

Issue

The Government reintroduced its package of Carbon Pollution Reduction Scheme legislation in Federal Parliament on 22 October 2009. The package comprises the CPRS Bill 2009 and a set of subsidiary Bills which are required to make consequential amendments to other legislation.

Purpose of the Legislation

The CPRS Bill sets up an emission trading scheme (ETS) as part of a framework designed to reduce pollution caused by emissions of carbon dioxide (CO₂) and other greenhouse gases, collectively known as GHG emissions and measured in parts per million of carbon dioxide equivalent¹ (or ppm CO₂e). The ETS provides economic incentives for achieving reductions in GHGs.

The objectives of the Legislation

The objectives of the legislation are:

- to give effect to Australia's obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to that Convention.
- to support the development of an effective global response to climate change, and
- to take action to enable the reduction of Australia's GHG emissions to meet its emissions reduction targets.

Major Elements of the CPRS Bill

• Emissions-intensive trade-exposed industries

According to the government, the CPRS bill provides for a program to support businesses producing internationally traded goods which face the most significant exposure to the carbon price. The government is proposing assistance in the form of administrative allocations of permits which will be provided to new and existing firms engaged in emissions-intensive trade-exposed – so called EITE – activities. The government is proposing that from the first year of the CPRS, highly emissions-intensive activities will have an effective rate of assistance of almost 95 per cent, and less emissions-intensive activities will have an effective rate of assistance of 66 per cent

Eligibility of activities for EITE assistance has not yet been assessed. The Government is proposing to use its guidance paper (*Assessment of activities for the purposes of the emissions-intensive trade-exposed assistance program: guidance paper*), as a basis for its decision on EITE eligibility. The final details of eligibility and rates of assistance will be provided in the Regulations.

The Hon Greg Combet AM MP, Minister Assisting the Minister for Climate Change in his second reading speech said that the EITE assistance program will be subject to five-yearly reviews and that the Expert Advisory Committee will consider a range of matters in conducting those reviews.

As stipulated in the Bill an emissions permit will be known as an Australian Emissions Unit (AEU). According to government, the number of AEU's issued each year will be lower than the national emissions limits required to meet the specified emissions trajectory. The government's basis for this is because about 25 per cent of Australia's emissions sources are not covered by the scheme.

• Cap and Trade

There is no overall cap on free permit allocations. The government has indicated that assistance will be directly linked to output whereby if production doubles the allocation of permits will also double. This, according to the government, will cater for the expansion of Australian industry and that it is more generous than the EU and proposed US schemes.

The government has indicated that the design of the EITE program will ensure that affected industries which face the full carbon price will have the same incentives as all other industries to find opportunities to reduce their emissions. According to the government, assistance will be calculated based on historical, industry baselines of greenhouse intensity and assistance will reduce by 1.3 per cent per year. The

government's rationale is that it will ensure that the most efficient producers in an industry, and the producers that become more efficient over time, are rewarded for their efforts.

Under the proposed CPRS Bill, emissions caps will be set in the Regulations. The government says that specific emission caps for the years 2012–13 to 2014–15 will be announced by 1 July 2010. Thereafter, national emissions limits will be specified at least five years in advance. The government has further indicated that guidance may be provided for emissions limits for additional years beyond the five-year caps. This according to the government will be through 'gateways' that may be prescribed in the Regulations to specify upper and lower limits to the caps for each year in the extended period. According to the government's White Paper, the government intends to provide up to ten years of gateways beyond the five-year caps.

- **Coverage of the CPRS**

The CPRS Bill has broad coverage, as it applies to approximately 75 per cent of Australia's emissions. The Bill stipulates that direct obligations will apply to entities (i.e. companies, trusts, partnerships and the like), or individuals, that:

- have at least one facility that directly emits at least 25 000 tonnes CO₂e per year or an equivalent amount on a pro rata basis if the facility is not controlled by the entity through the whole of the relevant year
- import or manufacture synthetic GHGs of at least 25 000 tonnes of CO₂e or an equivalent amount on a pro rata basis, or
- have a landfill operation that directly emits at least 10 000 tonnes CO₂e per year and that facility is within a prescribed distance of another landfill facility accepting the same classification of waste, which itself emits at least 25 000 tonnes CO₂e per year

- **Exemptions**

Exemptions from the proposed scheme include:

- the agricultural sector. The government is disposed to include the agricultural sector directly in the scheme in 2015, but a final decision will not be made on this matter until 2013
- GHG emissions from the combustion of biofuels and biomass for energy, including emissions from the combustion of methane from waste land fill facilities
- emissions from landfill sites closed on or before 30 June 2008
- emissions from operating land fill sites due to waste deposited on or before 30 June 2008
- deforestation is not included in the proposed scheme. Forestry operators may opt into the scheme for reforestation credits but participation is not compulsory
- emissions from decommissioned underground coal mines, and
- offshore emissions from exported fuels and materials.

- **Domestic offsets**

Agriculture is not currently in the CPRS, but the Government has not ruled out including it in the future - from 2015 at the earliest. The CPRS Bill does, however, provide for domestic offsets for reforestation.

The government says that this is a crediting mechanism to encourage reductions in carbon pollution before the scheme starts and proponents of approved reforestation projects will be eligible to receive emission units for increases in carbon sequestration taking place from 1 July 2010. Emissions units will then be available for purchase by liable entities – the large emitters and fuel suppliers – as an alternative to reducing their emissions or purchasing emissions units from other sources.

- **Electricity Sector Adjustment Scheme**

The government is proposing free permits on a once-off basis over the first five years of the CPRS, to investors who purchased or constructed coal-fired generation assets prior to the Commonwealth

Government's announcement of its support for an emissions trading scheme. The government estimates that the free permits to be provided to generators will be worth approximately \$3.8 billion. The government says that this assistance is focused on the most emissions-intensive generators as these generators are likely to experience the largest losses in asset value.

- **Assistance for the Coal Sector**

The Government says that it recognises that emissions-intensive coal mines need transitional assistance to adjust to the introduction of the Carbon Pollution Reduction Scheme. It will target assistance to the most gassy mines, and has on the table a \$750m package to assist these mines investigate and implement abatement opportunities and ease their transition to the introduction of a carbon price.

- **Australian Emissions Unit' (AEU) price cap**

The government is proposing that in 2011–2012 an unlimited number of AEU's will be available at a fixed price of \$10 per tonne CO₂e. However according to government, fixed price permits from the first year of the proposed scheme's operation cannot be banked or saved for use in later years.

- **Penalties**

The government is proposing that the scheme's governing body—the Australian Climate Change Regulatory Authority (the Authority)—be provided with a range of compliance, anti-avoidance, investigative and enforcement powers and a range of mechanisms, including civil penalty and criminal provisions, to respond variously to non-compliance with the Scheme. The Bill stipulates that Directors and officers of a company found to be in breach of certain provisions of the CPRS Act may also be fined. Fraudulent conduct in relation to the issuing of AEU's, may result in the offender being required to relinquish those units (Part 13 of the Bill).

Anti-avoidance provisions are also proposed in relation to the exemptions from liability for small facilities (generally, those emitting less than 25,000 tonnes of CO₂e per year). These are designed to capture entities that pursue artificial means to keep their facilities below this threshold so as to avoid CPRS liability. A limited financial penalty will apply if the required number of emissions units is not surrendered to the Authority by the appropriate time. In the first year (2011–2012) this penalty will be \$11 per unit. The penalty in later year will be fixed by regulation but will be limited to no more than 110 per cent of the average auction price for the particular financial year. According to government, the penalty provisions ensures that liable entities have an incentive to buy any necessary units through a secondary market rather than simply paying a penalty if they do not surrender enough AEU's. While penalties will not be tax deductible, a liable entity may undertake to surrender additional permits at a later date (the next year) if they do not surrender enough permits by 15 December in any one year.

- **Independent Review**

The Bill has provision for an independent expert advisory committee which will periodically undertake a public review of the CPRS.

Australian Climate Change Regulatory Authority Bill 2009

The Australian Climate Change Regulatory Authority Bill 2009 establishes the Australian Climate Change Regulatory Authority (Authority), which will be responsible for administering the Carbon Pollution Reduction Scheme (Scheme), the Renewable Energy Target, and the National Greenhouse and Energy Reporting System.

Background

The Australian Climate Change Regulatory Authority will be established to administer the proposed CPRS.

The authority will be:

- responsible for auctioning and allocating emissions units, maintaining a national registry of emissions units and ensuring that firms comply with their obligations under the scheme.

- a body corporate headed by a chair and between two and four other members.
- required to produce three-yearly corporate plans and annual reports, and comply with the Financial Management and Accountability Act 1997.
- taking over the functions of the existing Office of the Renewable Energy Regulator and the Greenhouse and Energy Data Officer, so that a single regulatory body will have overall responsibility for administration of climate change laws.
- advising and assisting persons in relation to their obligations under the scheme

Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009 [No. 2]

Purpose

To safeguard the constitutional validity of the proposed *Carbon Pollution Reduction Scheme Act 2009* in respect of the levying of charges for the issue of Australian emissions units.

Background

Part 4 of Division 2 of the Carbon Pollution Reduction Scheme Bill 2009 Bill [No. 2] (the primary Bill) provides that a charge may be payable to the Commonwealth for the issue of an Australian emissions unit. The Government has stated that it does not consider such a charge is a tax within the meaning of the constitution, and thus the primary Bill does not impose a tax. However, to avoid any risk of a contravention of the first paragraph of section 55 above, it has introduced three separate Bills, along with inserting clause 91 in the primary Bill.

Clause 91 in the primary Bill provides that if the charge for the issue of an Australian emissions unit is in fact a tax, then the charge is not imposed by the primary Bill, but whichever of the following three Acts are relevant in the circumstances:

- *the Carbon Pollution Reduction Scheme (Charges—Customs) Act 2009*
- *the Carbon Pollution Reduction Scheme (Charges—Excise) Act 2009*
- *the Carbon Pollution Reduction Scheme (Charges—General) Act 2009*

According to government, this approach avoids any possibility of the non-taxation elements of the primary Bill being 'of no effect' under section 55 of the Constitution. It then safeguards the validity of the primary Bill, and hence the legislative underpinning of the CPRS.

Carbon Pollution Reduction Scheme (Charges – Excise) Bill 2009 [No. 2]

Purpose

To safeguard the constitutional validity of the proposed *Carbon Pollution Reduction Scheme Act 2009* in respect of the levying of charges for the issue of Australian emissions units.

Background

Under the Carbon Pollution Reduction Scheme (CPRS), charges may be payable to the Commonwealth by a person who is issued with an Australian emissions unit, either as a result of the unit being auctioned by the Commonwealth, or the Commonwealth selling it at a fixed price.

Carbon Pollution Reduction Scheme (Charges – General) Bill 2009 [No. 2]

Purpose

To safeguard the constitutional validity of the proposed *Carbon Pollution Reduction Scheme Act 2009* in respect of the levying of charges for the issue of Australian emissions units.

Background

If the amount payable to the Commonwealth for the issue of units as the result of an auction or for a fixed charge is taxation within the meaning of section 55 of the Constitution, then the charge is imposed under this Bill. However, the charge is only imposed so far as it is neither a duty of customs nor a duty of excise. **[Clause 7]**

When enacted, the bill has no effect to the extent, if any, to which it imposes a tax on property of any kind belonging to a State (where 'property of any kind belonging to the State' has the same meaning as in section 114 of the Constitution). **[Clause 8].**

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 [No. 2]

Purpose

To establish a 'CPRS fuel credit' program to offset, temporarily, the effect on business of higher fuel prices resulting from the advent of the Carbon Pollution Reduction Scheme (CPRS).

Background

The Government made the commitment to cut fuel taxes in its CPRS White Paper. The government expects that the CPRS will result in higher fuel prices, and proposes to cut fuel taxes to offset the initial effects of the CPRS on prices. In essence, the proposal is a form of adjustment assistance to fuel users.

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009 [No. 2]

Purpose

To amend the *Fuel Tax Act 2006*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* consequent to the introduction of the proposed Carbon Pollution Reduction Scheme (CPRS) fuel credits scheme.

Background

Excise is one of two taxes imposed on fuels (the other is the goods and services tax). The rate of excise on most fuels is 38.143 cents per litre (shown as \$0.38143 in the *Excise Tariff Act 1921*). According to government, the CPRS is likely to result in higher absolute prices, and perhaps higher relative prices of fuels compared with other goods and services. The government says that the Bill seeks to provide temporary adjustment assistance to fuel users to ease the transition to higher prices by amending the *Excise Tariff Act 1921* (the Excise Tariff Act).

Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 [No. 2]

Purpose

This Act amends various existing Commonwealth legislation as a consequence of the passing of the main legislation implementing the Government's Carbon Pollution Reduction Scheme referred to as the CPRS Act.

The following legislation is affected by the CPRS Consequential Amendments Bill:

- *Anti-Money Laundering and Counter Terrorism Financing Act 2006*
- *Australian Securities and Investments Commission Act 2001*
- *Corporations Act 2001*
- *Financial Management and Accountability Act 2007*
- *National Greenhouse and Energy Reporting Act 2007*
- *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

- *Renewable Energy (Electricity) Act 2000*
- *Trade Practices Act 1974*
- *A New Tax System (Goods and Services Tax) Act 1999*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*, and
- *Taxation Administration Act 1953*.

Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2009 [No. 2]

Purpose

The purpose of the Bill is to provide financial assistance to low and middle-income households from the expected increases in the cost of living arising from the introduction of the Carbon Pollution Reduction Scheme (CPRS). The Bill is part of a package comprising 11 Bills, the principal one being the Carbon Pollution Reduction Scheme Bill 2009.

Background

The Carbon Pollution Reduction Scheme will be introduced with an initial \$10 per tonne fixed carbon price in 2011-12 and a flexible carbon price in 2012-13. The government says that this is expected to result in increases in the cost of living of 1.2 per cent in the first two years.

In order to provide assistance with the cost of living impacts of the scheme, the Government is proposing to provide upfront support to low and middle-income households from 2011-12 through a package of direct cash assistance and tax offsets to help in adjusting to a low pollution future.

Pensions, income support allowances and family payments will be increased by a total of 2.8 per cent over the first two years of the scheme which includes a 1 per cent increase from 1 July 2011 and a further 1.8 per cent increase on 1 July 2012, including upfront indexation.

Since assistance for the cost of living increase provided through certain payments would be brought forward, the government has indicated that subsequent indexation arrangements would be adjusted to avoid duplication.

Part 1 of the Schedule of the Bill introduces increases to social security benefits, allowances, and pensions to compensate recipients of those payments for anticipated increases in the cost of living as a result of the introduction of the Carbon Pollution Reduction Scheme.