



Express law fast track information for clients

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Revised Carbon Pollution Reduction Scheme legislation introduced into parliament

Revised Carbon Pollution Reduction Scheme (CPRS) legislation, comprising 11 Bills, was introduced into parliament last night.

The legislation was rejected by the Senate in August 2009 and again in December 2009. The legislation introduced last night incorporates amendments moved by the Government to implement outcomes of its negotiations with the Opposition in 2009.

The package of legislation includes the following three main Bills:

- [Carbon Pollution Reduction Scheme Bill 2010](#)
- [Carbon Pollution Reduction Scheme \(Consequential Amendments\) Bill 2010](#)
- [Australian Climate Change Regulatory Authority Bill 2010](#).

The legislation will commence 28 days after Royal Assent. However, the first year that entities will be liable under the CPRS will commence on 1 July 2011.

The Carbon Pollution Reduction Scheme Bill 2010 contains the detailed provisions relating to the emissions trading scheme.

This Express Law discusses how the CPRS would work if the legislation was enacted.

How will the CPRS work?

The CPRS will use a cap and trade mechanism to limit emissions of greenhouse gases. Greenhouse gas is defined to include carbon dioxide, methane, nitrous oxide and a synthetic greenhouse gas. Regulations may expand this definition.

A national scheme cap (the cap) is set on the total amount of greenhouse gas emissions covered by the scheme – about 75 per cent of Australia's emissions. The number of Australian emissions units (units) created will generally be equal to the cap, with some additional units issued for activities such as reforestation and domestic offsets. Liable entities are required to surrender a unit for each emitted tonne of carbon dioxide equivalent emissions. (Certain international emissions units can be surrendered instead).

The cost of buying the units or undertaking abatement opportunities to avoid direct or indirect liability is known as the 'carbon cost'.

How is the cap set?

The cap on the greenhouse gas emissions for each year will be expressed as a number of tonnes of carbon dioxide equivalent emissions and will be set by regulations on recommendation from the Minister for Climate Change and Water. In making the recommendation, the minister must have regard to Australia's international obligations and may have regard to the most recent five-yearly review report on the scheme. The minister may also (among other things) have regard to the principle that stabilisation of concentration of greenhouse gases of 450 parts per million of carbon dioxide equivalence or lower is in the national interest.

The cap will be lower than the emissions limit that is required to meet national targets. This is because the CPRS will not cover all sources of emissions: for example, emissions from agriculture and deforestation are not covered by the CPRS and, for others, liability only applies once a threshold is passed. The cap will also take account of voluntary action.

How are units issued and traded?

The Australian Climate Change Regulatory Authority (ACCRA), to be established by the Australian Climate Change Regulatory Authority Bill 2010, will issue the units. The units are tradeable, each worth one tonne of carbon dioxide equivalence. The units may be purchased either at auction arranged by ACCRA or on a secondary trading market. Those valuing the units most highly will be prepared to pay the most for them. For some, it will be cheaper to reduce emissions than to buy units. ACCRA will maintain a national registry of units. For the year commencing 1 July 2011, units will be able to be purchased for a flat price of \$10 (noting that they cannot be banked for later years).

Persons who carry out emissions-intensive trade-exposed activities (such as zinc smelters or newsprint manufacturers), coal-fired electricity generators and certain emissions-intensive coal mines will be issued with free units. Additionally, units will be issued for:

- reforestation
- the destruction of synthetic greenhouse gas
- eligible domestic offsets projects.

How is liability applied?

Generally, obligations to surrender units will be placed on a liable entity:

- with operational control of a facility that emits greenhouse gases that have a carbon dioxide equivalence of 25,000 tonnes or more per year (although the thresholds for landfill facilities are treated differently), and
- that is an upstream fuel supplier — although some fuel re-suppliers and users assume liability by use of an 'obligation transfer number' and therefore purchase the

fuel free of the carbon cost (the major fuels covered include liquid petroleum fuel, liquid petroleum gas, coal and natural gas).

A person who does not have operational control of a facility may assume liability for the facility emissions under certain circumstances.

Who is a liable entity?

A person may be a liable entity if the person:

- is responsible for greenhouse gases emitted directly from a facility or holds a liability transfer certificate in respect of a facility
- imports, produces or supplies certain fuels, or
- imports, manufactures or supplies synthetic greenhouse gas.

A liable entity can include Australian or overseas-owned companies, trusts, governments, local councils and individuals.

What are liable entities' obligations?

Liable entities under the scheme must report the emissions for which they are liable through the [National Greenhouse and Energy Reporting Act 2007](#) (as amended by the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2010). Units representing a liable entity's emissions number must be surrendered by 15 December following the relevant financial year. Failure to surrender sufficient units will incur a pecuniary penalty due on 31 January and a requirement to 'make good' by surrendering units in the following year.

Other issues

The legislative package includes provisions for enforcement and compliance and review of ACCRA's decisions.

Application of the CPRS to Commonwealth agencies

The legislation will generally apply to the Commonwealth as a legal person and to Commonwealth authorities in the same way as other entities. The most likely application of obligations to the Commonwealth or a Commonwealth authority would be:

- where the greenhouse gases emitted from the operation of a facility by the Commonwealth/Commonwealth authority have a carbon dioxide equivalence of 25,000 tonnes or more per year, or
- if the Commonwealth/Commonwealth authority is a large user of a particular type of fossil fuels and is required to assume liability or voluntarily assumes liability.

Commonwealth agencies will also be subject to increased costs where 'eligible upstream fuel' is covered upstream in the supply chain (such as natural gas) and for electricity supply. The price of other goods and services may also increase because of the imposition of the carbon cost. The ability of suppliers to pass through the carbon cost in

long-term contracts will need to be assessed on a case-by-case basis, depending upon the wording of the pass-through provisions in that contract.

Key financial penalties, including penalties for failure to surrender sufficient units, apply to government agencies.

AGS has been assisting the Department of Climate Change with the development of the legislation.

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