Eligible Kyoto unit	A Kyoto unit that is also an eligible international emissions unit
ERU	Emissions Reduction Unit
EU	European Union
EU Directive	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC
EU ETS	The European Union Emissions Trading System
European allowance unit	An allowance within the meaning of the <i>European Union Greenhouse Gas Emission</i>

<i>Abbreviation</i>	<i>Definition</i>
	<i>Allowance Trading Directive</i> , but excluding allowances issued in respect of aviation activities
Excise Tariff Act	<i>Excise Tariff Act 1921</i>
Fuel Tax Act	<i>Fuel Tax Act 2006</i>
GST	Goods and Services Tax
Kyoto unit	An Assigned Amount Unit, a Certified Emission Reduction unit, an Emission Reduction Unit, a Removal Unit or a prescribed unit issued in accordance with the Kyoto rules
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
OTN	Obligation Transfer Number
PEN	Provisional Emissions Number
Registry	Australian National Registry of Emissions Units
Regulator	The Clean Energy Regulator
RMU	Removal Unit
SGG (Import Levy) Act	<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>
SGG (Manufacture Levy) Act	<i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>

General outline and financial impact

Background

Clean Energy Legislation

The Australian Government accepts the advice of scientists that greenhouse gas emissions are contributing to climate change and this poses great risks to our environment, our economy and our society.

That is why Australia is joining with the rest of the world in cutting carbon pollution dramatically over coming decades. The economies that accept this challenge are those that will be more competitive in the years ahead.

Delayed action is a false economy, raising the economic costs of action and risking worse impacts from the effects of climate change. As Australia produces more carbon pollution per head of population than any developed country in the world and is within the top 20 in terms of absolute emissions, we have no choice but to act strongly to reduce our levels of pollution.

A broad-based carbon price is the most environmentally effective and cheapest way to reduce pollution. A carbon price puts a price tag on carbon pollution.

The carbon price is now creating powerful incentives for all businesses to cut their pollution by investing in clean technology or finding more efficient ways of operating. It is now creating economic incentives to reduce pollution in the cheapest possible ways, rather than relying on more costly approaches such as government regulation and direct subsidies.

These incentives are now flowing through the economy. The carbon price makes lower-polluting technologies, especially clean energy technologies, more competitive and boosts investment in these technologies. In this way, introducing a price on carbon is triggering the transformation of the economy towards a clean energy future.

A cap and trade emissions trading scheme, as will be in force from 1 July 2015, places a cap on the amount of pollution that covered sectors can emit. That cap declines over time, allowing Australia to meet our emissions reduction targets. The carbon price is then set by the market as it determines the least cost ways of reducing carbon pollution.

The Clean Energy Legislative Package implements the carbon pricing mechanism and provides that it may be linked to credible overseas emissions trading schemes and to the Carbon Farming Initiative. It also

provides for assistance to households and industry, to assist 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 2011.¹

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 and related bills

The:

- Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012;
- Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
- Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
- Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012;
- Clean Energy (Charges-Excise) Amendment Bill 2012;
- Clean Energy (Charges-Customs) Amendment Bill 2012; and
- Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012

make amendments to the CE Act, the ANREU Act, the NGER Act, the Fuel Tax Act, the Excise Tariff Act, the SGG (Import Levy) Act, the SGG (Manufacture Levy) Act, the CE (Unit Issue Charge-Auctions) Act, the CE (Charges-Customs) Act and the CE (Charges-Excise) Act that cover:

- arrangements to facilitate the linking of Australia's carbon pricing mechanism to other countries' emissions trading schemes, including the EU ETS;
- the removal of the price floor and repeal of the *Clean Energy (International Unit Surrender Charge) Act 2011*;
- consequential changes to the equivalent carbon pricing of liquid fuels and synthetic greenhouse gases;

¹ The explanatory memorandum to the Clean Energy Bill 2011 is available at: <http://www.comlaw.gov.au/Details/C2011B00166/Download>

- the streamlining of arrangements for relinquished carbon units;
- limits on issue of carbon units at auction without a pollution cap in place;
- the content of Measurement Determinations under the NGER Act;
- the treatment of natural gas under the carbon pricing mechanism; and
- the treatment of GST joint venture operators in the Opt-in Scheme.

On 28 August 2012 the Australian Government and the European Commission announced that the carbon pricing mechanism would be linked with the EU ETS.

Under this arrangement, Australian liable entities will be able to use European allowance units to meet up to 50 per cent of their liabilities under the carbon pricing mechanism from the commencement of the flexible price period on 1 July 2015. This ensures that Australian liable entities have access to a broader range of credible, low-cost abatement from an established market. This will allow for a smoother transition from the fixed price to a market based, emissions trading scheme.

Full linking will also allow companies that operate in both Europe and Australia to access units which are fully transferable in both jurisdictions, making compliance simpler and making it easier to manage emissions across operations.

The EU ETS is a mandatory emissions trading system that operates across the European Union, covering all 27 EU member states, along with Norway, Iceland and Liechtenstein. Operating since 2005, the EU ETS is the world's largest emissions trading scheme, covering some 11,000 facilities. It has delivered cost-effective emissions reductions. In 2011, emissions had fallen 17.5 percent below 1990 levels in the European Union.

As part of this arrangement, the Government agreed that it would remove the price floor and restrict the quantity of eligible Kyoto units that liable entities can use to discharge their carbon pricing liabilities. These changes will reduce the complexity of the linking arrangement and facilitate the convergence of Australian and European carbon prices.

This means that from 1 July 2015 Australia's carbon price will reflect that of our second largest trading bloc, and be consistent with at least 30 other countries – including the United Kingdom, France and Germany.

It also means that the carbon price will be fixed for only three years, before becoming an internationally linked emissions trading scheme where the market sets the carbon price.

The amendment bills package makes provision for the linking of the Australian carbon pricing mechanism with overseas emissions trading schemes, including the EU ETS. The amendments are designed to enable the Government to make and implement arrangements to link with a variety of schemes, and are therefore designed to provide appropriate flexibility for the Government in implementing these technical arrangements.

The global carbon market is growing year by year with markets emerging across the globe.

- The EU ETS currently operates in 30 European countries.
- Emissions trading schemes are also operating in New Zealand, Switzerland and at the provincial level in Japan and in nine US States.
- In 2013, emissions trading schemes are legislated to commence in the US state of California, in the Canadian province of Quebec. China aims to commence pilot emissions trading schemes in seven provinces and cities.
- South Korea, Australia's fourth largest trading partner, has also legislated an emission trading scheme which is set to commence in 2015.
- Market-based emissions reduction policies are also under consideration or development in Brazil, Chile, Columbia, Costa Rica, Jordan, India, Indonesia, Mexico, Morocco, South Africa, Thailand, Turkey, Ukraine, Vietnam and in the Canadian provinces of British Columbia, Ontario and Manitoba.

Under the linking arrangement, Australian liable entities may only use eligible Kyoto units to meet 12.5 per cent of their total liability. This will continue until at least 2020. Furthermore, the Government may, through regulations, introduce additional or alternative quantitative limits on the use of eligible international emissions units. This will provide the Government the flexibility to respond to changing international circumstances as needed.

However, the Government is conscious of the need to provide a stable market and investment environment. It is committed to provide at least three years' notice before new designated limits are introduced or changes to existing designated limits are due to take effect.

Under the linked arrangement, the price floor will no longer operate in the first three years of the flexible price period, thus facilitating the

convergence of the EU and Australian carbon prices. This will be achieved by removing the requirement for a minimum auction reserve price for the financial years 2015-16, 2016-17 and 2017-18 from the CE Act, the CE (Unit Issue Charge-Auctions) Act, the CE (Charges-Customs) Act, and the CE (Charges-Excise) Act, as well as removing the requirement for a surrender charge on eligible international emissions units by repealing the *Clean Energy (International Unit Surrender Charge) Act 2011*.

In making these changes, it is also necessary to ensure that the equivalent carbon price paid by users of liquid fuels and synthetic greenhouse gases is more clearly reflective of the carbon price under the linking arrangements. To this end, the application of an equivalent carbon price is amended in the Fuel Tax Act, the Excise Tariff Act, the SGG (Import) Act and the SGG (Manufacture) Act to introduce a new concept: the 'per-tonne carbon price equivalent'.

The Regulator will determine and publish the equivalent carbon price within seven business days after the last day of each May and November (starting in May 2015), subject to a requirement that the maximum per-tonne carbon price equivalent is equal to the 6-monthly auction price.

Amendments to the ANREU Act ensure that linking can occur, even in the event that it is not possible to implement a direct registry link between the carbon pricing mechanism and an overseas emissions trading scheme. Indirect linking may be given effect by the Government issuing AIUs to holders of an ANREU account, where these units are backed by foreign emissions units. The Government has also been given powers to open and operate an overseas registry account and to alter the way in which AIUs are managed in the ANREU as circumstances necessitate.

There are also technical amendments to enhance the auction scheme. The limit on advance-auctioned carbon units is increased to 40 million units for carbon units whose vintage is 2015-16 that are auctioned in 2013-14 and 20 million units for other advance auctions where there is no carbon pollution cap number for that year. The final details of the auction arrangements are determined by the legislative instrument under section 113 of the CE Act which is expected to be made in early 2013 after further consultation with industry. The Government has decided that there will no longer be auctions of relinquished carbon units. Instead, if a carbon unit is relinquished, it is cancelled, and a new carbon unit will be auctioned.

Minor and technical amendments to the CE Act and the NGER Act provide the Minister with the power to determine methods to measure amounts of designated fuels and methods to adjust liabilities relating to potential greenhouse gas emissions. Minor amendments to the CE Act also clarify the treatment of GST joint venture operators in the Opt-in Scheme.

Lastly, more flexibility is provided around how the supply and use of natural gas is treated under the CE Act. These amendments help to maintain competitive neutrality by supporting the complete coverage of natural gas under the carbon pricing mechanism.

Date of effect:

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

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

Schedule 1, Parts 1 and 3, which make general amendments to the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) and the CE Act, will commence on the day after the bill receives the Royal Assent.

Schedule 1, Part 2, which makes amendments relating to fuel to the CE Act and the NGER Act, will commence on 1 July 2013. The amendments to the NGER Act made by this Part apply to reports relating to the 2012-13 financial year and all subsequent years.

Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Schedule 1 takes effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

All other sections of the bill take effect the day that Act receives the Royal Assent.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Schedule 1 takes effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

All other sections of the bill take effect the day that Act receives the Royal Assent.

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Schedule 1 takes effect immediately after the commencement of Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

All other sections of the bill take effect the day that Act receives the Royal Assent.

Clean Energy (Charges—Excise) Amendment Bill 2012

Schedule 1 takes effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

The remainder of the bill takes effect the day that Act receives the Royal Assent.

Clean Energy (Charges—Customs) Amendment Bill 2012

Schedule 1 takes effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

The remainder of the bill takes effect the day that Act receives the Royal Assent.

Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012.

Schedule 1 takes effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*.

The remainder of the bill takes effect the day that Act receives the Royal Assent.

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 5 December 2011, the Government announced that it had agreed with European Union Commissioner for Climate Action, Ms Connie Hedegaard, terms of reference for discussions on linking the carbon pricing mechanism and the EU ETS. At this time, the Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP, said that:

‘Now that Australia's carbon price is the law, the Australian Government will focus on linking our scheme to international carbon markets and other emissions trading schemes.

‘Expanding international carbon markets is good for the environment and good for economic growth. It allows global emissions to be reduced in the most cost-effective and efficient way.’²

On 28 August 2012, the Government announced arrangements to link the carbon pricing mechanism to the EU ETS.

Those amendments 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:

These amendments are not anticipated to have a financial impact.

² Minister for Climate Change and Energy Efficiency, *Australia and Europe strengthen collaboration on carbon markets*, 5 December 2011. Available at:
<http://www.climatechange.gov.au/en/minister/greg-combet/2012/media-releases/March/mr20120329b.aspx>

Summary of regulation impact statements

Interim partial link between the EU ETS and the Australian carbon pricing mechanism

Impact:

The Regulation Impact Statement (RIS) for linking the carbon pricing mechanism with the EU ETS 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 introduction of a partial link between the EU ETS and the carbon pricing mechanism will provide Australian liable entities with immediate access to credible international units for compliance via the world's largest carbon market for the first three years of the flexible price period. Liable entities will also retain access to Kyoto units.

This arrangement will improve the overall stability and ongoing credibility of the carbon pricing mechanism, as well as avoid potential complexity associated with the implementation of price floor arrangements. A link may also lower transaction costs for entities with liabilities under both schemes. It will also support the development of global carbon markets and ultimately, global action on climate change.

Recipients of assistance in the form of free permits, such as entities receiving assistance under the Jobs and Competitiveness Program may receive a higher effective rate of assistance due to price differentials between carbon units and eligible Kyoto units.

On the other hand, the domestic carbon price will be affected by decisions taken in Europe to support the price of European allowance units, while for a small number of businesses the change in the treatment of international units may create additional low-level administrative costs.

Further impacts of these arrangements on the domestic carbon price and the cost of compliance will depend on prevailing market prices for Kyoto units and European allowance units once the carbon pricing mechanism commences its flexible price phase. Under the carbon price projections in the 2012-13 Budget, drawn from the *Strong Growth, Low Pollution* modelling report, there would be no impact on domestic carbon prices of establishing a partial link to the EU ETS under these interim arrangements. This is because the international carbon price is projected to be above the price floor and because the projections assume a single international unit price and do not distinguish between Kyoto unit and European allowance unit prices.

If the market prices of Kyoto units and European allowance units differ, with European allowance units trading at a premium to Kyoto units, the

Australian domestic carbon price would be expected to equal the prevailing European allowance unit price, as the proposed quantitative sub-limit on the use of Kyoto units implies that some liable entities would need to use European allowance units for compliance purposes. The average cost of meeting a given domestic carbon liability would also be less than the Australian carbon price because all liable entities would be able to use lower cost Kyoto units for a portion of their liability, rather than meeting their full liability through the surrender of carbon units and European allowance units valued at the Australian carbon price.

On balance, the advantages of providing liable entities with access to another secure source of international units, greater effective assistance to recipients of free permits and reduced administrative complexity outweigh these costs. Therefore, it was decided that the Government would establish a partial link between the carbon pricing mechanism and the EU ETS, including not implementing the price floor and introducing an additional quantitative sub-limit on the use of eligible Kyoto units for compliance with obligations under the carbon pricing mechanism. This sub-limit percentage should be set such that some European allowance units are used for compliance, while retaining access to Kyoto units.

Carbon Auction Schedule, frequency and collateral

Impact:

The Regulation Impact Statement (RIS) for auctions of carbon units will be made 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:

From 1 July 2015 the carbon pricing mechanism will transition to an emissions trading scheme and the carbon price will be set by the market through auctions. The auctions will sell carbon units for a particular 'compliance year', most carbon units will be sold in their compliance year, however some will be sold in advance of the compliance year, and some after it. A carbon unit auction limit applies to the amount of units from a compliance year that can be auctioned in an earlier year. It is aimed at preventing over-allocation before the pollution cap is known for a given compliance year.

The carbon unit auction limit will be increased from 15 million to 40 million for 2015-16 units auctioned in 2013-14, and 20 million for all other advance auctions before a pollution cap is set. Increasing this limit provides additional flexibility for the auctioning of units.

Increasing the carbon unit auction limit is not expected to have a financial impact.

Statement of Compatibility with Human Rights

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

Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

Clean Energy (Charges-Excise) Amendment Bill 2012

Clean Energy (Charges-Customs) Amendment Bill 2012

Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 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 *Clean Energy Act 2011* (CE Act) to:

- give effect to the arrangement to link Australia's carbon pricing mechanism and the European Union Emissions Trading System (EU ETS) by removing the price floor for carbon units and limiting the use of Kyoto units for compliance purposes under the CE Act;
- provide for the calculation of an equivalent carbon price that reflects liable entities' cost of compliance under a linking arrangement;
- increase the limit on advance-auctioned carbon units;
- prevent units being issued at auction more than three years in advance of their vintage year;
- change the treatment of relinquished carbon units;
- allow regulations to be made to determine how specific circumstances relating to the supply and use of natural gas are treated under the CE Act.

These bills amend the *Australian National Registry of Emissions Units Act 2011* to:

- enable European allowance units to be held in the Australian National Registry of Emissions Units (ANREU), and used for compliance purposes under the CE Act;
- in the event that a direct link with a foreign emissions trading scheme, including the EU ETS, is not possible, to enable the Clean Energy Regulator to issue Australian-issued international units (AIUs) which correspond to foreign emissions units withdrawn from circulation within the relevant foreign registry, and which can be used for compliance purposes under the CE Act.

These bills amend the *Fuel Tax Act 2006*, the *Excise Tariff Act 1921*, the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to:

- adjust the calculation of the equivalent carbon price to ensure that it remains clearly equivalent to the effective carbon price faced by liable entities under the carbon pricing mechanism.

These bills amend the *National Greenhouse and Energy Reporting Act 2007* to:

- provide the Minister with the power to determine methods to measure and adjust amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions.

These bills repeal the *Clean Energy (International Unit Surrender Charge) Act 2011*, and amend the *Clean Energy (Unit Issue Charge-Auctions) Act 2011* to remove provisions associated with the price floor.

Human rights implications

The bills engage the right to privacy in four respects:

- The bills enable the making of regulations which could require certain persons who receive natural gas to provide personal information, in the form of an ‘own-use notification’, to the supplier of the gas. The personal information would encompass information identifying the person, information as to whether the person intends to consume natural gas supplied to the person, and other prescribed information. It is anticipated that notices would ordinarily be given by bodies corporate, rather than individuals. The notices are intended to enable identification of the liable entity in relation to the supply of gas. This purpose is both reasonable and consistent with the objectives

of the International Covenant on Civil and Political Rights (ICCPR). A statement of compatibility with human rights, including the right to privacy, would be prepared in relation to any regulation made under this regulation-making power.

- The bills provide for the publication of information about any relinquishment requirements that apply to a person in relation to an AIIU, and any non-compliance with those requirements, either on the Liable Entity Public Information Database (LEPID) (if the person is a liable entity) or on the Clean Energy Regulator's (the Regulator) website (if the person is not). A court may order a person to relinquish AIIUs if the person has been convicted of a dishonesty offence and the court is satisfied that the issue of the units was directly or indirectly attributable to the commission of the offence. The provisions mirror existing provisions around the publication of compliance information in relation to carbon units, and are intended to promote transparency in the operation of the carbon pricing mechanism and confidence in its integrity. The nature of the information to be published is precisely defined and the publication requirement does not involve the exercise of any discretionary powers. The publication of this information is therefore considered reasonable and consistent with the objectives of the ICCPR.
- The bills enable the making of regulations which could require the Regulator to publish on the Regulator's website information relating to the registered holder of prescribed international units. The regulation-making power is intended to promote transparency in the operation of any linking arrangement with a foreign registry. A statement of compatibility with human rights, including the right to privacy, would be prepared in relation to any regulation made under this regulation-making power.
- The bills also enable the making of regulations which could require a person to notify a matter to the Regulator. This could involve the disclosure of personal information to the Regulator. Any information disclosed to the Regulator would be subject to the secrecy provisions in Part 3 of the *Clean Energy Regulator Act 2011* and could only be disclosed by the Regulator in the circumstances provided for in that Part. A statement of compatibility with human rights, including the right to privacy, would be prepared in relation to any regulation made under this regulation-making power.

Conclusion

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

Greg Combet

Minister for Climate Change and Energy Efficiency

Chapter 1 Amendments relating to linking with overseas emissions trading schemes

Outline of chapter

1.1 Chapter 1 describes the amendments necessary to facilitate the linking of the carbon pricing mechanism with overseas emissions trading schemes, including the following specific amendments:

- amendments to the ANREU Act to include European allowance units as prescribed international units;
- amendments to the ANREU Act to provide flexibility to the Government to link with emissions trading schemes where direct linking of registries is not possible;
- amendments to the CE Act and associated acts to remove the price floor and associated provisions;
- amendments to the CE Act to allow regulations to be made to introduce one or more additional quantitative limits on a liable entity's use of eligible international emissions units, referred to as a designated limit;
- amendments to the CE Act to establish a 12.5 per cent designated limit on the surrender of eligible Kyoto units;
- amendments to the CE Act to ensure the appropriate interaction of designated limits, the existing 50 per cent surrender limit on eligible international emissions units (now referred to as the general limit) and over-surrender provisions; and
- amendments to the CE Act, the Fuel Tax Act, the Excise Tariff Act, the SGG (Import Levy) Act and the SGG (Manufacture Levy) Act to adjust the calculation of the equivalent carbon price to ensure that it remains clearly equivalent to the effective carbon price faced by liable entities under the carbon pricing mechanism.

Context of amendments

1.2 The CE Act allows eligible international emissions units to be surrendered to meet liabilities under the carbon pricing mechanism after 1 July 2015. This ensures that Australian liable entities have access to

international abatement opportunities, lowering the economic cost of meeting emissions targets.

1.3 Some units issued under the Kyoto Protocol have been defined as eligible international emissions units and may be used to meet liabilities after 1 July 2015. Under section 133 of the CE Act, these units are subject to a surrender limit such that they can be used for no more than 50 per cent of total liabilities in the first five years of the flexible price period (that is from 1 July 2015 until 30 June 2020).

1.4 On 28 August 2012, the Government announced that it would link the carbon pricing mechanism with the EU ETS. Under this arrangement, European allowance units will be able to be used for compliance under the carbon pricing mechanism.

1.5 The Government also agreed that it would remove the price floor and restrict the quantity of eligible Kyoto units that liable entities can use to discharge their carbon pricing liabilities. This additional restriction on the use of Kyoto units, set at 12.5 per cent of an entity's liability, will operate within the existing 50 per cent restriction on the use of eligible international emissions units.

Summary of new law

Use of eligible international emissions units for compliance under the carbon pricing mechanism

1.6 A 'European allowance unit' is defined as a prescribed international unit under section 4 of the ANREU Act. This means European allowance units may be surrendered to discharge liabilities under the carbon pricing mechanism from the 2015-16 financial year.

1.7 A legislative power to impose one or more designated limits on eligible international emissions units is provided under section 123A of the CE Act. A designated limit constrains the number of eligible international emissions units of a certain class or classes of unit that a liable entity can surrender in relation to a given financial year. The Government is very conscious of the need for a stable market and investment environment going forward. The Government is committed to providing at least three years' notice before introducing new or modifying existing designated limits. However, only one year's notice may be given if a designated limit is necessary to facilitate the linking of Australia's emissions trading scheme with another emissions trading scheme, as these links are anticipated to be beneficial in nature.

1.8 A designated limit on the use of eligible Kyoto units of 12.5 per cent of liability will apply from 1 July 2015, the first year that international units can be surrendered. Regulations may broaden the application of this limit to apply to additional classes of eligible

international emissions units, known as ‘listed units’, with the exception of European allowance units or AIUs issued in relation to European allowance units. From the 2020-21 financial year the designated limit percentage for this limit may be changed by regulations.

1.9 For the financial years from 2015-16 to 2019-20 inclusive, designated limits will act as supplementary limits to the existing 50 per cent limit on the surrender of eligible international emissions units, which is now known as the ‘general limit’.

1.10 The 50 per cent general limit on the surrender of eligible international emissions units will still expire on 30 June 2020.

1.11 Eligible international emissions units surrendered in excess of an applicable designated limit or the general limit in a given financial year are treated as having been surrendered for the next financial year.

Registry amendments to facilitate linking

1.12 The ANREU Act is amended to allow for linking to international carbon markets where a direct (registry-to-registry) link is not possible.

1.13 A new class of prescribed international unit known as AIUs is created under Part 4 of the ANREU Act. Regulations will stipulate the process for issuing AIUs and may alter transfer provisions relating to these units.

1.14 Amendments provide for the cancellation and relinquishment of AIUs.

Removal of the price floor

1.15 The price floor will not be implemented, and the requirement for a minimum auction reserve price for the financial years 2015-16, 2016-17, and 2017-18 is removed from the CE Act and related Acts.

1.16 The requirement for a surrender charge on eligible international emissions units has also been removed and the *Clean Energy (International Unit Surrender Charge) Act 2011* is repealed.

1.17 The Minister may still determine an auction ‘reserve charge amount’ to enhance price discovery at auctions.

Equivalent carbon pricing for liquid fuels and synthetic greenhouse gases

1.18 The CE Act, the Fuel Tax Act, the Excise Tariff Act, the SGG (Import Levy) Act and the SGG (Manufacture Levy) Act collectively ensure that the equivalent carbon price applied to liquid fuels and synthetic greenhouse gases reflects the cost of compliance faced by liable entities under the carbon pricing mechanism. The amendments mean that the

equivalent carbon price reflects the impact of quantitative limits on the surrender of eligible international units.

1.19 The Regulator will publish auction results for the 11 months ending 31 May 2015. This ensures that, if no auctions take place in the six months prior to May 2015, then the average auction unit carbon price can be calculated.

Comparison of key features of new law and current law

<i>New Law</i>	<i>Current Law</i>
Use of eligible international units for compliance under the carbon pricing mechanism	
<p>European allowance units can be surrendered to discharge liabilities under the carbon pricing mechanism from 2015-16. A designated limit on the use of eligible Kyoto units of 12.5 per cent of liability will also apply from 2015-16. Regulations may broaden the application of this limit to apply to additional classes of eligible international emissions units, known as ‘listed units’, with the exception of European allowance units or AIUs issued in relation to European allowance units. From the 2020-21 financial year the designated limit percentage for this limit may be changed by regulations</p> <p>The Government will have the power to apply additional designated limits on the use of eligible international emissions units. From 2015-16 to 2019-20, designated limits will operate within the existing 50 per cent limit on the surrender of eligible international emissions units (the general limit).</p> <p>Units surrendered in excess of designated or general limits will be treated as having been surrendered in the following financial year.</p>	<p>European allowance units are not eligible for use in the carbon pricing mechanism. Other than a 50 per cent limit on the surrender of eligible international units, no additional limits will apply from 2015-16.</p>
Registry amendments to facilitate linking	
<p>The ANREU Act allows for linking to international carbon markets where a direct (registry-to-registry) link is not possible.</p> <p>A new class of prescribed international unit known as AIUs is created under Part 4 of the ANREU Act. Regulations will stipulate the process for issuing AIUs and may alter</p>	<p>The Registry only provides for the direct (registry-to-registry) linking of emissions trading schemes.</p>

<i>New Law</i>	<i>Current Law</i>
transfer provisions relating to these units. Provision is made for the cancellation and relinquishment of AIUs.	
Removal of the price floor	
The price floor will not be implemented. No charge imposed on the surrender of eligible international emissions units.	If an eligible international emissions unit is surrendered in relation to 2015-16, 2016-17 or 2017-18, a charge is imposed by the <i>Clean Energy (International Unit Surrender Charge) Act 2011</i> .
No minimum auction reserve charge.	Minimum auction reserve charges of \$15 for 2015-16; \$16 for 2016-17; and \$17.05 and for 2017-18 are specified in legislation and apply if regulations are in force for determining the surrender charge on international units.
Equivalent carbon pricing for liquid fuels and synthetic greenhouse gases	
The equivalent carbon price applied to liquid fuels and synthetic greenhouse gases will reflect the impact of quantitative limits on the surrender of eligible international units. This will align it with the cost of compliance faced by liable entities under the carbon pricing mechanism.	There is no provision for an equivalent carbon price that reflects the impact of quantitative limits on the surrender of eligible international units.

Detailed explanation of new law

Preliminaries

1.20 The bill, once enacted, will be called the ‘Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012’. [Clause 1, *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012*]

1.21 The bills in the amendment bills package amend other legislation, namely the CE Act, the ANREU Act, the NGER Act, the CE (Charges-Excise) Act, the CE (Charges-Customs) Act, the Fuel Tax Act, the Excise Tariff Act, the SGG (Import Levy) Act the SGG (Manufacture Levy) Act and the CE (Unit Issue Charge – Auctions) Act, and do not contain any substantive provisions of their own. The bill repeals the *Clean Energy (International Unit Surrender Charge) Act 2011*. [Clause 3, *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012*] [Clause 3, *Clean Energy (Charges-Excise) Amendment Bill 2012*] [Clause 3, *Clean Energy (Charges-Customs) Amendment Bill 2012*] [Clause 3, *Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012*] [Clause 3, *The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012*] [Clause 3, *The Ozone Protection and Synthetic Greenhouse Gas*

(Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012] [Clause 3, The Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012]

1.22 Sections 1, 2 and 3 of the bill commence on the date the bill receives the Royal Assent. Schedule 1, Parts 1 and 3, which make general amendments to the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) and the CE Act, will commence on the day after the bill receives the Royal Assent. *[Clause 2, Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012]*

1.23 Schedule 1 of all other bills in the amendment bills package take effect at the same time as Part 1 of Schedule 1 to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012*. The remainder of these bills take effect the day the relevant Acts receive the Royal Assent. *[Clause 2, Clean Energy (Charges-Excise) Amendment Bill 2012] [Clause 2, Clean Energy (Charges-Customs) Amendment Bill 2012] [Clause 2, The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012] [Clause 2, The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012] [Clause 2, The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012] [Clause 2, The Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012]*

1.24 The Clean Energy (Charges-Excise) Amendment Bill 2012 once enacted, will be called the ‘Clean Energy (Charges-Excise) Amendment Act 2012’. *[Clause 1, Clean Energy (Charges-Excise) Amendment Bill 2012]*

1.25 The Clean Energy (Charges-Customs) Amendment Bill 2012 once enacted, will be called the ‘Clean Energy (Charges-Customs) Amendment Act 2012’. *[Clause 1, Clean Energy (Charges-Customs) Amendment Bill 2012]*

1.26 The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 once enacted, will be called the ‘Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Act 2012’. *[Clause 1, The Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012]*

1.27 The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 once enacted, will be called the ‘Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Act 2012’. *[Clause 1, The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012]*

1.28 The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012 once enacted, will be called the ‘Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Act 2012’. *[Clause 1, The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012]*

1.29 The Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012 once enacted, will be called the ‘Clean Energy (Unit Issue Charge-

Auctions) Amendment Act 2012'. [Clause 1, *The Clean Energy (Unit Issue Charge-Auctions) Amendment Bill 2012*]

Use of eligible international emissions units for compliance under the carbon pricing mechanism

European allowance units as prescribed international units

1.30 A 'European allowance unit' is defined as an allowance that is issued by, or under the authority of, a country implementing the *European Union Greenhouse Gas Emission Allowance Trading Directive* (the EU Directive) as amended [Item 5, section 4, *ANREU Act*] [Item 33A, section 5, *CE Act*]. The Directive is numbered 2003/87/EC and was made by the European Parliament and the Council of the European Union on 13 October 2003. [Item 6, section 4, *ANREU Act*] It establishes a scheme for greenhouse gas emission allowance trading within the European Union.³ Each European Union member state implements the EU Directive through its respective national laws. The other states participating in the EU ETS, which at present include Iceland, Liechtenstein and Norway, have also implemented the EU Directive through their own laws.⁴

1.31 The definition of 'European allowance unit' includes all units issued under the EU Directive, except those issued for aviation activities as set out in Annex 1 of the EU Directive. European aviation allowances are a subclass of European allowance units that can currently only be used for compliance by aircraft operators that have a liability under the EU ETS. As this class of units is not intended to be eligible for surrender in the carbon pricing mechanism, they have been explicitly excluded from the definition. [Item 5, section 4, *ANREU Act*]

1.32 European allowance units are included in the definition of 'prescribed international unit' in section 4 of the *ANREU Act*. [Item 12, section 4, *ANREU Act*] [Item 13, section 4, *ANREU Act*] This means that existing provisions for prescribed international units under Part 4 of the *ANREU Act* apply to European allowance units. Section 122 of the *CE Act* provides for eligible international emissions units (which includes European allowance units as a prescribed international unit) to be surrendered for compliance under the carbon pricing mechanism from the 2015-16 financial year.

1.33 Provision has been made to enable the linking of emissions trading schemes, including to the EU ETS, in cases where direct (registry-to-registry) linking is not possible. Specifically this will occur through the

³ The EU Directive is available here:

http://europa.eu/legislation_summaries/energy/european_energy_policy/128012_en.htm

⁴ With respect to the EU Directive, the European Commission publishes details of relevant implementing legislation of EU member states, which are available here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72009L0029:EN:NOT>

issuance of AIUs in relation to given international units where certain criteria have been met. These amendments are discussed in paragraphs 1.60 to 1.114 below.

Surrender limits on eligible international emissions units

1.34 A surrender limit on eligible international emissions units was included in section 123 of the CE Act, to safeguard the environmental integrity of Australia's pollution reduction efforts. As part of the arrangement to link the carbon pricing mechanism to the EU ETS, the Government agreed to introduce an additional limit on the use of eligible Kyoto units. A 12.5 per cent limit on Kyoto units will give effect to this arrangement and facilitates the convergence of the price of European allowance units and Australian carbon units. [Item 69, section 123A, CE Act] 'Kyoto unit' is defined to have the same meaning as under the ANREU Act. [Item 34, section 5, CE Act]

1.35 The 'general limit' maintains the existing 50 per cent surrender limit on eligible international emissions units, operating from financial year 2015-16 to 2019-20. The term 'general limit' is used rather than 'surrender limit' as multiple limits on the surrender of eligible international emissions units may apply. [Item 71, subsection 133(7E), CE Act]

1.36 A 'designated limit' constrains the number of eligible international emissions units of a certain class or classes that a liable entity can surrender in a given financial year. This designated limit is set as a percentage of a liable entity's annual liability; this is known as the 'designated limit percentage'. [Item 32, section 5, CE Act] [Item 33, section 5, CE Act] [Item 69, section 123A, CE Act]

Example 1.1 Designated limit

Under a designated limit percentage of 10 per cent, a liable entity with an annual liability of 100 units may only use 10 units of the unit class covered by the designated limit.

1.37 The Government may, by regulations, introduce one or more designated limits on eligible international emissions units other than Kyoto units. Each designated limit is to be identified in the regulations by a unique name to enable the application of ranking provisions regarding the application of designated limits as set out in the amended section 133 of the CE Act. [Item 69, subsection 123A(2), CE Act] [Item 71, subsection 133(7C), CE Act] The setting of designated limits through regulations reflects the requirement for flexibility in both setting and changing limits over time, reflecting the maturation of Australia's emissions trading arrangements, the enhancement of existing links with overseas emissions trading schemes and the development of new links and international emissions trading systems. All regulations made concerning designated limits are disallowable legislative instruments for the purposes of the *Legislative Instruments Act 2003* to ensure appropriate parliamentary oversight of changes to market access to units.

1.38 Designated limits may only apply from the start of the flexible price period, that is, the 2015-16 financial year, which is the first year that international units can be surrendered. *[Item 69, subsection 123A(3), CE Act]*

1.39 The regulations for each designated limit will specify the years in which it is to apply. However, in accordance with the notice provisions, a limit can come into effect no earlier than one to three financial years after the the year in which the relevant regulation is registered. *[Item 69, subsections 123A(1)-123A(5), CE Act]* A designated limit may apply for a limited number of financial years (for example, the financial years 2015-16, 2016-17 and 2017-18) or indefinitely (for example, the financial year 2015-16 and each later financial year). *[Item 69, subsection 123A(1), CE Act]*

1.40 The ability to set or amend designated limits on classes of eligible international emissions units provides the Government with flexibility to respond to changing international circumstances and is designed to facilitate future linking with other emissions trading schemes. For example, the Government may wish to have designated limits sunset in line with an international agreement taking effect or change designated limits to enable links with prospective schemes in the United States of America or the People's Republic of China. The Government is also very conscious of the need for a stable market and investment environment. The Government is committed to provide at least three years' notice before new designated limits are introduced or changes to existing designated limits are due to take effect. If it is necessary to facilitate linking with another emissions trading scheme, then the Government will provide at least one year's notice. The notice period is shorter in this case because providing access to additional unit types is anticipated to benefit liable entities and support Australia's international climate change objectives. *[Item 69, subsection 123A(4), CE Act]* *[Item 69, subsection 123A(5), CE Act]*

1.41 When setting designated limits on the surrender of eligible international emissions units, the Minister may consider the following matters: *[Item 69, subsection 123A(11), CE Act]*

- Australia's international objectives and obligations, so as to ensure that limits are consistent with the efficient and credible operation of international carbon markets;
- the environmental integrity of the carbon pricing mechanism;
- whether the units are accepted by either the European Union or New Zealand emissions trading schemes;
- the extent to which the regulations would facilitate linking of the scheme embodied in the CE Act and the associated provisions with other emissions trading schemes; and
- such other matters as the Minister considers relevant.

1.42 These considerations mirror the considerations that the Minister may consider when setting qualitative limits on international units under the current subsection 123(2) of the CE Act. However, these criteria are amended such that the Minister now *must* consider the expert recommendations of the Climate Change Authority when recommending a qualitative restriction or a designated limit. [Item 67A, subsection 123(1A), CE Act] [Item 67B, subsection 123(2), CE Act] [Item 69, subsection 123A(10), CE Act] The Climate Change Authority must take into account the principles in section 12 of the *Climate Change Authority Act 2011* in providing this advice and is expected to address the substantive issues involved in a particular restriction such as the relevant considerations listed above. This confirms the key role that the Climate Change Authority is expected to play concerning the environmental integrity of international units accepted into Australia's emissions trading scheme.

1.43 The Minister may also take into account an additional consideration, which is added to both new section 123A(11) of the CE Act concerning designated limits and the existing section 123(2) of the CE Act concerning qualitative restrictions, to the effect that the Minister may consider whether a qualitative limit or a designated limit facilitates linking. This consideration draws the Minister's attention to the importance of ensuring that any regulations setting quantitative and qualitative limits would, for example, take account of the Government's link between the carbon pricing mechanism and the EU ETS, or such other emissions trading schemes as it may link with in the future. [Item 69, subsection 123A(11) CE Act] [Item 68, subsection 123(2) CE Act]

1.44 In considering relevant matters, the Minister could consider the need for any particular transitional arrangements. However, as international units can be sold into other markets or banked for future use, the notice period should be sufficient to avoid the need for additional transitional arrangements.

1.45 The 12.5 per cent designated limit on Kyoto units is established in legislation through the 'listed unit designated limit'. This provides clarity and certainty about the designated limit for eligible Kyoto units. This designated limit percentage cannot be changed until the 2020-21 financial year. This encourages a stable investment environment as it ensures, until 2020, that liable entities use of Kyoto units will not be further restricted through designated limits. From the 2020-21 financial year regulations may change the designated limit percentage for the listed unit designated limit. [Item 69, section 123A, CE Act]

Example 1.2 Limits on eligible Kyoto units

A liable entity with a liability of 1,000 units could surrender up to 125 eligible Kyoto units in a given compliance year.

1.46 Regulations may broaden the application of this listed unit designated limit such that it applies to additional classes of eligible

international emissions units, with the exception of European allowance units or AIUs issued in relation to European allowance units. [Item 69, subsection 123A(8), CE Act] [Item 69, subsection 123A(9), CE Act]

Excess surrender provisions

1.47 In some circumstances a liable entity may surrender too many units when meeting its liability for a given financial year under the carbon pricing mechanism. When this occurs, there will be rules setting out the treatment of units that are surrendered in excess of a designated limit and/or the general limit on the surrender of eligible international emissions units.

1.48 The excess surrender provisions are expected to apply only rarely, as it is not in a liable entity's interest to surrender units in excess of the relevant surrender limit. If a liable entity surrenders units in excess of a limit, it will lose control of the use to which these units will be put. For this reason, liable entities would reasonably not be expected to surrender units in excess of surrender limits. In addition, liable entities are unlikely to surrender units in advance of knowing their emissions number for a given financial year.

1.49 When a liable entity surrenders eligible international emissions units for a given financial year, these units will be tested to see if there is an 'unacceptable designated limit situation' and/or an 'unacceptable general limit situation'. These limits are to be applied consecutively, with all designated limits to be applied before the general limit is applied. [Item 71, subsection 133(7B), CE Act] [Item 71, subsection 133(7D), CE Act]

1.50 An unacceptable general limit situation applies when an entity surrenders more units than is allowed by the general limit, that is, a liable entity surrenders eligible international emissions units for more than 50 per cent of its liability. [Item 71, subsection 133(7E), CE Act] Similarly, an unacceptable designated limit situation applies when an entity surrenders units in excess of that allowed by a given designated limit, for example if an entity surrenders Kyoto units for more than 12.5 per cent of its liability. [Item 71, subsection 133(7F), CE Act]

1.51 If an unacceptable designated limit situation applies, and/or if an unacceptable general limit situation applies, those units covered by the applicable situation (that is, those units in excess of the limit) are treated as having not been surrendered in the current eligible financial year and as having been surrendered for liabilities in the next eligible financial year. [Item 71, subsection 133(7), CE Act] [Item 71, subsection 133(7A), CE Act]

Example 1.3 Unacceptable general limit situation

If, in December 2016, a liable entity with a carbon pricing liability of 100 units for 2015-16 surrenders 60 eligible international emissions units for 2015-16, then 10 of these units are covered by the unacceptable general limit situation. These units will be treated as having not been surrendered in 2015-16 and as having been surrendered for the liable entity's liability in 2016-17.

1.52 Units must be ordered to determine which units are covered by an unacceptable designated limit situation or an unacceptable general limit situation. Units subject to a particular limit will be ordered according to the time at which they were surrendered. The most recently surrendered unit will be ranked first, while the next most recently surrendered will be ranked second and so on. Those units that have a ranking that is less than or equal to the number of units that were surrendered in excess of a given limit are those units that will be covered by the relevant unacceptable designated limit situation or unacceptable general limit situation. [Item 71, subsection 133(7E)(e), CE Act] [Item 71, subsection 133(7F)(f), CE Act]

Example 1.4 Ranking of units under an unacceptable situation

If an entity surrenders a total of three units – one ERU on 1 December, one CER on 2 December and one EUA on 3 December, for the purposes of applying the general limit, then the EUA would be ranked first, the CER ranked second and the ERU ranked third.

1.53 To enable the ranking of units when more than one unit is surrendered in a single transaction, the Minister may, through a disallowable determination, state the order in which units surrendered in a single transfer are ranked for the purposes of applying a surrender limit. [Item 71, subsection 133(7G)(a), CE Act] For example, this may be used to ensure that firms receive the most advantageous treatment by ensuring that lower cost unit types are treated as having been surrendered before higher cost units.

1.54 If a determination is not in force, then units surrendered in a single transaction will be treated as having been surrendered in the numerical order of their serial numbers, disregarding any alphabetical characters included in those serial numbers. [Item 71, subsection 133(7G)(b), CE Act]

Example 1.5 Simultaneous surrender

The Regulator will treat a unit with the serial number ABC123 as having been surrendered before a unit with the serial number ABC124. Similarly, the Regulator will treat a unit with the serial number XYZ234 as having been surrendered before a unit with the serial number ABC456 or a unit with serial number 12345.

1.55 Surrender limits are to be applied consecutively, with all designated limits to be applied before the general limit is applied. [Item 71, subsection 133(7D), CE Act]

1.56 As more than one designated limit may apply at a given time, eligible international emissions units may be subject to more than one unacceptable designated limit situation. In this case, designated limits will be applied consecutively in an order determined by a legislative instrument made by the Minister. This will be a disallowable legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The order of application of designated limits can influence which units are treated as

excess surrendered. By providing the Minister the power to determine the order in which designated limits are applied, the Minister may apply them in an order that minimises the number of units considered excess surrendered or to ensure that the surrender of lower cost international units is maximised. [Item 71, subsection 133(7B), CE Act]

1.57 If a legislative instrument is not in force, because it has not been made or has been disallowed, designated limits will be applied consecutively beginning with the designated limit that has the smallest designated limit percentage. [Item 71, subsection 133(7B)(b), CE Act]

Example 1.6 Consecutive application of designated limits by size

If eligible international emissions units are subject to designated limit A of 15 per cent and designated limit B of 10 per cent, then designated limit B will be applied before designated limit A.

1.58 If there are two or more designated limits that apply, and those limits have the same designated limit percentage, then the limits will be applied consecutively based on the alphabetical order of the unique names of the limits. [Item 71, subsection 133(7C), CE Act]

Example 1.7 Consecutive application of alphabetically ordered designated limits

If eligible international emissions units are subject to designated limit B of 10 per cent and designated limit A of 10 per cent, then designated limit A will be applied before designated limit B.

1.59 Units found to be in an unacceptable designated limit situation are treated as if they were surrendered for the next eligible financial year. As limits are applied consecutively, units found to be in an unacceptable designated limit situation regarding one designated limit are not ranked for the purposes of applying subsequent designated limits or the general limit. [Item 71, subsection 133(7D), CE Act] [Item 71, subsection 133(7E), CE Act] [Item 71, subsection 133(7F), CE Act]

Example 1.8 Treatment of units covered by a designated limit

Take the case where there are three designated limits, designated limit A applies a 10 per cent limit to *Reforestation units*, designated limit B applies a 10 per cent limit to *Afforestation units*. Both *Reforestation units* and *Afforestation units* belong to the *International land sector units* class, which is subject to designated limit C of 15 per cent. Note that the 50 per cent general limit also applies.

Assume an entity has a liability of 100 units for the 2015-16 financial year and it surrenders 15 *Afforestation units* on 1 December 2016, 30 European allowance units on 2 December 2016 and 15 *Reforestation units* on 3 December 2016. In this case designated limits A, B and C all apply. Ranking these limits in order from lowest to highest percentage, this means that designated limits A and B apply before designated limit C. As designated limits A and B have the same

designated limit percentage, these limits are ranked in alphabetical order, meaning that designated limit A will be applied first.

Applying designated limit A, 5 *Reforestation Units* will be treated as not having been surrendered in relation to the 2015-16 financial year, but will be treated as having been surrendered in the 2016-17 financial year. Applying designated limit B, 5 *Afforestation units* will be treated as not having been surrendered in relation to the 2015-16 financial year, but will be treated as having been surrendered in the 2016-17 financial year. Applying designated limit C, 5 additional *Reforestation units* will be treated as not having been surrendered in relation to the 2015-16 financial year, but will rather be treated as having been surrendered in the 2016-17 financial year. As the *Reforestation units* were surrendered after the *Afforestation units* they are the unit captured by the unacceptable designated limit situation regarding designated limit C.

Further note that in this example, the unacceptable general limit situation does not apply, as after the application of designated limits A, B and C, only 45 eligible international emissions units are treated as having been surrendered for the 2015-16 financial year (10 *Afforestation units*, 5 *Reforestation units* and 30 European allowance units).

Registry amendments to facilitate indirect linking of emissions trading schemes

Supporting the development of international emissions trading

1.60 Generally, the Government will seek to implement direct linking between the carbon pricing mechanism and overseas emissions trading schemes by means of a direct link between their respective registries. This would enable the direct transfer of units from one registry to another, subject to appropriate safeguards.

1.61 In some circumstances, direct linking may not be possible, either temporarily or permanently, as a consequence of specific issues such as potential delays in changing relevant legislation or due to the design of the electronic registries in which the emissions units are held. The ANREU Act provides a framework for linking when the direct linking of registries is not possible. This includes provisions for the Regulator to open and operate a foreign registry account on behalf of the Commonwealth and provisions for the issuance and transfer of AIUs. By providing the Government powers to alter arrangements through disallowable legislative instruments, the Government has the necessary capacity to implement specific arrangements to facilitate linking with other overseas emissions trading schemes and provide for the specific operating requirements of those future linking arrangements. In most cases, these arrangements will be of a highly technical nature, reflecting the practicalities of linking the Registry with other registries and specific issues concerning the acceptance of international emissions units. These regulations will be the subject of

Parliamentary oversight as they will be legislative instruments for the purposes of the *Legislative Instruments Act 2003* and the subject of disallowance.

1.62 These powers enable the Government to give effect to international agreements or arrangements for linking. An ‘international arrangement’ is defined in section 4 of the ANREU Act as an arrangement between Australia and a foreign government body or an international organisation. [Item 8, section 4, ANREU Act] An ‘international organisation’ is defined in section 4 of the ANREU Act to cover international organisations such as the European Union and its constituent bodies, such as the European Commission, and other international entities that are not sovereign states, but which may operate emissions trading schemes. [Item 9, section 4, ANREU Act]

Opening and operating Commonwealth foreign accounts

1.63 The Commonwealth may open and operate an account in a foreign registry, known as a ‘Commonwealth foreign registry account’. [Item 3, section 4, ANREU Act] [Item 27, subsection 86A(1)(a), 86A(2), ANREU Act] This power allows the Regulator, acting on behalf of the Commonwealth, to operate an account in a foreign registry that may be required to facilitate a link (for example, to hold or transfer foreign units).

1.64 The Minister may, through a disallowable legislative instrument, direct the Regulator to open and operate a Commonwealth foreign registry account on behalf of the Commonwealth. [Item 27, subsection 86A(4)] The power of the Regulator to apply to open an account in a foreign registry and then operate that account must only be exercised in accordance with a ministerial direction, which is appropriate for the operation of a foreign registry account in the name of the Commonwealth [Item 27, subsections 86A(4), 86A(5), ANREU Act]. As the Commonwealth foreign registry account will operate under the rules of a foreign registry, any legislative instrument will be consistent with the relevant rules of the foreign registry.

1.65 The administrator of the foreign registry will ultimately determine whether the Commonwealth may open and operate an account in the foreign registry, having regard to the rules and requirements applicable to its own registry.

1.66 In addition to opening and operating a foreign registry account, the Commonwealth may do anything incidental to, or ancillary to, the opening or operation of such an account [Item 27, subsection 86A(1)(b), ANREU Act]. This recognises that the Government may need to perform operations, in addition to opening and operating a foreign registry account, in order to facilitate a link. For example, this may allow the Commonwealth to open and operate a trading platform on a foreign registry to obtain transaction data to support linking arrangements.

Issuance of AIUs

1.67 Part 4 of the ANREU Act sets out the rules in relation to dealings with prescribed international units. Amendments will divide Part 4 of the ANREU Act into three Divisions so as to include provisions about the issue of AIUs. *[Item 16, section 48, ANREU Act] [Item 17, section 48, ANREU Act] [Item 18, section 48, ANREU Act]*

1.68 The Regulator may issue AIUs on behalf of the Commonwealth. *[Item 18, section 48A, ANREU Act] [Item 10, section 4, ANREU Act] [Item 2, section 4, ANREU Act] [Item 29A, section 5, CE Act]* Amendments include AIUs in the definition of prescribed international units under section 4 of the ANREU Act. *[Item 12, section 4, ANREU Act] [Item 13, section 4, ANREU Act]* This means that AIUs can be surrendered for compliance under the carbon pricing mechanism. It also triggers the application of Part 4 of the ANREU Act which contains general provisions relating to prescribed international units.

1.69 The issuance process for AIUs is similar to the process for issuing carbon units, set out in Part 4, Division 2 of the CE Act. To hold an AIU, a person must have a Registry account. *[Item 18, subsection 48C(3), ANREU Act]* The Regulator will issue an AIU by making an entry for the unit in an account in the Registry. *[Item 18, subsection 48C(1), ANREU Act]* Each AIU will have a unique identification number known as the 'serial number'. *[Item 18, section 48B, ANREU Act] [Item 18, subsection 48C(2), ANREU Act]*

1.70 Consistent with the treatment of other types of emissions units issued under Australian law, AIUs will be treated as personal property both generally and for the purposes of certain Australian laws including the bankruptcy law, corporations law, laws relating to deceased estates and for other laws as prescribed. If the transfer of AIUs is permitted, the protection to good faith purchasers would be afforded to the purchasers of AIUs.

1.71 The Regulator must not issue an AIU unless conditions set out in regulations are satisfied. *[Item 18, subsection 48D(1), ANREU Act]* Conditions on the issuance of AIUs must give effect to the principle that an AIU must not be issued unless a corresponding foreign emissions unit has been withdrawn from circulation within a foreign registry. *[Item 18, subsection 48D(2), ANREU Act]* A corresponding foreign emissions unit means a unit (however described) that is issued outside Australia. This could include a European allowance unit. *[Item 18, subsection 48D(3), ANREU Act]* To ensure appropriate parliamentary oversight, these regulations are disallowable.

1.72 It is intended that the Australian income tax treatment of any AIUs that are issued in accordance with Regulations made under new section 48D of the ANREU Act will be consistent with the income tax treatment applying to similar transactions involving other eligible international emissions units.

1.73 The issuance provisions establish a principle based framework to guide the development of indirect linking arrangements while maintaining appropriate capacity to implement the highly technical aspects of linking arrangements. For example, the regulations could provide that an AIIU must be issued if a European allowance unit has been transferred to, and is held within, a Commonwealth foreign registry account. The regulations could also provide for the issue of an AIIU to a person if that person has cancelled a European allowance unit for a purpose other than meeting requirements under the EU Directive.

1.74 To ensure that appropriate provision is made for the issue of AIIUs under the requirements of a potentially wide range of future linking arrangements, the regulations may make further provision concerning AIIUs, including requiring a person to notify the Regulator about a prescribed matter. [Item 18, subsection 48E(2), ANREU Act] If a person does not comply with a requirement specified in the regulations, then that person, or a person who aids or abets in such non-compliance, may be liable to a civil penalty. [Item 18, subsection 48E(2), ANREU Act] These regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003* and may be disallowed.

Transfer of AIIUs

1.75 Provisions giving effect to transfers of prescribed international units are set out in new Division 3 of Part 4 of the ANREU Act.

1.76 The Government may, by regulations, modify the provisions of new Division 3 of Part 4 of the ANREU Act in relation to a specified class of AIIUs. [Item 19, section 57, ANREU Act] [Item 20, section 57, ANREU Act]

1.77 If regulations do not specify particular arrangements for the transfer of AIIUs, then the general provisions relating to prescribed international units will apply. For example, AIIUs, as prescribed international units, would be transferable within the Registry unless regulations made under new subsection 57(2) of the ANREU Act modify the operation of the domestic transfer provisions in Part 4, Division 3 of the ANREU Act by declaring that once issued, AIIUs are not transferable.

1.78 Modifications may be made to provisions relating to:

- making entries in the Registry for prescribed international units;
- ownership of prescribed international units;
- transfer of prescribed international units including domestic transfers and incoming and outgoing international transfers;
- transmission prescribed international units by operation of laws;

- property rights in relation to prescribed international units;
and
- equitable interests in relation to prescribed international units
including the registration of equitable interests.

1.79 Any modifications under new subsection 57(2) will prevail over the existing provisions in Part 4, Division 3 of the ANREU Act.

1.80 This regulation-making power provides the Government with necessary flexibility to implement future international linking arrangements, which may differ in their nature and scope. This flexibility is necessary to ensure that the current form of the ANREU Act does not unduly limit the capacity of Australia to effectively negotiate future linking arrangements in its best interests and to ensure that Australia can also implement the operating requirements for any such future linking arrangements.

1.81 This approach also provides the Government with an efficient way to modify the rules governing a specific international linking arrangement to ensure compliance with any requirements under the relevant international arrangement. Subsequent to an international agreement, this approach may also expedite access by liable entities to new types or classes of eligible international emissions units where a direct link to a foreign registry is not possible, which would further encourage the development of a deep and liquid international carbon market.

1.82 Any regulations modifying the operation of the existing provisions of Part 4, Division 3 of the ANREU Act are legislative instruments for the purposes of the *Legislative Instruments Act 2003* and may be disallowed. The regulation-making power is limited in scope to amendments concerning a specified class of AIIUs and does not apply more generally. Furthermore, if the transfer of AIIUs is permitted within the Registry, then modifications under new subsection 57(2) of the ANREU Act will not be required.

Cancellation of AIIUs

1.83 The Regulator must cancel an AIIU held in a person's Registry account if the conditions set out in the regulations are satisfied. [*Item 23, section 66A, ANREU Act*] The circumstances set out in regulations may, for example, include an option to voluntarily cancel AIIUs. In the case where an indirect link is preliminary to a direct link, the Government may wish to specify that AIIUs must be surrendered before a direct link is established or be cancelled. By providing for conditions to be set out in regulations, the Government may take account of the specific requirements for the implementation of differing linking arrangements over time. These regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003* and may be disallowed.

1.84 To cancel a unit, the Regulator must remove the entry for the unit from the person's Registry account and set out a record of each cancellation. [Item 23, subsections 66A(3)-(4), ANREU Act]

1.85 In the interests of due process, a decision by the Regulator to cancel an AIIU will be a reviewable decision. [Item 26, section 82, ANREU Act]

General power of correction

1.86 Section 21 of the ANREU Act provides that the Regulator may alter the Registry to ensure compliance with provisions of an international agreement relating to prescribed international units.⁵

1.87 This general power of correction is extended to include corrections necessary to comply with requirements of an 'international arrangement' relating to prescribed international units. [Item 15, subsection 21(1), ANREU Act] An 'international arrangement' means an arrangement between Australia and a foreign government body or an international organisation. [Item 8, section 4, ANREU Act] A 'foreign government body' includes foreign governments, sub-national governments and their authorities and an 'international organisation' includes both bilateral and multilateral international bodies and groups of international bodies, as well as the subsidiary bodies through which they work (including commissions, councils and committees). [Item 7, section 4, ANREU Act] [Item 9, section 4, ANREU Act] The Regulator can alter the Registry to comply with linking arrangements that have been agreed, for example through a protocol or an exchange of letters. This mirrors the existing approach, such that the Registry will be corrected if it is inconsistent with the Kyoto rules.

Relinquishment

1.88 A person may be required to relinquish AIIUs in certain circumstances. [Item 14, section 4, ANREU Act] The purpose of the relinquishment provisions are to ensure that fraudulent conduct relating to AIIUs (and the international units to which they are linked) is treated in a similar way to fraudulent conduct relating to other carbon units. These provisions are based on the comparable provisions included in Parts 10 and 11 of the CE Act.

1.89 Upon application by the Commonwealth Director of Public Prosecutions or the Regulator, a court may order a person to relinquish a specified number of AIIUs if a person is convicted of: [Item 23, sections 66B-66C, ANREU Act]

- an offence relating to fraudulent conduct under a specified section of the *Criminal Code*⁶; or

⁵ This is further discussed in paragraphs 1.31 to 1.33 of the Explanatory Memorandum for the Australian National Registry of Emissions Units Bill 2011, available at: <http://www.comlaw.gov.au/Details/C2011B00062/Download>

- an offence relating to a foreign law that corresponds to the specified sections of the *Criminal Code*.

1.90 A person must comply with such an order even when the person is not the registered holder of any AIIUs nor the holder of those units required to be relinquished. [Item 23, section 66C, ANREU Act]

1.91 The purpose of these provisions is to ensure that relinquishment can be required in cases where the fraudulent conduct occurs overseas, which is particularly important given the basis on which AIIUs are issued.

1.92 Similar to relinquishment of carbon units, AIIUs are relinquished by electronic notice transmitted to the Regulator. The notice must specify, among other things, that the relinquishment relates to AIIUs and the specific order under which relinquishment is required. Upon relinquishment, the AIIU is cancelled and the Regulator must remove the entry from the unit holder's Registry account. [Item 23, section 66D, ANREU Act]

1.93 Regulations may make specific provisions regarding the process of relinquishment. [Item 23, section 66D, ANREU Act] This reflects that differing approaches may be required because AIIUs may be relinquished for different types of international units, and given the potential for different classes of AIIU to have different restrictions on their transfer. The range of these approaches will depend on the nature and scope of future linking arrangements entered into by Australia. These regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003* and may be disallowed.

1.94 If a person required to relinquish AIIUs does not hold a sufficient number of these units, the person may transfer an equal number of substitute units, in place of AIIUs, in accordance with the regulations. Transfer of the substitute units has the effect as if relinquishment of the AIIUs had occurred. The transfer is actioned by electronic notice and must specify that the transfer is instead of the relinquishment of AIIUs. A carbon unit or an eligible Australian carbon credit unit are considered substitutes. All other unit types, including Kyoto units, are not considered substitutes [Item 23, section 66E, ANREU Act]. Please note that a carbon unit that is substituted for an AIIU is considered to have been transferred rather than relinquished. This means that provisions for relinquished carbon units in Part 11 of the CE Act do not apply.

1.95 If a person is required to relinquish a particular number of AIIUs and does not do so before a particular time (that is, the compliance deadline), then they are liable to pay an administrative penalty or a late payment penalty. [Item 23, section 66F, ANREU Act] [Item 23, section 66G, ANREU Act] The amount of the penalty is the same as the amount of the penalties

⁶ As implemented by the *Criminal Code Act 1995*

for non-compliance with relinquishment requirements under Part 11 of the CE Act. This represents the opportunity cost of buying an Australian carbon unit.

Table 1.1 Penalties relating to the relinquishment of AIUs

<i>Item/New Section</i>	<i>Description</i>	<i>Administrative Penalty</i>
Item 23 new section 66F(2)	Administrative penalty – Failure to relinquish AIUs at all	Determined according to the formula in new section 66F(2)
Item 23 new section 66F(4)	Administrative penalty – Failure to relinquish sufficient units	Determined according to the formula in new section 66F(4)
Item 23 new section 66	Late payment penalty – relinquishment	An amount calculated at the rate of 20 per cent per annum or such rate as is specified in regulations

1.96 Liability for administrative and late payment penalties is an automatic consequence of non-compliance and the Regulator has no discretion about whether the person is liable.

1.97 The Regulator does not have a general power to remit late payment penalties but must apply specified criteria in determining whether to remit a late payment penalty, [Item 23, subsection 66G(2), ANREU Act] namely:

- the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
- the person contributed to the delay in payment and has taken reasonable steps to mitigate the causes of the delay and, having regard to the reasons for the delay, it would be fair and reasonable to remit some or all of the amount; or
- the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.

1.98 In the interests of due process, a decision by the Regulator to refuse to remit the whole or part of late payment penalty is a reviewable decision. [Item 26, line 16 at the end of the table, ANREU Act]

1.99 Late payment penalties are debts due and payable to the Commonwealth and may be recovered by the Regulator, on the Commonwealth's behalf, in a court of competent jurisdiction. [Item 23, section 66H, ANREU Act]

1.100 The Regulator may set off penalties for non-compliance with relinquishment requirements, if the amount owing is of a kind specified in the regulations. [Item 23, section 66J, ANREU Act] The Commonwealth must refund an overpayment of a late payment penalty made by a person [Item 23, section 66K, ANREU Act]. This effectively allows for the person and the

Commonwealth to net-out money owed. It is appropriate to specify the types of debts that can be set off in regulations as the amount may vary according to the debts to be set off. These are disallowable regulations.

1.101 To maintain the integrity of relinquishment provisions, entering into ‘schemes’ aimed at ensuring that a body corporate or trust becomes unable to pay an existing or future liability to pay an administrative penalty under section 66F (for non-compliance with a relinquishment requirement in relation to an AIIU) is a criminal offence. *[Item 23, sections 66L-66M, ANREU Act]*

1.102 These provisions are, in substance, closely modelled on sections 275 and 276 the CE Act, which deal with schemes to avoid payment of an existing or future liability to pay an administrative penalty under section 212 of the CE Act (for non-compliance with a relinquishment requirement in relation to a carbon unit). ‘Scheme’ and ‘trust’ have the same respective meanings as in Part 19 of the CE Act. *[Item 23, section 66N, ANREU Act]*

1.103 These provisions are comparable to those which apply to various taxes. They are aimed at artificial schemes involving, for instance, ‘asset-stripping’ whereby a corporation’s assets are moved leaving only liabilities, and creating a situation where the corporation is forced into liquidation. By avoiding their liabilities under the CE Act, such schemes may allow dishonest persons to accrue very large financial gains. For this reason, the maximum sanction is 10 years’ imprisonment or 10,000 penalty units, or both.

Civil penalties

1.104 Civil penalty orders are one of a range of measures designed to encourage compliance with registry rules and requirements.

1.105 Civil penalty provisions, including ancillary contraventions, will apply if a person contravenes or aids a contravention of a requirement relating to AIIUs set out in the regulations *[Item 18, section 48E, ANREU Act]*. Failure to comply with the regulations may lead to the imposition of a civil penalty. *[Item 18, subsection 48E(4), ANREU Act]*

1.106 Pecuniary penalties for contravention of a civil penalty are set out in Part 7 of the ANREU Act. Subsection 69(4)(b) provides that the pecuniary penalty payable by a body corporate must not exceed 10,000 penalty units for each contravention of a civil penalty provision. Subsection 69(5)(b) of the ANREU Act provides that the pecuniary penalty payable by a person other than a body corporate must not exceed 2,000 penalty units for each contravention. The maximum levels of civil penalties reflect the seriousness of the contraventions and represent clear and strong disincentives for non-compliance. Any civil penalties provided for in the ANREU Act are maximums and any penalty that may be imposed by a court will be determined according to the circumstances of the particular case. The integrity of the carbon pricing mechanism could be

compromised by liable entities or other market participants acting in a manner that undermines the linking arrangement.

1.107 In a proceeding for a civil penalty order against a person for contravention of a requirement relating to AIUs set out in regulations, it is not necessary to prove that person's state of mind, including the person's intention, knowledge, recklessness, negligence or any other state of mind. [Item 24, section 79, ANREU Act] [Item 25, section 79, ANREU Act] Implicit in this is a reasonable expectation that those subject to the provision will take steps to prevent inadvertent contraventions. This mirrors the current provisions in section 79 of the ANREU Act.

Publication of information

1.108 To promote transparency, the Regulator is to publish information about prescribed international units, including information about the issue of AIUs.

1.109 For each class of prescribed international units, the Regulator must publish, on its website the total number of each class of units held in the Registry and other information relating to the units or their registered holders as specified in the regulations. [Item 21, section 59A, ANREU Act] The Regulator must publish this information as soon as practicable after the end of each quarter. [Item 21, section 59A, ANREU Act] 'Quarter' means a period of three months beginning on 1 July, 1 October, 1 January or 1 April of a given year. [Item 13A, section 4, ANREU Act]

1.110 The Regulator must also publish, and keep up-to-date, statements setting out concise descriptions of the characteristics of European allowance units and AIUs [Item 22, section 61, ANREU Act]. These statements will assist in providing information to retail investors about emissions units. No product disclosure statement or prospectus will be issued by the Commonwealth under the relevant provisions of the *Corporations Act 2001* concerning these units. This approach is consistent with that taken to other types of emissions units, including eligible international emissions units. The Regulator must publish the concise descriptions of European allowance units and AIUs within 30 days of the commencement of the relevant regulations. [Item 22, subsections 61(5)-(6), ANREU Act]

1.111 To promote transparency of the relinquishment process, the Regulator must publish certain information relating to the relinquishment of prescribed units. These publication requirements are either through a requirement to publish the information on the Information Database or on the Regulator's website (www.cleanenergyregulator.gov.au).

1.112 If a relinquishment requirement relates to a person in the Information Database, the Regulator must enter in the Information Database any requirement to relinquish AIUs and the number of units required to be relinquished or substitute units transferred. [Item 22A, section 63B, ANREU Act] [Item 22A, section 63D, ANREU Act] If the person is not already in the

Information Database, the Regulator must publish the person's name, the details of the relinquishment requirement and the number of relinquished AIUs (or substitute units transferred) on its website. *[Item 22A, section 63E, ANREU Act] [Item 22A, section 63G, ANREU Act]*

1.113 The Regulator must enter in the Information Database the information relating to the number of units relinquished as soon as practicable after receiving either the relinquishment notice or the notice of substitute unit transfer. *[Item 22A, section 63D, ANREU Act] [Item 22A, section 63G, ANREU Act]*

1.114 If the relinquishment requirement relates to a person in the Information Database, the Regulator must enter on the Information Database any details of unpaid administrative penalties relating to non-compliance with an AIU relinquishment requirement *[Item 22A, section 63C, ANREU Act]*. If the person is not in the Information Database, the Regulator must publish the name of the person and the details of the unpaid penalty amount on its website. *[Item 22A, section 63F, ANREU Act]*

Removal of the price floor

1.115 The CE Act and associated acts currently provide for a price floor (a minimum carbon price) for the financial years 2015-16, 2016-17, and 2017-18. The price floor would be implemented through a minimum auction reserve price and a charge on the surrender of eligible international emissions units.

1.116 The capacity to impose a price floor is removed as part of the Government's arrangement to link the carbon pricing mechanism to the EU ETS. Further details on the price floor, as originally proposed, are available in the paragraphs 3.83 to 3.88 and paragraph 3.109 of the Explanatory Memorandum to the Clean Energy Bill 2011.⁷

Removal of surrender charge on eligible international emissions units

1.117 Section 124 of the CE Act, which introduced the surrender charge on eligible international emissions units, is repealed, as is the entire *Clean Energy (International Unit Surrender Charge) Act 2011*. Section 124 of the CE Act provided for a charge to be imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* if an eligible international emissions unit was surrendered in relation to the financial years 2015-16, 2016-17, or 2017-18. *[Item 70, section 124, CE Act] [Item 95, CE (IUSC) Act]*

1.118 The Simplified Outline of Part 6 of the CE Act is amended to remove reference to the charge for the surrender of international units. *[Item 65, section 121, CE Act] [Item 66, section 121, CE Act] [Item 67, section 121, CE Act]*

⁷ Available from:

<http://www.comlaw.gov.au/Details/C2011B00166/Explanatory%20Memorandum/Text>

1.119 The *Clean Energy (International Unit Surrender Charge) Act 2011* is no longer an ‘associated provision’ of the CE Act within the meaning of section 307 of the CE Act. [Item 28, section 5, CE Act] [Item 81, section 307, CE Act] [Item 82, section 307, CE Act]

1.120 The Climate Change Authority is no longer required to conduct reviews under sections 288 and 293 of the CE Act of provisions that relate to charges for the surrender of eligible international emissions units. [Item 79, section 288, CE Act] [Item 80, section 293, CE Act]

Removal of minimum auction reserve price

1.121 Subsection 111(5) of the CE Act no longer provides for a minimum auction reserve charge. Subsection 111(5) of the CE Act provided for a minimum auction reserve charge in relation to the 2015-16, 2016-17, and 2017-18 financial years. [Item 58, section 111, CE Act]

1.122 A minimum auction reserve charge no longer applies under section 8 of the Clean Energy (Charges-Customs) Act, section 8 of the Clean Energy (Charges-Excise) Act and section 8 of the Clean Energy (Unit Issue Charge-Auctions) Act. [Item 2, section 8, CE (Charges-Excise) Act] [Item 2, section 8, CE (Charges-Customs) Act] Superfluous definitions have been repealed. [Item 1, section 3, CE (Charges-Excise) Act] [Item 1, section 3, CE (Charges-Customs) Act] [Items 1-2, section 3, CE (Unit Issue Charge-Auctions) Act] [Item 3, subsection 8(3), CE (Unit Issue Charge-Auctions) Act]

1.123 The Minister may establish a ‘reserve charge amount’ through a Ministerial determination for a specified auction. The Minister may establish a means to calculate a reserve charge amount in relation to the specified auction. This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument. Specifying a calculation for the reserve charge amount in a determination would provide market participants certainty regarding the method of determining future auction reserve charges. [Item 59, subsection 111(6), CE Act] [Item 3, subsection 8(4), CE (Charges-Excise) Act] [Item 3, subsection 8(4), CE (Charges-Customs) Act] [Item 4, subsection 8(4), 10, CE (Unit Issue Charge-Auctions) Act]

1.124 Under section 113 of the CE Act the Minister may establish the policies, procedures and rules for auctioning through a determination. The scope of the Minister’s power to make this determination is modified to reflect the changes to the arrangements for relinquished units (see paragraphs 1.88 to 1.103 above). [Item 61, subsection 113(2)(m), CE Act] [Item 62, subsection 113(2)(r), CE Act] [Item 63, subsection 113(2)(r), CE Act] [Item 64, subsection 113(2)(s), CE Act]

1.125 The ‘auction reserve charge amount’ is a mechanism aimed at enhancing the price discovery of the auction. A reserve charge amount can serve to counteract bid shading (that is, bidding an amount which is less than the amount that the participant believes that the unit is worth) or collusion by auction participants by minimising the potential gains from such behaviour. When there is a secondary market for carbon units, the

reserve charge will ensure that the clearing price of the auction does not significantly diverge from the secondary market price.

1.126 In February 2012, the Department of Climate Change and Energy Efficiency published a ‘*Position paper on the legislative instrument for auctioning carbon units in Australia’s carbon pricing mechanism*’⁸. The paper proposed that an ascending clock auction format be used. For an ascending clock auction, the reserve charge would typically also represent the first price for which bidders can indicate their demand, the starting price. A starting price will improve the speed and efficiency of the auction.

1.127 The Climate Change Authority is no longer required to conduct reviews under sections 288 and 293 of the CE Act of provisions that relate to minimum reserve auction charges. [Item 79, section 288, CE Act] [Item 80, section 293, CE Act]

1.128 The definition of ‘auction’ is amended to reflect the changes to the arrangements for relinquished units. [Item 29, section 5, CE Act]

Equivalent carbon pricing for liquid fuels and synthetic greenhouse gases

1.129 The use of eligible international emissions units up to the designated limits can lead to a liable entity having a cost of compliance that is lower than the price of carbon units.

1.130 Under the existing provisions of relevant Acts in the Clean Energy Legislative Package,⁹ the equivalent carbon price that applied to liquid fuels and synthetic greenhouse gases was to be determined by reference to the price of carbon units sold at domestic auctions. For synthetic greenhouse gases the Regulator would use the benchmark average auction charge to calculate the equivalent carbon price. For liquid fuels the Regulator would use the auction results for the six months ending on 31 May and the six months ending 30 November to calculate the equivalent carbon price. [Item 2A, section 4, ANREU Act]

1.131 The equivalent carbon price that now applies to synthetic greenhouse gases and liquid fuels provides a more accurate estimate of the cost of compliance faced by liable entities under the carbon pricing mechanism, taking into account links with other international schemes, including the EU ETS. This equivalent carbon price is now known as the ‘per-tonne carbon price equivalent’. [Item 36, section 5, CE Act] [Item 76, section 196A, CE Act]

⁸ Available at:

<http://www.climatechange.gov.au/government/submissions/closed-consultations/auctioning-carbon-units/~media/submissions/auctioning-carbon-units/auction-carbon-credits-position-paper-pdf.pdf>

⁹ The CE Act, the Fuel Tax Act, the Excise Tariff Act, the SGG (Import Levy) Act and the SGG (Manufacture Levy) Act.

Per-tonne carbon price equivalent

1.132 The Regulator will calculate the per-tonne carbon price equivalent based on a weighted average of prices for domestic units and international units. Specifically, the weighted average of domestic units will reflect the six-monthly auction results, and the weighted average of international units will reflect the sum of the reference prices for eligible international emissions units subject to a designated limit.

Example 1.9 Calculation of the Per-tonne carbon price equivalent

If the reference price for Kyoto units is \$11, with a designated limit of 12.5 per cent, and if the six month average auction price is \$13 then the per-tonne carbon price equivalent will therefore be equal to $(\$11 \times 12.5\%) + (\$13 \times (1 - 12.5\%))$, which is \$12.75.

1.133 To ensure clarity and consistency in the calculation of the per-tonne carbon price equivalent and to provide certainty to affected entities, the Minister may determine the approach that the Regulator is to take when determining reference prices for prescribed classes of international units subject to a designated limit through a Ministerial determination. This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument. This will allow the Minister to set an appropriate reference price for different unit types. For example, these reference prices may need to account for trade in units across different exchanges and the proportion of units traded on and off exchanges.

1.134 The Regulator must publish the per-tonne carbon price equivalent for a designated six month period (which ends on 31 May or 30 November, starting on 31 May 2015) within seven business days after the end of each designated six month period. [Item 76, subsection 196A(1), CE Act]

The average carbon unit auction price for a six month period

1.135 From May 2015 onwards, the Regulator must publish the ‘average carbon unit auction price’. This price is the average price for auctions of carbon units for the previous six month period, ending at the end of May or the end of November respectively. This must occur within seven business days of May 31, and within seven business days of November 30. [Item 30, section 5, CE Act] [Item 72, subsections 196(1AA)-(1AB), CE Act] [Item 73, subsection 196(1), CE Act] [Item 74, subsection 196(1A), CE Act] [Item 75, subsection 196(2A), CE Act]

1.136 The average carbon unit auction price for the six month period ending at the end of May 2015 will be calculated using the auction results from the previous 11 months. This is to ensure that if no auctions take place in the six months prior to May 2015 the average carbon unit auction price can still be calculated. [Item 72, subsections 196(1AA)-(1AB), CE Act]

Reference prices

1.137 If a designated limit applies to a particular class of eligible international emissions units for a particular financial year, then from 31 May 2015, the Regulator must declare a *reference price* for the class of units within seven days after 31 May and after 30 November of that financial year. [Item 76, subsection 196A(5), CE Act]

1.138 To ensure clarity and consistency in the calculation of the reference price and to provide certainty to affected entities, the Minister may determine, by a legislative instrument, the method used by the Regulator to make such a declaration. [Item 76, subsection 196A(6), CE Act] This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument. In making such a determination, the Minister must have regard to prices paid for eligible international units that are in that class, and such other matters (if any) that they consider to be relevant. [Item 76, subsection 196A(7), CE Act] For example, these reference prices may need account for trade in units across multiple different exchanges and the proportion of units traded on and off exchanges.

1.139 The declaration of a reference price by the Regulator must comply with such a determination, and be published on the Regulator's website. [Item 76, subsections 196A(8)-196A(9), CE Act]

1.140 The declaration of a reference price by the Regulator is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. [Item 76, subsection 196A(10), CE Act] The declaration is not of a legislative character and is therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is included to assist readers and indicate that an exemption from the *Legislative Instruments Act 2003* is neither sought nor required.

1.141 The *adjusted reference price* for a class of units that has a designated limit is the product of the reference price for the class of units with the designated limit percentage for that class of units. [Item 76, subsection 196A(11), CE Act]

Basic rule for calculating the per-tonne carbon price equivalent

1.142 The per-tonne carbon price equivalent, for a designated six month period, is defined by the equation below, and worked out to two decimal places (rounding up if the third decimal place is 5 or more). [Item 76, subsection 196A(2), CE Act]

$$\frac{\text{total of adjusted reference prices}}{\left[\left(1 - \frac{\text{total of designated limit percentages}}{\text{average carbon unit}} \right) \times \text{auction price} \right]}$$

where:

- the *total of adjusted reference prices* is the sum of the adjusted reference prices for that six month period – it is in effect the weighted sum of the reference prices, weighted by the corresponding designated limit percentages;
- the *total of the designated limit percentages* is the sum of the designated limit percentages for classes of eligible emissions units that are subject to designated limit percentages in the financial year in which the designated six month period ends; and
- the *average carbon unit auction price* is the average carbon unit auction price for the six month period that is specified in section 196 of the CE Act.

1.143 The basic rule for calculating the per-tonne carbon price equivalent is modified in certain circumstances that are outlined below. *[Item 76, subsection 196A(3), CE Act]*

Modifications to the basic rule for calculating the per-tonne carbon price equivalent

1.144 The calculation of a per-tonne carbon price equivalent will take into account the possibility that one or more reference prices are higher than the average auction price, and the possibility that no legislative instruments are in force for determining reference prices.

1.145 If the number worked out under the basic rule for calculating the per-tonne carbon price equivalent is greater than the average carbon unit auction price, the per-tonne carbon price equivalent is equal to the average carbon unit auction price. *[Item 76, subsection 196A(4), CE Act]*

1.146 If there is no legislative instrument in force to specify the method used by the Regulator to declare a reference price, the per-tonne carbon price equivalent is equal to the average carbon unit auction price. *[Item 76, subsection 196A(4), CE Act]*

1.147 If there is a reference price for a class of eligible international emissions units that is greater than the average carbon unit auction price, then the basic rule for calculating the per-tonne carbon price equivalent is modified in the following way. The adjusted reference price for that class is disregarded when calculating the *total of adjusted reference prices*; and the designated limit percentage for that class is disregarded when calculating the *total of designated limit percentages*. *[Item 76, subsection 196A(12), CE Act]* This is equivalent to setting the reference price for that class to be the average carbon unit auction price. This provision reflects that if the price for a class of eligible international emissions units is higher than the price of carbon units, they are unlikely to be used.

1.148 The basic rule is also modified in the event that new designated limits are made, for which the limit applies to a class of units that is contained within another class of units for which a different designated limit applies.

1.149 If there is a class of eligible international emissions units subject to a designated limit for a particular financial year; and there is a class of eligible international emissions units that is included in the original class and that is subject to a smaller designated limit percentage, then the designated limit percentage for that class is disregarded when calculating the *total of designated limit percentages*. [Item 76, subsection 196A(13), CE Act]

1.150 If a class of eligible international emissions units is subject to a designated limit for a particular financial year, and there is a class of eligible international emissions units that is included in the original class and that is subject to a smaller designated limit percentage, and the reference price for that class is *greater than or equal to* the reference price for the original class, the adjusted reference price for the class subject to the smaller designated limit percentage is disregarded when calculating the *total of adjusted reference prices*. [Item 76, subsection 196A(14), CE Act] This reflects that in this circumstance, liable entities would prefer not to purchase units that are in the smaller class, because they would be more expensive.

Example 1.10 Example where the reference price is disregarded

There are international emissions units called *Reforestation units* with a designated limit of 5 per cent. Units in this class are also *International land sector units*, which have a designated limit of 12.5 per cent, the reference price for *Reforestation units* is \$15, the reference price for *International land sector units* is \$10 and the average carbon unit auction price is \$20.

In this situation, subsection 196A(13) of the CE Act specifies that the designated limit of 5 per cent for *Reforestation units* is disregarded when calculating the total of designated limit percentages, so the total of designated limit percentages is 12.5 per cent. Subsection 196A(14) of the CE Act specifies that because the price of *Reforestation units* is greater than the price of *International land sector units*, the adjusted reference price for *Reforestation units* is disregarded when calculating the total of adjusted reference prices.

If there are no other designated limits, the total of adjusted reference prices will be equal to \$1.25 ($\$1.25 = \$10 \times 12.5\%$); the total of designated limit percentages will be equal to 12.5 per cent; and the per-tonne carbon price equivalent will therefore be equal to $\$1.25 + (100\% - 12.5\%) \times \20 , which is \$18.75.

1.151 If a class of eligible international emissions units is subject to a designated limit for a particular financial year, and there are one or more classes of eligible international emissions units subject to a smaller designated limit, which are contained in the original class, and for which

the reference prices are less than the reference price for the original class, the adjusted reference price for the original class would be given by: [Item 76, subsection 196A(15), CE Act]

$$\text{Reference price for principal class} \times \left(\begin{array}{l} \text{Designated limit} \\ \text{percentage for} \\ \text{principal class} \end{array} - \begin{array}{l} \text{Total of designated} \\ \text{limit percentages} \\ \text{for secondary classes} \end{array} \right)$$

Where:

- the *reference price for principal class* refers to the reference price of the original class of eligible international emissions units for the designated six month period;
- the *designated limit percentage for principal class* is the designated limit percentage for the original class; of eligible international emissions units; and
- the *total of designated limit percentages for secondary classes* is the sum of the designated limit percentages for each class contained in the original class that has a reference price that is less than the reference price for the principal class.

Example 1.11 Calculation of per-tonne carbon price equivalent

There are international emissions units called *Reforestation units*, which have a designated limit of 5 per cent; and there are international emissions units called *Afforestation units*, which have a designated limit of 2.5 per cent. Units in these classes are also *International land sector units*, which have a designated limit of 12.5 per cent and that the reference price for *Reforestation units* is \$8; the reference price for *Afforestation units* is \$5; the reference price for *International land sector units* is \$10; and the average carbon unit auction price is \$20. There are no other designated limits.

In this situation, subsection 196A(13) of the CE Act specifies that the designated limit of 5 per cent for *Reforestation units* is disregarded when calculating the total of designated limit percentages; and the designated limit of 2.5 per cent for *Afforestation units* is disregarded when calculating the total of designated limit percentages. The total of designated limit percentages is 12.5 per cent.

Subsection 196A(15) of the CE Act specifies that because the price of *Afforestation units* and *Reforestation units* is less than the price of *International land sector units*, the adjusted reference price for *International land sector units* is $\$10 \times (12.5\% - (5\% + 2.5\%))$, which is \$0.50. The adjusted reference price for *Afforestation units* is $\$0.125 (\$5 \times 2.5\%)$ and the adjusted reference price for *Reforestation units* is $\$0.40 (\$8 \times 5\%)$. The total of adjusted reference prices will be equal to \$1.025.

The per-tonne carbon price equivalent will therefore be equal to $\$1.025 + (100\% - 12.5\%) \times \20 , which is \$18.53, due to rounding.

How classes of eligible international units are defined

1.152 Eligible international emissions units will be divided into classes for the purposes for calculating the per-tonne carbon price equivalent. Listed units, as defined under 123A(10) of the CE Act, will form one class. *[Item 76, section 196A (17), CE Act]* Other classes will be established by regulations made for the purposes of subsection 123A(1) of the CE Act. *[Item 76, section 196A (18), CE Act]*

How the per-tonne carbon price equivalent is used

1.153 The per-tonne carbon price equivalent applied to synthetic greenhouse gases will be the most recently published (under section 196A of the CE Act) before the start of the quarter in which the manufacture or import of the synthetic greenhouse gas occurs. This will ensure that the per-tonne carbon price equivalent applied to synthetic greenhouse gases is consistent with compliance costs of liable entities under the carbon pricing mechanism with linking arrangements. *[Items 1-4, section(2A), (3A), and (4A), SGG (Import Levy) Act] [Items 1-3, section (2A), (3A), SGG (Manufacture Levy) Act]*

1.154 The relevant fuel tax legislation is amended to ensure that its imposition of the equivalent carbon price is consistent with compliance costs of liable entities under the carbon pricing mechanism with linking arrangements. *[Items 1-4, section 3, 6FA(3), 6FB(3), Excise Tariff Act] [Item 83, subsections 43-8(2)(a) and 43-8(2)(b), Fuel Tax Act].*

Chapter 2 Other amendments

Outline of chapter

2.1 Chapter 2 explains the other technical amendments to the CE Act and the NGER Act, including:

- amendments to the CE Act concerning the streamlining of the processes relating to the advance auctions of carbon units and relinquishment of carbon units;
- technical amendments to the NGER Act to provide the Minister with the power to determine methods to measure amounts of designated fuels and methods to adjust liabilities relating to potential greenhouse gas emissions;
- amendments to the CE Act permitting regulations to be made to determine how specific circumstances relating to the supply and use of natural gas are treated under CE Act; and
- a minor amendment to the provisions of the CE Act concerning the eligibility test for the Opt-in Scheme to expressly include GST joint venture operators as well as GST joint venture participants.

Context of amendments

Advance auctions of carbon units

2.2 Under Part 4 of the CE Act, the Regulator may auction carbon units before the first year for which they can be surrendered (that is, their vintage year). These auctions are known as ‘advance auctions’.

2.3 The amount of carbon units that can be advance auctioned is currently limited to a maximum of 15 million carbon units for each vintage per year, where the auction occurs more than 6 months before the beginning of the relevant vintage year and there is no carbon pollution cap number for that year. This limit prevents the advance auctioning of a large number of units which could reduce the Government’s capacity to set future carbon pollution cap levels.

2.4 This limit is increased to 40 million units for carbon units whose vintage is 2015-16 that are auctioned in 2013-14; and 20 million units for other advance auctions where there is no carbon pollution cap number for that year. The new limit will ensure that liable entities have access to sufficient quantities of carbon units to enable risk management through

forward contracting. It avoids the risk auctions are delayed because of the disallowance period applicable to pollution caps.

Changes to the treatment of relinquished carbon units

2.5 Parts 7, 10 and 11 of the CE Act provide that carbon units may be relinquished voluntarily, or as a result of a court order to relinquish units. The rules concerning relinquishment are to be streamlined, so that the current requirement that relinquished units be transferred to a 'Commonwealth relinquished units account' is removed and those units will instead be cancelled, and a new unit issued by the Regulator in their place.

Amendments relating to measuring and adjusting amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions

2.6 Section 7B of the NGER Act defines potential greenhouse gas emissions embodied in an amount of designated fuel, including natural gas and taxable fuel.¹⁰ 'Potential greenhouse gas emissions' are used to assign liability for emissions, before they are produced, relating to natural gas and fuels covered under the carbon price opt-in scheme.

2.7 Section 7B of the NGER Act gives the Minister power to determine methods for ascertaining the potential greenhouse gas emissions embodied in an amount of designated fuel. Subsection 10(3) of the NGER Act gives the Minister power to determine methods to measure amounts of emissions, energy consumption and energy production.

2.8 The amendments enable the Minister to adjust the liability resulting from potential greenhouse gas emissions embodied in an amount of designated fuel to account for discrepancies in the calculation of liability in the previous eligible financial year.

Changes to the treatment of some natural gas supply and use arrangements

2.9 The natural gas industry involves a complex array of supply arrangements which can change over time. Currently, the natural gas provisions cater for the vast majority of supply arrangements in use. In order for the carbon pricing mechanism to maintain effective and complete coverage of natural gas, a power will be included in the CE Act to allow regulations to be made to provide for coverage of alternative natural gas arrangements. This will help maintain competitive neutrality by supporting the complete coverage of natural gas under the carbon pricing mechanism over time.

¹⁰ Taxable fuel has the same meaning as in the *Clean Energy Act 2011*.

2.10 Part 3, Division 2 of the CE Act provides for liability for natural gas emissions to apply to a person who is a liable entity for a facility where gas is used. Part 3 Division 3 of the CE Act provides for liability to arise for a natural gas supplier when they supply natural gas to a person and the natural gas is withdrawn from a natural gas supply pipeline for use. It also establishes the Obligation Transfer Number (OTN) to apportion liability between suppliers and end users.

2.11 Where the existing provisions in Part 3, Division 2 or Part 3 Division 3 of the CE Act do not apply, regulations may set out specific circumstances in which liability would arise for a supplier or end user of natural gas. ‘Own-use notifications’ and ‘follow-up notifications’ are mechanisms intended to enable suppliers to identify when the gas they supply is applied to a person’s use. This will allow suppliers to determine where liability applies. Regulations may modify the definition of supply for the purpose of the new provisions and determine when supply occurs to facilitate their application.

2.12 These provisions are intended to apply to specific commercial arrangements in the natural gas sector. In general, they are not intended to cover natural gas used at large gas consuming facilities as liability would ultimately arise from the direct emitter provisions. Furthermore, the amendments are not intended to apply to small end users, such as households, as they obtain gas through generic supply arrangements which give rise to liability for a supplier under section 33 of the CE Act.

Changes to the Opt-in Scheme eligibility test

2.13 Under the Opt-in Scheme, a designated opt-in person must pass the eligibility test in respect of each acquisition, manufacture or import of fuel in order to be liable for the potential emissions embodied in the fuel. The eligibility test for GST joint venture participants is extended to also include GST joint venture operators.

Summary of new law

2.14 The limit on advance auctioned units under section 101 of the CE Act is increased to 40 million units for carbon units whose vintage is 2015-16 that are auctioned in 2013-14; and 20 million units for other advance auctions where there is no carbon pollution cap number for that year.

2.15 The Regulator must not auction units more than three years in advance of their vintage.

2.16 Relinquished carbon units will be cancelled and a new carbon unit will be auctioned in its place.

2.17 The Minister, from 1 July 2013, may adjust the liability resulting from potential greenhouse gas emissions embodied in an amount of designated fuel. These adjustments are designed to account for discrepancies in the calculation of liability in the previous eligible financial year which are the result of complexities in the market arrangements for designated fuels.

2.18 The Government may set out, through regulations, the specific circumstance in which liability would arise for a supplier or end user of natural gas where the use of the natural gas is not already covered by Part 3, Division 2 or Part 3 Division 3 of the CE Act.

Comparison of key features of new law and current law

<i>New Law</i>	<i>Current Law</i>
Advance auctions of carbon units	
<p>No more than 20 million carbon units will be auctioned in a financial year before their vintage year if no carbon pollution cap has been set for that vintage year.</p> <p>However, in 2013-14, up to 40 million carbon units of the 2015-16 vintage can be auctioned if no carbon pollution cap has been set for 2015-16.</p> <p>The Regulator may only auction units of a particular vintage, if the year in which the auction occurs is within 36 months of the relevant vintage year</p>	<p>No more than 15 million carbon units are to be auctioned in a financial year before their vintage year if no carbon pollution cap has been set for that vintage year.</p>
Changes to the treatment of relinquished carbon units	
<p>If a carbon unit is relinquished, it is cancelled. If its vintage year is a flexible charge year, a new carbon unit will be issued by the Regulator.</p>	<p>If a relinquished carbon unit has a vintage year that is a flexible charge year, then it is transferred to the Commonwealth relinquished units account. There would be secondary market auctions of relinquished carbon units.</p>
Amendments to the NGER Act	
<p>The Minister's determination making power is extended to include methods for measuring fuels for the purposes of ascertaining potential greenhouse gas emissions. In addition, the Minister may determine a method for adjusting a person's PEN relating to potential greenhouse gas emissions.</p>	<p>The Minister may determine, by legislative instrument, methods to measure and ascertain greenhouse gas emissions, energy consumption and production and emission reductions, removals and offsets.</p>
<p>An executive officer of the corporation</p>	<p>Applications for registration and reporting</p>

<i>New Law</i>	<i>Current Law</i>
making the application may sign-off on applications for registration and reporting transfer certificates.	transfer certificates must have approval from the chief executive officer of the corporation making the application.
Changes to the treatment of some natural gas supply and use arrangements gas	
Regulations may set out the circumstances in which liability applies to a natural gas end user or natural gas supplier where natural gas is used and the use is not covered by the existing direct emitter or natural gas supply provisions.	Liability arises under the natural gas supply provisions where natural gas is supplied and it is withdrawn from a natural gas supply pipeline for use. Alternatively it can arise where it counts towards a facility's direct emissions. Liability can apply to a natural gas supplier, a person who is a liable entity for a large gas consuming facility or a person who quotes the person's OTN for natural gas supplied to them.
The Opt-in Scheme eligibility test	
The eligibility test that must be passed for a designated opt-in person to be liable for the potential emissions embodied in an amount of fuel includes both GST joint venture participants and GST joint venture operators.	The eligibility test that must be passed for a designated opt-in person to be liable for the potential emissions embodied in an amount of fuel is limited to GST joint venture participants.

Detailed explanation of new law

Preliminaries

2.19 Schedule 1, Parts 1 and 3, which make general amendments to the ANREU Act and the CE Act, will commence on the day after the bill receives the Royal Assent. *[Clause 2, Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012]*

2.20 Schedule 1, Part 2, of the bill which makes amendments relating to fuel to the CE Act and the NGER Act, will commence on 1 July 2013. The amendments to the NGER Act made by this Part apply to reports relating to the 2012-13 financial year and all subsequent years. *[Clause 2, Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012]*

Advance auctions of carbon units

2.21 The limit on advance auctioned units under section 101 of the CE Act is increased so that the Regulator can auction: *[Item 50, section 101, CE Act]* *[Item 51, section 101, CE Act]* *[Item 52, section 101, CE Act]*

- up to 40 million units of the 2015-16 vintage in 2013-14, if no carbon pollution cap is in place for 2015-16; and

- up to 20 million carbon units of a particular vintage before their vintage year, if no carbon pollution cap is in place for that vintage year.

2.22 The Regulator may not auction units of a particular vintage, unless the year in which the auction occurs is within 36 months of the relevant vintage year. *[Item 53, section 101, CE Act]*

Changes to the treatment of relinquished carbon units

2.23 As relinquished carbon units will be cancelled rather than auctioned, section 112 of the CE Act, which provides for auctions of relinquished carbon units, is repealed. *[Item 60, section 112, CE Act]* References to section 112 of the CE Act are no longer required and are removed from section 113(2) and subsection 102(3) of the CE Act. *[Item 57, section 102, CE Act]* *[Items 61-64, section 113, CE Act]* As it is no longer required, there will no longer be a Commonwealth relinquished units account. *[Item 31, section 5, CE Act]*

2.24 All relinquished units will be cancelled. Relinquished carbon units with a flexible charge vintage year will be cancelled and a new carbon unit will be subsequently auctioned in its place. *[Item 77, section 210, CE Act]*

2.25 To ensure that carbon unit supply is not affected by changes to the treatment of relinquished units, section 102 of the CE Act is amended so that the total number of carbon units issued by the Regulator takes into account the number of relinquished units. *[Item 54, section 102, CE Act]* *[Item 55, section 102, CE Act]* *[Item 56, section 102, CE Act]*

2.26 In particular, the number of carbon units with a particular vintage year that are issued by the Regulator will be equal to the total of: *[Item 54, section 102, CE Act]* *[Item 55, section 102, CE Act]* *[Item 56, section 102, CE Act]*

- the carbon pollution cap number for that year;
- the total number of carbon units with the corresponding vintage year that were relinquished before the start of the relevant vintage year; and
- the total number of carbon units with the relevant vintage year or an earlier vintage year that were relinquished during the relevant vintage year.

2.27 This approach ensures that if a carbon unit is relinquished, a new carbon unit will be issued, even if there will be no further auctions corresponding to the vintage year of that carbon unit.

Amendments relating to measuring amounts of designated fuels for the purpose of ascertaining potential greenhouse gas emissions

2.28 Complex commercial arrangements in markets for designated fuels can lead to difficulties in measuring amounts of fuel and therefore

ascertaining potential greenhouse gas emissions embodied in an amount of fuel. Specifically:

- In the natural gas market there are time delays associated with the incorporation of natural gas supply meter readings into financial accounts. This delay means that reconciliation of accounts and meters are often required. These reconciliations may occur sometime after supply takes place.
- A key component of determining opt-in eligibility for taxable fuels is the entity's entitlement to a fuel tax credit for fuel acquisition, manufacture or import. Entitlement to a fuel tax credit is affected by the sector in which the fuel is used. This creates complexities where the fuel is not used (or the type of use is not known) until the following eligible financial year.

2.29 To account for these commercial complexities, the Minister's power to determine, by disallowable legislative instrument, the methods for measuring amounts of emissions and energy is expanded to include the capacity to determine methods for measuring fuels for the purposes of ascertaining potential greenhouse gas emissions. Additionally, the Minister has the power to determine adjustments to a person's 'provisional emissions number' (PEN) relating to potential greenhouse gas emissions. The purpose of the original determination-making power, and these amendments is to ensure the transparency, comparability, accuracy and completeness of reporting under the National Greenhouse and Energy Reporting System.

2.30 Under section 10 of the NGER Act, the Minister may determine methods, or criteria for methods, for measuring amounts of designated fuel for the purposes of ascertaining potential greenhouse gas emissions. This includes the capacity to determine methods for measuring natural gas, taxable fuel, liquefied natural gas, or liquefied petroleum gas. This means that the Minister can include measurement methods in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* for natural gas and opt-in scheme fuels to quantify potential greenhouse gas emissions. The Minister may also determine that different measurement criteria apply under different circumstances. In keeping with existing determinations under section 10 of the NGER Act, this determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument. [Item 92, section 10, NGER Act] [Item 93, subsection 10(5), NGER Act]

2.31 The Minister may also determine adjustments to a person's PEN, where that PEN results from a provision under Divisions 3 or 3A of Part 3 of the CE Act or in the Opt-in Scheme.¹¹

¹¹ Note that the Regulations establishing the Opt-in Scheme under Part 3, Division 7 of the CE Act are yet to be made.

2.32 Where a person's PEN in the previous eligible financial year is found to exceed the actual PEN for that year, if for example due to full activity data not being available, the PEN in the current eligible financial year may be reduced to reflect the previous year's discrepancy. Reductions to a person's PEN can only occur where conditions specified in the determination are satisfied and where the person's PEN reported in the previous eligible financial year was less than the actual PEN resulting from the actual amount of designated fuel supplied, acquired, manufactured or imported in that year. [Item 93, subsection 10(6), NGER Act]

2.33 Similarly, where a person's PEN in the previous eligible financial year is found to be less than the actual PEN for that year, if for example due to full activity data not being available, the PEN in the current eligible financial year may be increased to reflect the previous year's discrepancy. Increases to a person's PEN can only occur where conditions specified in the determination are satisfied and where the person's PEN reported in the previous eligible financial year was greater than the actual PEN resulting from the actual amount of designated fuel supplied, acquired, manufactured or imported in that year. [Item 93, subsection 10(8), NGER Act]

2.34 The power to adjust PENs is limited as for both positive and negative adjustments to a person's PEN; the adjustment cannot be more than the amount of the discrepancy in the previous eligible financial year. The intent is to allow persons in situations that satisfy the conditions specified in the determination to reconcile fuel amounts between eligible financial years and not be subject to a shortfall charge. [Item 93, subsections 10(7)-10(9), NGER Act]

Example 2.1 Indicative example of how a PEN may be adjusted

In 2013-14 a natural gas supplier (IVY Corp) reported its PEN to be 50,000, based on the methods included in the Minister's Determination for measuring the amount of natural gas supplied. In 2014-15 IVY Corp ascertains that its 2013-14 PEN is 55,000 based on the amount of natural gas actually supplied. IVY Corp calculates its 2014-15 unadjusted PEN to be 60,000. Once adjusted, IVY Corp's 2014-15 PEN is 65,000, noting that the details regarding adjustment will be set out in the Minister's Determination.

2.35 To facilitate these adjustments, the definition of 'provisional emission number' has been amended in section 5 of the CE Act to refer to the adjustment provisions included in the amended NGER Act. [Item 84, section 5, CE Act]

2.36 'Liquefied natural gas' and 'liquefied petroleum gas' are defined to have the meanings given in Regulation 1.03 of the *National Greenhouse and Energy Reporting Regulations 2008*.¹² 'Taxable fuel' is defined in

¹² Liquefied petroleum gas is, in turn, defined by reference to subsection 3 (1) of the *Excise Tariff Act 1921*.

section 5 of the CE Act to have the same meaning as in section 110-5 of the *Fuel Tax Act 2006*. The terms ‘natural gas supplier’, ‘Opt-in scheme’, ‘OTN’ and ‘supply’ are all defined in section 5 of the CE Act. [Item 85, section 7, NGER Act] [Item 86, section 7, NGER Act] [Item 87, section 7, NGER Act] [Item 88, section 7, NGER Act] [Item 89, section 7, NGER Act] [Item 90, section 7, NGER Act] [Item 91, section 7, NGER Act]

2.37 The amendments to sections 7 and 10 of the NGER Act apply from 1 July 2013. Therefore, no adjustments are possible for PENs, preliminary emission numbers or interim emission numbers that relate to the 2012-13 eligible financial year. [Item 94, timing of application of amendments, NGER Act]

Changes to application signoff under the NGER Act

2.38 Currently, applications for registration and reporting transfer certificates must have approval from the chief executive officer of the corporation making the application. This requirement is altered to provide that approval from an executive officer of the corporation is sufficient for the purposes of registration and reporting transfers. An ‘executive officer’ is defined in section 7 of the NGER Act to include a broader category of senior officers of a body corporate, including directors, the chief financial officer and the secretary of a body corporate. Allowing an executive officer to sign-off on applications for registration and reporting transfers, streamlines the application process and aligns corporate sign off with other parts of the National Greenhouse and Energy Reporting System. [Item 83A, subsection 12(3), NGER Act] [Item 83B, subsection 12K(5)(d)(iii), NGER Act] [Section 2, Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012]

Changes to the treatment of some natural gas supply and use arrangements

2.39 Currently, liability arises under Part 3 Division 3 of the CE Act, where natural gas is supplied and it is withdrawn from a natural gas supply pipeline for use. Alternatively liability can arise where emissions from the use of natural gas count towards a facility’s direct emissions under Part 3, Division 2 of the CE Act. Liability can apply to a natural gas supplier, a person who is a liable entity for a large gas consuming facility or a person who quotes the person’s OTN for natural gas supplied to them.

2.40 Currently, there is the potential for certain commercial arrangements to lead to situations which may not be captured by the current provisions of the CE Act concerning emissions embodied in natural gas. Regulations may set out the circumstances in which liability applies to a supplier or end user in specific circumstances, enabling the Government to maintain competitive neutrality across the industry by supporting the complete coverage of natural gas under the carbon pricing mechanism. The specific provisions would be consistent with the current natural gas provisions in that liability would arise where the use of the natural gas results in greenhouse gas emissions. These specific regulations would

reflect the commercial arrangements in place from time to time, ensuring that the maximum amount of natural gas is covered by the carbon pricing mechanism, consistent with the principle that all emissions embodied in natural gas should be covered, and opportunities to develop new commercial arrangements to avoid liability are minimised. Please note that the amendments concerning the treatment of natural gas do not take effect unless necessary regulations are made and the Government would consult on the development of any such regulations prior to their being recommended to the Governor-General-in-Council.

2.41 New Sections 35A and 35B of the CE Act allow the Government, through a regulation, to apply liability to a natural gas supplier or end user respectively. In making any necessary regulations, consideration would be given to the administrative efficiency of placing the liability on either the supplier or end user. *[Item 48, section 35A, CE Act] [Item 48, section 35B, CE Act]* The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

2.42 Where natural gas is supplied and no liability has arisen from that or any previous supply of the natural gas under sections 33 and 35 of the CE Act, and there is a reasonable expectation that no liability will arise from the use of natural gas as a result of Part 3, Division 2 of the CE Act, liability may be placed on the natural gas supplier under new section 35A of the CE Act. Regulations may specify an eligible financial year or years in which these arrangements would apply. To provide parties with sufficient notice regarding these arrangements, the specified eligible financial year must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*. *[Item 48, section 35A, CE Act]*. Liability would apply to a natural gas supplier if:

- it supplies natural gas;
- no liability has arisen as a result of sections 33 or 35 of the CE Act;
- the supplier does not reasonably expect use of the natural gas will be covered by the direct emitter provisions in Part 3, Division 2 of the CE Act at the time the gas is supplied; and
- the conditions in the regulations are satisfied.

2.43 In certain circumstances, natural gas suppliers may not have sufficient information to determine the intended use of the gas supplied. For example, a supplier may not be reasonably expected to know the intended use of natural gas supplied to a person at an inlet flange of a natural gas supply pipeline where that person arranges their own transport of the gas. So that a supplier may form a reasonable expectation that the natural gas is supplied for use and know the amount supplied for use, an 'own-use notification' and a 'follow-up notification' from the end user could be required as conditions in the regulations. Further information

about own-use notifications and follow-up notifications is set out in paragraphs 2.44 to 2.48 below. *[Item 48, subsection 35A(1)(d), CE Act]* The definition of ‘accept’ in section 5 of the CE Act has been updated to reflect these changes to the treatment of natural gas suppliers. *[Item 27A, section 5, CE Act]*

2.44 If an own-use notification were to apply, the supplier could have a preliminary emissions number for the embodied emissions in the whole amount of natural gas supplied. The sum of preliminary emissions numbers for a supplier is a PEN, but this can be reduced by netted out numbers. A supplier may have a netted-out number where a follow-up notification has been provided by the end user to its supplier to report the amount of natural gas applied to own use. The remainder of the natural gas supplied, not subject to the follow-up notification, would be the netted-out number. *[Item 48, section 35A, CE Act]*

2.45 The Government may make regulations that allow or require a person to give an own-use notification to their natural gas supplier. This could allow or require the person to notify their supplier and therefore have liability for the natural gas rest with the supplier. This facilitates the application of liability to a supplier where, in the absence of such a notification, they could not readily form an expectation that the natural gas is supplied for use or know the portion of a supply which is for the person’s use. *[Item 35, section 5, CE Act]* *[Item 49, sections 64A-64C, CE Act]*

2.46 Regulations may be made that allow or require a supplier to accept an own-use notification from their customer. This could allow or require the supplier to accept the notification of own use and therefore have liability for the natural gas rest with the supplier. Where conditions in the regulations are satisfied, this could allow the supplier to effectively reject an own-use notification. *[Item 35, section 5, CE Act]* *[Item 49, sections 64D-64E, CE Act]*

2.47 A person must not provide an own-use notification if they are not permitted or required to do so under section 64A or 64B of the CE Act. If a person provides an own-use notification where they are not permitted or required to do so, then the own-use notification is taken not to have been given. This limitation is provided to avoid the risk of misuse of an own-use notification, where the misuse could lead to avoidance of liability. *[Item 49, section 64F, CE Act]*

2.48 To ensure that such misuse does not occur, a person is also liable to pay a civil penalty if a court finds that the person has provided an own-use notification and they are not permitted or required to do so by the CE Act (see paragraphs 2.56 to 2.58 below). *[Item 49, section 64F(3), CE Act]*

2.49 Regulations may be made that allow a person to give a follow-up notification to their natural gas supplier in relation to a supply of natural gas which is subject to an own-use notification. This could allow the person to inform their supplier of the amount of natural gas taken for own use. A

supplier would not have the ability to not accept a follow-up notification. [Item 33B, section 5, CE Act] [Item 49, sections 64G-64H, CE Act]

2.50 A person must not provide a follow-up notification if they are not permitted or required to do so under section 64G of the CE Act. If a person provides a follow-up notification where they are not permitted or required to do so, the follow-up notification is taken not to have been given. This limitation is provided to avoid the risk of misuse of a follow-up notification, where the misuse could lead to avoidance of liability. [Item 49, section 64J, CE Act] To ensure that such misuse does not occur, a person is also liable to pay a civil penalty if a court finds that the person has provided a 'follow-up' notification and they are not permitted or required to do so by the CE Act (see paragraphs 2.56 to 2.58 below). [Item 49, section 64J(3), CE Act]

2.51 Where a supplier has a liability under section 35A and an own-use notification is provided in relation to an amount of natural gas, or the conditions in the regulations are satisfied, the emissions attributable to the gas do not count under sections 20 to 25 of the CE Act. This ensures liability does not arise for both the supplier and user of the gas. However, the amount of natural gas associated with the own-use notification does count for the purposes of determining whether a facility meets relevant thresholds for liability. [Item 42, section 20, CE Act] [Item 43, section 21, CE Act] [Item 44, section 22, CE Act] [Item 45, section 23, CE Act] [Item 46, section 24, CE Act] [Item 47, section 25, CE Act]

2.52 Section 5 of the CE Act defines supply as supply (including re-supply) by way of sale, exchange or gift. Regulations can determine whether there is or is not a supply of natural gas for the purposes of new section 35A of the CE Act. It allows an act or circumstance, which might be combination of acts and conditions, to constitute a supply. New section 35A of the CE Act will generally operate consistently with the commercial arrangements that industry would consider constitutes a supply natural gas. For example, the transfer of title from an owner or operators of natural gas supply pipelines to an end user for the purpose of providing pipeline service would not generally be considered a supply. In such circumstances another entity such as a producer or retailer of natural gas would typically be considered to be making a supply to the end user. [Item 37, section 5, CE Act] [Item 38, section 5, CE Act] [Item 39, section 5A, CE Act]

2.53 To provide sufficient notice of any changed arrangements to affected liable entities, the Government may make regulations which specify an eligible financial year or years in which these arrangements would apply. The specified eligible financial year must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*. [Item 37, section 5, CE Act] [Item 38, section 5, CE Act] [Item 39, section 5A, CE Act] The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

2.54 Section 6 of the CE Act specifies when supply of natural gas occurs. Currently regulations made for the purpose of the existing definition of supply provide for supply to occur in reference to the time of withdrawal. As new section 5A of the CE Act provides for modifying the definition of supply for the purposes of new section 35A of the CE Act, and as the concept of withdrawal might not apply in 35A, the regulations will need to determine when a supply of natural gas occurs in relation to section 35A.

2.55 To provide sufficient notice of any changed arrangements to affected liable entities, the Government may make regulations which specify an eligible financial year or years in which these arrangements would apply. The specified eligible financial year must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*. [Item 40, section 6, CE Act] [Item 41, section 6, CE Act] The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

2.56 Where no liability has arisen from the use of natural gas as a result of Part 3, Division 2 or sections 33 and 35 or new section 35A of the CE Act, liability may be placed on the natural gas end user under new section 35B of the CE Act. Liability would apply to a person where natural gas is applied to a person's own use if: [Item 48, section 35B, CE Act]

- no liability has arisen as a result of sections 33 or 35 or new section 35A of the CE Act;
- use of the natural gas will not be covered by the direct emitter provisions in Part 3, Division 2 of the CE Act; and
- the conditions in the regulations are satisfied.

2.57 To provide sufficient notice of any changed arrangements to affected liable entities, the Government may make regulations which specify an eligible financial year or years in which these arrangements would apply. The specified eligible financial year must be later than the financial year in which the regulations are registered under the *Legislative Instruments Act 2003*. [Item 48, section 35B, CE Act] The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

Civil penalties and infringement notices

2.58 New sections 64B, 64D, 64E, 64F and 64J of the CE Act are covered by existing civil penalty provisions in Part 17 of the CE Act. Subsection 252(4) of the CE Act provides that the pecuniary penalty payable by a body corporate must not exceed 10,000 penalty units (currently \$1.1 million) for each contravention of a civil penalty provision. Subsection 252(6) of the CE Act provides that the pecuniary penalty payable by a person other than a body corporate must not exceed 2,000 penalty units (currently \$220,000) for each contravention. The

maximum levels of civil penalties reflect the seriousness of the contraventions and represent clear and strong disincentives for non-compliance. Any civil penalties provided for in the CE Act are maximums and any penalty that may be imposed by a court will be determined according to the circumstances of the particular case. The integrity of the carbon pricing mechanism could be compromised by liable entities or other market participants acting in a manner that is designed to avoid liability or mislead the Regulator by misusing the natural gas notification provisions. For further information about the application of civil penalties under the CE Act see paragraphs 7.73 to 7.94 of the Revised Explanatory Memorandum to the Clean Energy Bill 2011. *[Item 49, new section 64B(3), CE Act] [Item 49, new section 64D(3), CE Act] [Item 49, new section 64E(3), CE Act] [Item 49, new section 64F(3), CE Act] [Item 49, new section 64J(3), CE Act]*

2.59 As a civil penalty applies to misusing the natural gas notification provisions, a person may also be the subject of an infringement notice under Part 18 of the CE Act. The applicable infringement notice penalty would be 2,000 penalty units (currently \$220,000) for a corporation or 400 penalty units (currently \$44,000) for any other person. For further information about the application of infringement notices under the CE Act see paragraphs 7.58 to 7.72 of the Revised Explanatory Memorandum to the Clean Energy Bill 2011.

2.60 In a proceeding for a civil penalty order against a person for misusing the natural gas notification provisions, it is not necessary to prove that person's state of mind, including the person's intention, knowledge, recklessness, negligence or any other state of mind under section 262 of the CE Act. Implicit in this is a reasonable expectation that those subject to the provision will take steps to prevent inadvertent contraventions. *[Item 78, subsections 262(1)(ma)-262(1)(me), CE Act]*

Changes to the Opt-in Scheme eligibility test

2.61 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.¹³

2.62 The eligibility test that must be passed by a designated opt-in person for that person to be liable for the potential emissions embodied in an amount of fuel makes reference to three classes of persons: members of

¹³ A description of the Opt-in Scheme is set out in paragraphs 1.216 to 1.232 of the Revised Explanatory Memorandum to the Clean Energy Bill 2011 and paragraphs 1.24 to 1.43 of the

a GST group, participants in a GST joint venture, and persons that are entitled to fuel tax credits for the fuel.

2.63 To provide consistency and clarity for all GST joint ventures, the eligibility test for the Opt-in Scheme is amended to include an explicit reference to GST joint venture operators as well as GST joint venture participants. *[Item 49A, section 92A, CE Act] [Item 49B, section 92A, CE Act] [Item 49C, section 92A, CE Act] [Item 49D, section 92A, CE Act]*

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