

# A Short History of Climate Change Policy in Australia

Originally published August 2014<sup>1</sup>

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<sup>1</sup> This paper is published on the Herbert Smith Freehills website at [www.herbertsmithfreehills.com](http://www.herbertsmithfreehills.com)

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## 1. Introduction

Until 17 July 2014, debate on national climate change legislative policy had been under way in Australia for well over two decades. For much of that period it was unclear when a decisive conclusion to the debate would occur.

This indecisiveness, in the latter part of the period, was the result of two overarching influential factors. One factor was the Federal Government's continuing lack of control over the Senate. The other was tension on the issue of carbon pricing within the Liberal/National Party Coalition while in opposition.

The first of these factors arose in November 2007 when the Rudd Federal Government was elected, and continued to be influential after the election of the Gillard Federal Government on 21 August 2010 and even after the election of the Abbott Federal Government on 7 September 2013, but was resolved substantially in the Abbott Government's favour (as regards carbon pricing) on 1 July 2014.

The second factor waned after Tony Abbott's ascension to the leadership of the Federal Opposition on 1 December 2009 and has been inoperative since the election of the Abbott Federal Government on 7 September 2013.

It is now possible to discern five clear carbon policy phases in Australia. This briefing note supplies an overview of those phases.

The fifth and current phase commenced on 17 July 2014. On that day were proclaimed into effect the Abbott Government's amendments to the *Clean Energy Act 2011 (Cth)* ending as at 30 June 2014 the 'fixed phase' carbon pricing scheme which had existed prior to that date under that Act and removing any future 'flexible phase' emissions trading scheme. Various 'carbon-related' statutory entities and programs remain which had been established in or prior to the periods of the Rudd and Gillard Governments<sup>2</sup>. Legislation for the Abbott Government's proposed 'Direct Action' scheme – namely the *Carbon Farming Initiative Amendment Bill 2014 (Cth)* – was introduced to the House of Representatives on 18 June 2014 and was referred by the Senate on 26 June 2014 to a Senate Committee for report on 7 July 2014, but as yet<sup>3</sup> no report has been tabled.

## 2. First Phase

### 2.1 December 1992

The first phase begins in December 1992 when, following Australia's ratification of the *United Nations Framework Convention for Climate Change*, the Federal Government released its National Greenhouse Response Strategy (NGRS)<sup>4</sup>. The NGRS relied on voluntary measures and 'no regrets' strategies, namely: measures that have net benefits (or no net cost). Also in December 1992, the Federal Parliament's Standing Committee on Industry, Science and Technology released its report *Gas and Electricity Combining Efficiency and Greenhouse*<sup>5</sup> which recommended increase in the use of natural gas in power generation.

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<sup>2</sup> Namely: the renewable energy target under the *Renewable Energy (Electricity) Act 2000 (Cth)*; the Clean Energy Finance Corporation under the *Clean Energy Finance Corporation Act 2012 (Cth)*; the Climate Change Authority under the *Climate Change Authority Act 2011 (Cth)*; the Australian Renewable Energy Agency under the *Australian Renewable Energy Agency Act 2011 (Cth)*; and the Clean Energy Regulator under the *Clean Energy Regulator Act 2011 (Cth)*

<sup>3</sup> 19 August 2014

<sup>4</sup> <http://catalogue.nla.gov.au/Record/1820932>

<sup>5</sup> <http://catalogue.nla.gov.au/Record/1122088?lookfor=subject:%22Greenhouse%20effect,%20Atmospheric%20-%20Australia.%22&offset=153&max=153>

## 2.2 February 1997

In February 1997, the Inter-Governmental Committee on Ecologically Sustainable Development released a discussion paper<sup>6</sup> on directions for a national greenhouse response strategy. The Productivity Commission (then known as the Industry Commission) made a submission<sup>7</sup> criticising 'no regrets' policies as insufficient and recommending greater use of market-based instruments to achieve favourable economic and greenhouse outcomes in the long term at least cost.

## 2.3 March to December 1999

In March to December 1999, the then Australian Greenhouse Office (**AGO**) published a series of four discussion papers on emissions trading (**AGO Discussion Papers**) for public comment<sup>8</sup>. These documents describe the essential features of a cap-and-trade emissions trading scheme, the differences between such a scheme and a carbon tax, and some reasons for preferring the former.

## 2.4 December 2002

In December 2002, the Independent Review of Energy Market Directions set up by the Council of Australian Governments (**COAG**) released its report. Its 'major recommendation' was the replacement of existing state and Commonwealth measures aimed at reducing greenhouse gas emissions in the electricity sector with an economy-wide emissions trading scheme.

## 3. Second Phase

### 3.1 December 2002 to July 2007

On 1 January 2003, what is believed to be the world's first mandatory emissions trading scheme (**ETS**) for greenhouse gases (**GHGs**) came into effect in New South Wales<sup>9</sup>. In January 2004, the Australian States and Territories collaborated to form the National Emissions Trading Task Force which, over the next two years, developed detailed policy frameworks for a national cap-and-trade ETS. Its detailed report was published in December 2007<sup>10</sup>.

However, there were no corresponding Federal developments until November 2006 when Prime Minister Howard announced that the Federal government would establish a joint government-business taskforce to examine the form that 'an emissions trading system...might take in the years ahead'. In consequence, on 10 December 2006 the *Prime Ministerial Task Group on Emissions Trading (ET Task Group)* was formally established. On 31 May 2007, the *ET Task Group* released its *Report of the Task Group on Emissions Trading (ET Task Group Report)*. On 3 June 2007, Prime Minister Howard announced that the Federal Government would introduce emissions trading<sup>11</sup>. On 17 July 2007 the then Federal Government released *Australia's Climate Change Policy*<sup>12</sup>. In it, the Federal Government accepted, and proposed policies for implementing, the major recommendations of the *ET Task Group Report*. The *Policy* committed the Federal Government to the introduction of an emissions trading scheme.

<sup>6</sup>[http://catalogue.nla.gov.au/Record/1427543?lookfor=author:"Intergovernmental%20Committee%20on%20Ecologically%20Sustainable%20Development"&offset=2&max=3](http://catalogue.nla.gov.au/Record/1427543?lookfor=author:)

<sup>7</sup> <http://www.pc.gov.au/ic/research/submission/icesd/mediarelease>

<sup>8</sup> AGO Discussion Paper 1: *Establishing the Boundaries* (March 1999); AGO Discussion Paper 2: *Issuing the Permits* (June 1999); AGO Discussion Paper 3: *Crediting the Carbon* (October 1999); and AGO Discussion Paper 4: *Designing the Market* (December 1999)

<sup>9</sup> The New South Wales Greenhouse Gas Reduction Scheme imposes a liability on electricity retailers in New South Wales to meet annual emissions targets through the acquisition and surrender of abatement certificates generated by accredited renewable energy sources.

<sup>10</sup> <http://www.caf.gov.au/Documents/nett-final-report.pdf>.

<sup>11</sup> See: the Prime Minister's address on 3 June 2007 to the Liberal Party Federal Council, available at: <http://www.pm.gov.au/media/Speech/2007/Speech24350.cfm>

<sup>12</sup> Available at: [http://pandora.nla.gov.au/pan/76725/20070918-1657/www.pmc.gov.au/publications/climate\\_policy/docs/climate\\_policy\\_2007.pdf](http://pandora.nla.gov.au/pan/76725/20070918-1657/www.pmc.gov.au/publications/climate_policy/docs/climate_policy_2007.pdf)

### 3.2 September 2007 to November 2007

On 24 September 2007, the Federal Government released its discussion paper *Abatement Incentives Prior to the Commencement of the Australian Emissions Trading Scheme*<sup>13</sup> for discussion. On 28 September 2007, the *National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Act)* received assent. The Act came fully into force on 29 September 2007. The Act put in place a framework for the reporting and dissemination of information related to greenhouse gas emissions (and other matters) in order 'to underpin the introduction of an emissions trading scheme in the future'<sup>14</sup>.

## 4. Third Phase

### 4.1 November 2007 to December 2007

On 24 November 2007, the Labor Party was elected to Federal Government, and the third phase began.

Very shortly after its election, the new government confirmed positions which had first been mooted at a one-day National Climate Change Summit convened by the Party on 31 March 2007, and which were reiterated in *An Action Agenda for Climate Change* issued on 30 May 2007, that the new Government would: ratify the Kyoto Protocol; set up a national emissions trading scheme (ETS); and cut Australia's GHG emissions by 60% on 2000 levels by 2050. It also announced that it had accepted an invitation to attend the December 2007 Conference of the Parties to the Kyoto Protocol in Bali (**Bali Conference**).

On 3 December 2007, the day on which the new Government was officially formed, as its first official act it ratified the Kyoto Protocol. The ratification became effective in March 2008. Prime Minister Rudd addressed the Bali Conference on 12 December 2007. In his speech<sup>15</sup>, he described climate change as 'the defining challenge of our generation' and as a 'top priority of the new Australian Government'.

### 4.2 July 2008 to December 2008

On 15 December 2008, the Government released a white paper entitled *Carbon Pollution Reduction Scheme: Australia's Low-Pollution Future (White Paper)*, which proposed the introduction on 1 July 2010 of a cap-and-trade greenhouse-gas emissions trading scheme to be known as the CPRS, and which set out detailed 'policy positions' on most aspects of the design of the CPRS. The White Paper had been preceded in July 2008 by a green paper entitled *Carbon Pollution Reduction Scheme: Green Paper (Green Paper)* which outlined the government's 'preferred positions' in relation to the design of the CPRS and which called for submissions prior to the publication of the White Paper. The White Paper had also been preceded by the publication on 30 September 2008 of *The Garnaut Climate Change Review: Final Report (2008 Garnaut Report)*, which also dealt in detail with the proposed design of an Australia-wide cap-and-trade emissions trading scheme.

### 4.3 March 2009 to February 2010

On 10 March 2009, the Government published its exposure draft legislation for the CPRS and, in May 2009, it introduced into the House of Representatives eleven Bills connected with the proposed CPRS. These eleven Bills (together, the **First 2009 CPRS Bills**) were passed by the House of Representatives (with certain Government-moved amendments to some of the Bills) on 4 June 2009, and were introduced into the Senate on 15 June 2009. The Senate considered the *First 2009 CPRS Bills* (without voting on them) on 22 and 23 June 2009 before the Senate was adjourned for the winter recess on 25 June 2009. The Senate voted down each of the *First 2009 CPRS Bills* on 13 August 2009.

On 22 October 2009, each of the *First 2009 CPRS Bills* (including where relevant the government-moved amendments referred to above) was reintroduced into the House of Representatives. The 'new' Bills were

<sup>13</sup> Available at: [http://www.dpmc.gov.au/consultation/docs/early\\_action\\_discussion\\_paper.pdf](http://www.dpmc.gov.au/consultation/docs/early_action_discussion_paper.pdf)

<sup>14</sup> *National Greenhouse and Energy Reporting Act 2007 (Cth)* section 3(a).

<sup>15</sup> Available at: <http://www.theaustralian.news.com.au/story/0,25197,22912806-11949,00.html>

known as the *Carbon Pollution Reduction Scheme Bill 2009 [No 2]*, etc. The *CPRS Bills [No 2]* (**Second 2009 CPRS Bills**) were passed by the House on 16 November 2009. On 17 November 2009, the *Second 2009 CPRS Bills* were reintroduced into the Senate. On 24 November 2009, the Government publicly released a series of proposed amendments to the legislation which had been negotiated over the preceding weeks between the Government (Senator Penny Wong) and the Opposition (Senator Ian Macfarlane). The proposed amendments included the legislated exclusion of agriculture, the inclusion of a general mechanism for recognising offsets, increased assistance for EITE industries, and a greatly expanded compensation regime for coal-fired power generators, among other matters. Then-Opposition Leader Malcolm Turnbull supported the passage of the legislation with the agreed amendments. However, on 1 December 2009 he lost the leadership of the Liberal Party to Tony Abbott, who immediately announced that the Opposition in the Senate would seek to have consideration of the *Second 2009 CPRS Bills* deferred, but if that proved impossible, would oppose the Bills outright. On 1 December 2009, Greg Combet for the Government announced that the CPRS including the amendments negotiated by Senators Wong and Macfarlane (**Amended CPRS**) would be the Government's future policy. On 2 December 2009, the Senate rejected the *Second 2009 CPRS Bills* outright. This action provided the Government with a trigger for a 'double-dissolution election' under the Australian Constitution, but only in relation to the *Second 2009 CPRS Bills* as introduced into the Senate on 17 November 2009, and not in relation to the Amended CPRS which had since become Federal Government policy.

On 2 December 2009, shortly after the Senate's rejection of the *Second 2009 CPRS Bills*, Acting Prime Minister Julia Gillard announced that legislation for the Amended CPRS would be introduced on the first sitting day of the Parliament after the summer recess, namely: 2 February 2010. On that day, the Government introduced a third set of eleven CPRS bills, in a form reflecting the Amended CPRS (**2010 CPRS Bills**). The *2010 CPRS Bills* were passed by the House of Representatives on 11 February 2010. No vote in the Senate was ever taken on the *2010 CPRS Bills* other than one in which the Senate determined to delay any vote on them until its sittings in May 2010.

#### **4.4 Overview of Second 2009 CPRS Bills**

The CPRS, as set out in the *Second 2009 CPRS Bills*, covered virtually all corporations involved in the emission of greenhouse gases within Australia, with the exception of agriculture and deforestation. The greenhouse gases covered by the scheme were carbon dioxide, methane, sulphur hexafluoride, nitrous oxide, hydrofluorocarbons and perfluorocarbons.

A corporation covered by the CPRS was to be required to purchase enough emissions permits for the corporation's greenhouse gas emissions, emitted in Australian territory, where controlled facilities emit more than 25,000t (= 25 Kt) carbon dioxide equivalent (**CO<sub>2</sub>e**) per year, or where the corporation was designated by the CPRS as a 'proxy' for downstream emitters.

The number of permits in circulation were to be equivalent to the government-determined 'cap' on emissions, plus any permits issued to Kyoto-compliant forestry. As a matter of policy, the short and medium term caps had been set at between 5% and 25% of 2000 levels by the end of 2020. The long term cap was at least a 60% reduction against 2000 greenhouse gas emissions levels by 2050.

Permits, which were to be personal property, were to be purchased at auction directly from the government or on the secondary trading market (including from Kyoto-compliant forestry) or were to be allocated freely under compensation arrangements proposed as part of the scheme. At the end of each year, a corporation covered by the CPRS was to be liable to surrender to the government a permit for every tonne of its covered CO<sub>2</sub>e emitted that year.

The purchase and surrender of emissions permits was designed to impose direct costs at certain points in the economy. Most commonly, this imposition was to occur at the point of greenhouse gas emission: for example, in electricity generation and in industrial processes. In other cases, this imposition was to occur at a different point in the supply chain: for example, upstream fuel suppliers were to have direct costs imposed

on them as 'proxies' for the emissions of the users of their products, and no direct liability was to be imposed on those down-stream users.

The legislation contemplated an administrative mechanism (known as the Obligation Transfer Number (**OTN**)) to enable, and in some cases require, permitting obligations to be transferred as regards certain fuels, and another administrative mechanism (known as the Liability Transfer Certificate (**LTC**) mechanism) which, in other cases, enabled permitting obligations to be transferred to subsidiaries or to financial controllers of relevant facilities.

While the direct liability was to rest at these set points, corporations were able to 'pass on' their greenhouse gas emissions costs wherever they could. A corporation's ability to do so was to be a matter of contractual negotiation as there was no proposal for legal assistance or a legal framework to pass on emissions costs. Consequently, an emissions cost as a result of the CPRS was to be a component of the price of all goods and services with a greenhouse gas emissions 'footprint'.

An entity covered by the scheme which did not surrender sufficient emissions permits to cover its emissions was to be liable to a penalty and a 'make good' obligation.

There was to be compensation for emissions-intensive, trade-exposed (**EITE**) activities (for example, aluminium smelting) and coal-fired generators, as well as a range of other compensatory measures to be delivered through the taxation system and grant programs.

The CPRS did not rely on carbon offsets. However, special treatment was to be given to Kyoto-compliant forestry (which, on an 'opt-in' basis, were to be issued with free permits equivalent to the CO<sub>2</sub>e sequestered) and 'Carbon Capture and Storage'. Emitters would also have been able to purchase emissions credits generated by offset projects accredited under the Kyoto Protocol in other countries, but not domestic offsets.

#### **4.5 Overview of 2010 CPRS Bills**

As mentioned, the *2010 CPRS Bills* reflected amendments to the *Second 2009 CPRS Bills* which were negotiated between the Federal Government and the Opposition in late November 2009.

In summary:

- The Government increased compensation to EITE industries, but not to the level requested by the Opposition or some industry groups such as the Minerals Council of Australia. LNG was to receive special treatment ensuring that it would be given compensation cover for 50 per cent of its emissions. Food processing was also to have access to \$150 million of dedicated assistance.
- The Government indefinitely exempted agriculture from the CPRS. This meant that a large part of Australian emissions were not covered by the CPRS. But it also removed a large part of the opposition to the CPRS. Agriculture interests had been vocal opponents of the proposed CPRS.
- The Government opened the way for significant agricultural and other offsets to be recognised. Relatedly, on 20 January 2010, it released its National Carbon Offset Standard (**NCOS**).
- There was to be substantially increased financial support for the coal mining sector.
- There was also to be increased support for the coal-fired power sector, significantly increasing the amount of free permits which would be given to coal-fired power stations and doubling the time over which they would receive them. The Government proposed other mechanisms targeted to address loan default and energy supply risks.
- There was to be substantially increased support for mining and manufacturing sectors affected by electricity price rises.
- There were to be measures to recognise voluntary action and energy efficiency.

#### 4.6 CPRS Delayed

On 27 April 2010 the then Prime Minister Kevin Rudd announced that the implementation of the 2010 CPRS Bills would be delayed until after 2012 or until the domestic and international political circumstances improve. He was replaced as Prime Minister and ALP leader on 24 June 2010 by Julia Gillard.

### 5. Fourth Phase

#### 5.1 September 2010 Agreement

At the 21 August 2010 election, climate change policy was a central issue. The composition of the Parliament which was returned at the election meant that issues of climate change policy were to be central for some time.

At the election, Prime Minister Gillard's party, the Australian Labor Party (**ALP**), became a 'minority government'. In the House of Representatives it had a 'notional majority' of 76 (supported by 3 Independents and a Greens Member of Parliament). In the Senate, from 1 July 2011 the Green Party held the balance of power and the ALP needed that party's support to pass any legislation which was opposed by the Liberal/National Party Coalition. The election result prompted the Gillard Government to recommit itself early to the introduction of a carbon price into the Australian economy, having been much criticized for its lack of resolve on this issue in the months before the election, and to public processes of Parliamentary inquiry on carbon legislative policy which eventually led to the coming into effect on 1 July 2011 of the *Clean Energy Act 2011 (Cth)* (**Clean Energy Act**) and a suite of related Acts.

A crucial influence on the Gillard Government's actions was the agreement which the ALP reached with the Green Party on 1 September 2010. Under it, the Green Party agreed to ensure supply to the ALP in government, and to oppose any motion of no confidence in the ALP in government, in return for the ALP's agreement to pursue (among other things) 'policies which address climate change'. In the agreement, the two parties acknowledged that 'Australia must tackle climate change and that reducing carbon pollution by 2020 will require a price on carbon'. They agreed to form and resource a multi-party climate change committee (**Multi-Party Committee**) 'which encompasses experts and representative ALP, Greens, independent and Coalition parliamentarians who are committed to tackling climate change and who acknowledge that reducing carbon pollution by 2020 will require a carbon price'.

Significant steps were taken in implementation of the 1 September 2010 Agreement.

#### 5.2 Multi-Party Committee

On 27 September 2010, Prime Minister Gillard announced the membership and terms of reference of the Multi-Party Committee<sup>16</sup>. Its central brief was to 'consult, negotiate, and report to the Cabinet, through the Minister for Climate Change and Energy Efficiency, on agreed options for the implementation of a carbon price in Australia'.

The Committee held its first meeting on 7 October 2010, resolving to meet monthly until the end of 2011 and to release a communiqué after each meeting. In its first communiqué<sup>17</sup> on 7 October 2010, the Committee 'affirmed the intention to advise agreement on an option for a carbon price' but noted that, 'where differences remain after good faith discussions, it would make every effort to produce workable options for Cabinet consideration'. In its second communiqué<sup>18</sup> on 10 November 2010, the Committee noted its consideration of three papers presented to it on that day: the status of carbon mitigation actions in other

<sup>16</sup> <http://www.climatechange.gov.au/minister/greg-combet/2010/media-releases/September/mr20100927.aspx>

<sup>17</sup> <http://pmtranscripts.dpmc.gov.au/browse.php?did=17396>

<sup>18</sup> <http://www.climatechange.gov.au/ministers/hon-greg-combet-am-mp/media-release/multi-party-climate-change-committee-mpccc-communiqu%C3%A9>

countries;<sup>19</sup> the energy market outlook; and the scope of works for an update to the 2008 Garnaut Report. In its third communiqué<sup>20</sup> on 21 December 2010, the Committee commenced consideration of the key design choices to be made when developing a carbon price, and adopted eleven policy principles as the basis for the Committee's deliberations on carbon price mechanisms<sup>21</sup>.

On 24 February 2011, the Committee released a framework for a carbon price mechanism (**2011 Carbon Price Framework**)<sup>22</sup>. On that day, Prime Minister Gillard adopted the 2011 Carbon Price Framework as legislative policy<sup>23</sup>.

At the time of the release, it was stated that the 2011 Carbon Price Framework had 'been agreed by the Government and Greens members of the Committee' but that the Independent members of the Committee (Mr Windsor and Mr Oakeshott) had agreed to the release of the framework 'to enable consideration by the community and to demonstrate the progress that has been made'. The elements of the 2011 Carbon Price Framework include:

- An initial carbon tax (fixed price on emissions) as early as 1 July 2012. No starting price was announced. It was anticipated to be at least \$20/t CO<sub>2</sub>e (but potentially \$25–\$30), with a fixed annual increase (potentially 4%+CPI pa).
- Then a transition to an emissions trading scheme (ETS) within three to five years. Criteria for moving from the 'carbon tax phase' to an 'ETS phase' were not announced. The transition date was to be determined before the legislation was introduced and would be subject to review a year before the scheduled commencement of the ETS. The ETS could be further deferred. In the 'ETS phase', the price would be unrestricted, set by the market, with some expecting a starting price of \$40–\$45/t CO<sub>2</sub>e.
- Coverage of stationary energy, transport, industrial processes, fugitive emissions (other than from decommissioned coal mines) and non-legacy waste. Other sectors could be phased in. Emissions covered by the Carbon Farming Initiative,<sup>2</sup> including agriculture, would be excluded.
- International credits could not be used during the carbon tax phase. Accepted international credits could be used in the ETS phase. The 2020 emissions reduction target would be set prior to the ETS commencement.

The 2011 Carbon Price Framework did not contain details of: industry, community and household assistance, and support for low emissions technology and innovation. The Committee's fifth communiqué<sup>24</sup> on 18 March 2011 announced only that the Committee had discussed a number of issues related to the 2011 Carbon Price Framework, and that this discussion would continue at the Committee's next meeting.

The Committee's sixth communiqué<sup>25</sup> on 19 April 2011 announced simply that discussion of the 2011 Carbon Price Framework was continuing.

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<sup>19</sup> The Committee noted that: around 85 countries, accounting for over 80% of global emissions, have committed to reducing emissions or emissions intensity under the Copenhagen Accord, including all members of the Major Economies Forum; and the majority of developed countries had either introduced, or were seriously considering introducing, market-based measures at national or sub-national level to help meeting their emissions reduction targets.

<sup>20</sup> <http://www.acci.asn.au/getattachment/1dfd4ec8-26f3-4807-9039-426356625b3f/Multi-Party-Climate-Change-Committee-principles-to.aspx>

<sup>21</sup> The principles are or concern: **environmental effectiveness; economic efficiency; budget neutrality; competitiveness of Australian industries; energy security; investment certainty; fairness; flexibility; administrative simplicity; clear accountabilities; support of Australia's international objectives and obligations.**

<sup>22</sup> <http://archive.today/JVuLQ>

<sup>23</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/March/sp20110308.aspx>; and <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/March/sp20110323.aspx>.

<sup>24</sup> <http://www.climatechange.gov.au/ministers/hon-greg-combet-am-mp/media-release/multi-party-climate-change-committee-meeting>

<sup>25</sup> <http://www.sciencemedia.com.au/downloads/2011-4-19-8.pdf>

### 5.3 Garnaut Review

The Garnaut Review<sup>26</sup> continued its work in updating the 2008 Garnaut Report. The release of update papers was complete in March 2011 and occurred as follows:

- February 2011: *Weighing the costs and benefits of climate change action*;<sup>27</sup>
- 7 February 2011: *Progress towards effective global action on climate change*;<sup>28</sup>
- 11 February 2011: *Global emissions trends*;<sup>29</sup>
- 1 March 2011: *Transforming rural land use*;<sup>30</sup>
- 10 March 2011: *The science of climate change*;<sup>31</sup>
- 17 March 2011: *Carbon pricing and reducing Australia's emissions*;<sup>32</sup>
- 23 March 2011: *Low emissions technology and the innovation challenge*<sup>33</sup>;
- 29 March 2011: *Transforming the electricity sector*<sup>34</sup>.

The update paper released on 17 March 2011 stated that an ETS, 'initially with a fixed (and rising) price, is the best instrument for long-term emissions reductions ... This model provides the benefits of credibility and steadiness in its early years, as industry and institutions build confidence and capability, with later trade in abatement allowing emissions reductions to take place where they are cheapest. It also provides substantial revenue'. The paper advocated a 'starting' carbon price of \$20 to \$30 a tonne escalating by CPI plus 4% a year to 2015. With some variations, the paper also advocated acceptance of the levels of industry assistance which were negotiated in late 2009 in relation to the CPRS. The paper proposed the establishment of an independent regulator to determine the levels and duration of assistance in particular cases.

On 31 May 2011, the final report of the Garnaut Review (**2011 Garnaut Report**) was released.<sup>35</sup> The 2011 Garnaut Report proposed a 'starting' carbon price of 'around' \$26 a tonne in 2012 escalating by 4% a year to 2015, converting to a floating price (under a trading regime) in the middle of 2015, unless an independent regulator, on expert advice, judges that the opportunities for international trade in entitlements would not be sufficient to support a liquid and stable permit market. The report indicates that a 'starting' carbon price of '\$26 would raise approximately \$11.5 billion in the first year and would rise over time. The report proposed that 55% of this revenue should be allocated towards household assistance, that 35% of carbon revenues should be allocated towards business assistance, and that the remainder of the revenue should be applied towards innovation in low-emissions technologies.

The 2011 Garnaut Report also recommended that three independent bodies should be established: an independent scheme regulator; an independent committee to advise on targets; and an independent agency to advise on trade-exposed industries. Details of these governance arrangements were contained in a 'supplementary note' to the 2011 Garnaut Report (**Supplementary Note**).<sup>36</sup>

The 2011 Garnaut Report stated that a 'starting' carbon price of \$26 would put Australia on track to achieve a 5% reduction below 2000 levels by 2020. The report also stated that a 'fair share' for Australia (if there was

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<sup>26</sup> See: <http://www.garnautreview.org.au/>

<sup>27</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up1-weighing-costs-benefits-climate-change-action.pdf>

<sup>28</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up2-progress-towards-effective-global-action-climate-change.pdf>

<sup>29</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up3-global-emissions-trends.pdf>

<sup>30</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up4-transforming-rural-land-use.pdf>

<sup>31</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up5-the-science-of-climate-change.pdf>

<sup>32</sup> See <http://www.garnautreview.org.au/update-2011/update-papers/up6-carbon-pricing-and-reducing-australias-emissions.pdf>

<sup>33</sup> See: <http://www.garnautreview.org.au/update-2011/update-papers/up7-low-emissions-technology-innovation-challenge.pdf>

<sup>34</sup> See: <http://www.garnautreview.org.au/update-2011/update-papers/up8-transforming-electricity-sector.pdf>

<sup>35</sup> See: <http://www.garnautreview.org.au/update-2011/garnaut-review-2011/garnaut-review-2011.pdf>

<sup>36</sup> See: <http://www.garnautreview.org.au/update-2011/garnaut-review-2011/summary-garnaut-review-2011.html>

global agreement to stabilise greenhouse gases at 550ppm) would be a 10% reduction below 2000 levels by 2020 and (if there was global agreement to stabilise greenhouse gases at 450ppm) a 25% reduction. The Supplementary Note proposed that Parliament should pass legislation which stated the initial aim of achieving the 5% reduction but provided that this target would be tightened after two years if the independent carbon committee recommended doing so in its first review – which would take place two years after commencement of the legislation – unless Parliament disagreed. The target could be further tightened after subsequent review by the independent committee. These would occur at least every five years, but any subsequent tightening could only occur with five years notice.

#### 5.4 Roundtables

On 27 September 2010, the Gillard Government announced its intention to establish a Business Roundtable on Climate Change (**Business Roundtable**), and an Environment and Non-Government Organisation Roundtable on Climate Change (**NGO Roundtable**). On 18 October 2010, the Gillard Government announced the membership of the Business Roundtable<sup>37</sup> and the NGO Roundtable<sup>38</sup>. Both the Business Roundtable and NGO Roundtable held their first meetings on 25 November 2010. The Business Roundtable explored how members would advise the Government about options for putting a price on carbon, while the NGO Roundtable considered how members would play a role in providing advice to Government on economic and environmental reform.<sup>39</sup> Both forums committed to meeting in February and April 2011, and then monthly from June throughout the second half of 2011. On 23 and 24 March 2011, the formation and details were announced of two subgroups of the Business Roundtable on Climate Change<sup>40</sup>, namely: **the Industry Transitional Assistance Working Group**<sup>41</sup>; and **the Energy Sector Working Group**<sup>42</sup>. Both groups comprised existing members of the Business Roundtable with some additional participants. The Business Roundtable held a second meeting on 8 April 2011<sup>43</sup> but no communiqué was issued.

On 10 February 2011, the Gillard Government announced the establishment of a climate commission led by Professor Tim Flannery (**Climate Commission**)<sup>44</sup>. The Climate Commission was established as ‘an

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<sup>37</sup> <http://www.climatechange.gov.au/minister/greg-combet/2010/media-releases/October/mr20101018.aspx>

<sup>38</sup> <http://www.climatechange.gov.au/minister/greg-combet/2010/media-releases/October/mr20101018a.aspx>

<sup>39</sup> <http://www.climatechange.gov.au/minister/greg-combet/2010/media-releases/November/mr20101126b.aspx>

<sup>40</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/March/mr20110324a.aspx>

<sup>41</sup> This group ‘will provide industry feedback to the Government on the introduction of a carbon price, appropriate transitional assistance arrangements for emissions intensive, trade exposed industries and the unique circumstances faced by industries such as the liquefied natural gas and coal industries. Advice from the working group will feed into the Business Roundtable, and inform the positions that the Government takes to the Multi Party Climate Change Committee’. Its members included: Mr Don Voelte, Woodside; Mr Hubie van Dalsen, BHP Billiton; Mr Paul O’Malley, BlueScope Steel; Ms Heather Ridout, Australian Industry Group; Ms Maria Tarrant, Business Council of Australia; Ms Ann Pickard, Shell; Mr Grant King, Origin Energy; Mr David Peever, Rio Tinto Australia; Mr Alan Cransberg, Alcoa; Mr Mark Selway, Boral; Mr Gus Carfi, Visy; Mr Graeme Liebelt, Orica; Mr Julian Segal, Caltex; Mr Geoff Plummer, OneSteel; Mr Peter Freyberg, Xstrata Coal.

<sup>42</sup> This group ‘will provide industry feedback to the Government on the introduction of a carbon price and appropriate transitional arrangements for the energy sector to ensure energy security and reliability is maintained. Advice from the working group will feed into the Business Roundtable, and inform the positions that the Government takes to the Multi Party Climate Change Committee’. Its members included: Mr Brad Page, Energy Supply Association of Australia; Mr Matthew Warren, Clean Energy Council; Mr Michael Fraser, AGL Energy; Mr Grant King, Origin Energy; Mr Richard Bolt, Victorian Department of Primary Industries; Mr Tony Concannon, IPR GDF SUEZ Australia; Mr Ian Nethercote, Loy Yang Power; Mr Brent Gunther, Intergen; Mr Richard McIndoe, TRUenergy; Ms Shirley In’t Veld, Verve Energy; Mr David Brown, CS Energy; Mr Russell Skelton, Macquarie Generation; Mr Ross Rolfe, Alinta Energy; Mr Malcolm Roberts, National Generators Forum; Mr John Pierce, Australian Energy Market Commission; Mr Matt Zema, Australian Energy Market Operator; Mr Brad Page, Energy Supply Association of Australia; Mr Matthew Warren, Clean Energy Council; Mr Michael Fraser, AGL Energy; Mr Grant King, Origin Energy; Mr Richard Bolt, Victorian Department of Primary Industries; Mr Tony Concannon, IPR GDF SUEZ Australia; Mr Ian Nethercote, Loy Yang Power; Mr Brent Gunther, Intergen; Mr Richard McIndoe, TRUenergy; Ms Shirley In’t Veld, Verve Energy; Mr David Brown, CS Energy; Mr Russell Skelton, Macquarie Generation; Mr Ross Rolfe, Alinta Energy; Mr Malcolm Roberts, National Generators Forum; Mr John Pierce, Australian Energy Market Commission; Mr Matt Zema, Australian Energy Market Operator.

<sup>43</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/transcripts/April/tr20110408.aspx>

<sup>44</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/February/mr20110210.aspx>

independent source of information on the science and impacts of climate change, the level of international action to address climate change; and the role of carbon pricing’.

On 19 April 2011, the Gillard Government announced the establishment of a land sector working group to examine the benefits and opportunities for the land sector under a carbon price (**Land Sector Working Group**) to meet first in early May 2011 and then during the development of the carbon price mechanism legislation.<sup>45</sup>

## 5.5 Legislative Policy

On 12 October 2010, Climate Change Minister Greg Combet made his first public speech<sup>46</sup>. He announced that the ‘introduction of a carbon price’ was a key element of the Gillard Government’s domestic climate change mitigation policy. He stated that the Australian economy ‘[had] evolved without regard to the costs of carbon pollution’, that Australian industry needed to become less carbon-intensive ‘if [it was] to remain internationally competitive over the long term’, and that ‘[the] best and most responsible way of doing this is by establishing a carbon price in the economy’. He said that the Multi-Party Committee was ‘unlikely to agree on every point of detail’ but that its ‘key objective’ was ‘to get agreement on a framework that will deliver a carbon price’.

On 4 November 2010, Minister Combet reiterated that ‘the Australian Government is...working towards the introduction of a carbon price into [the Australian] economy’.<sup>47</sup> Prime Minister Gillard made the same point in a public speech on 9 November 2010.<sup>48</sup>

Minister Combet reiterated and expanded on these themes in a speech on 17 December 2010<sup>49</sup>. In that speech: he compared the challenge for Australia of ‘decoupling’ carbon pollution from economic growth as similar to the economic challenges of the 1980s; he described the two broad options for the introduction of a carbon price as a ‘carbon tax’ and ‘an emission trading scheme’, there being ‘key differences’ between them; he indicated a preference for a cap-and-trade, not a baseline-and-credit, emission trading scheme over a carbon tax, while stating that the Government was keeping an open mind while the matter was considered by the Multi-Party Committee; and, finally, he indicated that there were short-term benefits in a cap-and-trade scheme that begins with a fixed price for a particular time.

On 9 February 2011, Minister Combet continued to call for the establishment of a carbon price as soon as possible in Australia<sup>50</sup>: on that day, his Department released *Australia’s Emissions Projections which assessed existing carbon-related policies and measures in Australia and predicted that, without further action, emissions in Australia would continue to rise to be 24 per cent of 2000 levels in 2020 and 44 per cent of 2000 levels in 2030*. The Department estimated that, to meet the Government’s commitment to reduce carbon emissions by at least 5 per cent below 2000 levels by 2020, Australia would need to eliminate around 160 million tonnes of CO<sub>2</sub>e in 2020, equivalent to reducing emissions from electricity generation by 75 per cent. Minister Combet stated that these needs could not be met ‘[without] a carbon price underpinning long term investments in renewable energy, low emissions gas generation and energy efficiency’ and that ‘a carbon price mechanism is essential as the primary driver of [this] economic transformation’.

On 16 February 2011<sup>51</sup> and 17 February 2011<sup>52</sup>, Minister Combet continued to emphasise ‘the scale of [the] challenge to decouple production from pollution’ in Australia, and the government’s determination ‘to deliver on a carbon price as a key economic reform supporting a long-term climate change’. On 8 March

<sup>45</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/April/mr20110419.aspx>

<sup>46</sup> <http://www.climatechange.gov.au/minister/greg-combet/2010/major-speeches/October/sp20101012.aspx>

<sup>47</sup> Media Release, ‘Australia & New Zealand recommit to working together on climate change’

<sup>48</sup> Prime Minister, Speech to the Rotary Club of Adelaide, 9 November 2010.

<sup>49</sup> <http://www.lexology.com/library/detail.aspx?g=754de4d2-d001-45de-9fd9-f04c9e9c6e90>

<sup>50</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/February/mr20110209.aspx>

<sup>51</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/February/sp20110216.aspx>

<sup>52</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/February/sp20110217.aspx>

2011<sup>53</sup>, he indicated the government's view that '[a] carbon price will enhance Australia's long-term economic competitiveness' and 'will decouple the historically close relationship between carbon pollution and economic growth'. The Minister continued these themes in speeches on 23 March 2011<sup>54</sup>, 4 April 2011<sup>55</sup> and 13 April 2011<sup>56</sup>.

## 5.6 Legislative Program

On 11 October 2010, it was confirmed that the Gillard government would introduce legislation to implement its pre-election promise for a voluntary scheme, known as the Carbon Farming Initiative (CFI) to create 'credits' from land-based actions that reduced or stored carbon pollution.

On 27 October 2010, as a 'first step' in the CFI, the government announced the establishment and membership of a committee – the Domestic Offsets Integrity Committee (DOIC) – to assess and adopt methodologies for calculating credits<sup>57</sup>. It was announced that priority would be given to establishing methodologies relating to carbon sink forests and soil carbon, and that legislation would be introduced to Parliament in the first half of 2011. A consultation paper was released on 22 November 2010 and submissions were invited by 21 January 2011 on a number of issues including methodologies, and the various proposed environmental integrity standards (for example, additionality). Draft legislation was released for public comment in January 2011. As proposed in that legislation, the CFI aimed to let parties generate government-backed tradeable 'credits' from Australian land-based actions that reduced or stored carbon pollution. These credits could be sold domestically (to parties wishing to offset their carbon emissions voluntarily) or internationally (for voluntary offsetting or compliance purposes under binding schemes such as the EU emissions trading scheme)<sup>58</sup>. On 17 March 2011, the government confirmed its intention to introduce legislation for the CFI before the end of June 2011,<sup>59</sup> and also announced DOIC's availability to receive proposed methodologies for assessment for use under the CFI.<sup>60</sup> On 24 March 2011, the government introduced bills for the CFI into Federal Parliament.<sup>61</sup>

On 13 April 2011, Minister Combet confirmed the government's intention to introduce carbon price legislation into Federal Parliament in the quarter beginning in September 2011 and to have a legislated carbon price mechanism in place by 1 July 2012.<sup>62</sup>

## 5.7 2011 Carbon Legislation

On 1 July 2012, the *Clean Energy Act 2011 (Cth)* (**Clean Energy Act**) and a suite of 18 related Acts (**2011 Carbon Legislation**)<sup>63</sup> came into operation. With some departures, the 2011 Carbon Legislation reflected the 2011 Carbon Price Framework and the 2011 Garnaut Report.

<sup>53</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/March/sp20110308.aspx>

<sup>54</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/March/sp20110323.aspx>

<sup>55</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/April/sp20110404.aspx>

<sup>56</sup> <http://www.climatechange.gov.au/minister/greg-combet/2011/major-speeches/April/sp20110413.aspx>

<sup>57</sup> <http://www.climatechange.gov.au/en/minister/greg-combet/2010/media-releases/October/mr20101027.aspx>

<sup>58</sup> For further information see: <http://www.freehills.com/6848.aspx>; and <http://www.freehills.com/6891.aspx>.

<sup>59</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/March/mr20110312.aspx>

<sup>60</sup> See: <http://www.climatechange.gov.au/minister/greg-combet/2011/media-releases/March/mr20110312.aspx>

<sup>61</sup> See <http://www.climatechange.gov.au/en/minister/greg-combet/2011/media-releases/March/mr20110324.aspx>. The Bills consist of: the *Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth)*; the *Carbon Credits (Consequential Amendments) Bill 2011 (Cth)*; and the *Australian National Registry of Emissions Units Bill 2011 (Cth)*.

<sup>62</sup> <http://www.climatechange.gov.au/en/minister/greg-combet/2011/transcripts/April/tr20110413b.aspx>

<sup>63</sup> The 18 related Acts consisted of: *Clean Energy (Charges-Customs) Act 2011*; *Clean Energy (Charges-Excise) Act 2011*; *Clean Energy (Consequential Amendments) Act 2011*; *Clean Energy (Customs Tariff Amendment) Act 2011*; *Clean Energy (Excise Tariff Legislation Amendment) Act 2011*; *Clean Energy (Fuel Tax Legislation Amendment) Act 2011*; *Clean Energy (Household Assistance Amendments) Act 2011*; *Clean Energy (Income Tax Rates Amendments) Act 2011*; *Clean Energy (International Unit Surrender Charge) Act 2011*; *Clean Energy Regulator Act 2011*; *Clean Energy (Tax Laws Amendments) Act 2011*; *Clean Energy (Unit Issue Charge - Auctions) Act 2011*; *Clean Energy (Unit Issue Charge - Fixed Charge) Act 2011*; *Clean Energy (Unit Shortfall Charge - General) Act 2011*; *Climate Change Authority Act 2011*; *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011*; *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011*; *Steel Transformation Plan Act 2011*.

### **Principal Features of 2011 Carbon Legislation (1)**

Prior to its amendment on 17 July 2014, the principal features of the *Clean Energy Act* were as follows:

- (a) The *Clean Energy Act* was administered by a Clean Energy Regulator (**Regulator**) established under the *Clean Energy Regulator Act 2011 (Cth)*.
- (b) The *Clean Energy Act* operated in two distinct phases: a **fixed charge phase**; and a subsequent **flexible charge phase**.
- (c) If, in either the fixed charge phase or the flexible charge phase, a **liable entity** had a **unit shortfall**, a charge was imposed on the unit shortfall.
- (d) Unit shortfall was calculated by reference to the number of **eligible emissions units (EEUs)** surrendered by the liable entity for the relevant financial year. Eligible emissions units were:
  - (1) **carbon units** issued by the Regulator under the *Clean Energy Act*;
  - (2) domestic credits – **eligible Australian carbon credit units** (as defined in *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)*); and
  - (3) international units – **eligible international emissions units** (as defined in *Australian National Registry of Emissions Units Act 2011 (Cth)*).
- (e) Carbon units, eligible Australian carbon credit units and eligible international emissions unit were all 'financial products' for the purposes of the *Corporations Act 2001 (Cth)*<sup>64</sup>.
- (f) There were two types of carbon unit: carbon units which were issued free of charge; and carbon units which were not issued free of charge.
  - (1) Carbon units which were 'free' were of two types:
    - (A) units issued in accordance with the **Jobs and Competitiveness Program (JCP)** under section 145 of the of the *Clean Energy Act*; and
    - (B) units issued in accordance with **Part 8** of the *Clean Energy Act* (relating to coal-fired power generation).
  - (2) Carbon units which were not issued free were also of two types:
    - (A) units which were issued for a 'fixed' price; and
    - (B) units which were issued at auction.
- (g) In the fixed charge phase, the price of carbon units which were not issued free under the *Clean Energy Act* was fixed, commencing at \$23 per tonne of CO<sub>2</sub>e and rising annually thereafter by approximately 5%.
- (h) In the fixed charge phase, eligible international emissions units could not be surrendered, and only up to 5% of liability (or 100% of liability in the case of a landfill facility) for a relevant financial year could be met using eligible Australian carbon credit units.
- (i) In the flexible charge phase:
  - (1) there was no limit on the number of eligible Australian carbon credit units which could be surrendered to offset liability; and
  - (2) subject to regulations prohibiting the surrender of specified eligible international emissions units, and subject to 'general' and 'designated' limits' on surrender, liability could be offset using eligible international emissions units. In practical terms:

<sup>64</sup> *Corporations Act 2001 (Cth)*, sections 764A(kaa), (ka) and (kb).

- (A) in the first five years of the flexible price phase, European allowance units (and Australian-issued international units) could be used to offset up to 50% of liability;
  - (B) thereafter, no such restriction on the use of European allowance units (and Australian-issued international units) applied;
  - (C) in the first five years of the flexible price phase, Kyoto units (and other 'listed units') could be used to offset up to 12.5% of liability;
  - (D) thereafter, the use of Kyoto units (and other 'listed units') would be subject to limits imposed by the regulations.
- (j) In the flexible charge phase, up to 5% of liability for a relevant financial year could be met by 'borrowing' carbon units of the next vintage year.
- (k) In the flexible charge phase, there would be no **price floor** for carbon units issued at auction under the *Clean Energy Act*. But this was subject to any reserves which the Minister could set.
- (l) In the first three years of the flexible charge phase, there would be a **price ceiling**. But this was only if regulations were in place for that purpose. The aim was to publish such regulations by 31 May 2014. Such regulations could not be made after 1 July 2015. If such regulations were made, the price ceiling in the first flexible charge year would increase by 7.625% in each subsequent year.
- (m) The amount of the unit shortfall charge was:
- (1) in fixed charge years 130% of the fixed charge for carbon units in the relevant financial year: and
  - (2) in flexible charge years 200% of the **benchmark average auction charge**<sup>65</sup> for the previous financial year.
- (n) In the flexible charge phase, the total number of carbon units issued under the *Clean Energy Act* for any particular year would align with the **carbon pollution cap number** for that year. The carbon pollution cap number was set for each year by regulations as follows:
- (1) in proposing regulations, the Minister was required to (among other things) the most recent report of the new Climate Change Authority established under the *Climate Change Authority Act 2011 (CCA)*.
  - (2) The CCA would make recommendations to the government on a range of matters, including recommendations for the carbon pollution cap number.
  - (3) The regulations would be disallowed if either House of Parliament passed a resolution within 15 days of regulations being tabled.
  - (4) The Minister must take all reasonable steps to ensure that regulations specifying the carbon pollution cap number for the first five flexible charge years (FY2015-16 to FY2019-20) would be tabled no later than 31 May 2014.
  - (5) The five years of pollution caps would be extended by a year every year so that five years of pollution caps would always be known.

The following table illustrates the timeline:

Deadline	Pollution cap announced for FY(s)
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<sup>65</sup> The benchmark average auction charge is calculated and published by the Regulator as soon as practicable after the end of each financial year: *Clean Energy Act 2011*, section 114.

31 May 2014                      FY2015-16, FY2016-17, FY2017-18, FY2018-19 and FY2019-20

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30 June 2016                      FY2020-21

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30 June 2017                      FY2021-22

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Pollution caps would continue to be set annually

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If no cap number was set by regulation, a default cap number was set at: (in FY2015-16) the total covered emissions for FY2012-13 less 38,000,000; and in subsequent financial years, the cap number of the previous year less 12,000,000.

The default caps followed a trajectory consistent with Australia's unconditional target of reducing national emissions to 5% below 2000 levels by 2020.

### ***Principal Features of 2011 Carbon Legislation (2)***

In July 2013, Prime Minister Rudd announced prospective changes to policy settings which, if implemented, would have made the following changes to the arrangements described in 0:

- (o) The fixed charge phase would terminate, and the flexible charge phase would commence, one year earlier. In other words, The fixed charge phase would be FY2012-13 and FY2013-14, and the flexible charge phase would be FY2014-15 and afterwards.
- (p) The arrangements described in 1.1(i)(2) would change as follows:
  - (1) for FY2014-15 to FY2018-2019, European allowance units may be used to offset up to 50% of liability;
  - (2) for FY2014-15, Kyoto units may be used to offset up to 6.25% of liability;
  - (3) for FY2015-16 Kyoto units may be used to offset up to 12.5% of liability.
- (q) The arrangements for the auctioning of carbon units as described in 1.1(f)(2)(B) would change as follows:
  - 2.5 A total of seven auctions were scheduled to be held for FY2013-14:
    - 2.6 two advanced auctions, between February 2014 and June 2014;
    - 2.7 four auctions during 2014-15; and
    - 2.8 one auction after 30 June 2014 and before the surrender date for FY2014-15 (1 February 2016) .
  - 2.9 The opening price was to be set at 80% of the European Union allowance price.
  - 2.10 The volume of units to be sold at the two advanced auctions was to be 20 million per auction.
- (r) As regards the **price ceiling** described in 1.1(l) above, regulations to establish a price ceiling in the first three years of the flexible charge phase would be in place by 1 July 2014.
- (s) As regards the **pollution cap** described in 1.1(n) above, the CCA would be asked to recommend a pollution cap for FY2014-15 (as well as caps for FY2015-16, FY2016-17, FY2017-18, FY2018-19 and FY2019-20) and to make these recommendations by 28 February 2014. Caps for FY2014-15 (as well as for FY2016-17, FY2017-18, FY2018-19 and FY2019-20) would be set by 1 July 2014. If no

pollution cap number was set by regulation, a default cap number set at: (in FY2014-15) the total covered emissions for FY2012-13 less 25,000,000; and in subsequent financial years, the cap number of the previous year less 12,000,000.

## 6. Fifth Phase

Climate change policy was a key issue in the Liberal Party leadership spill that took place on 2 December 2009. Tony Abbott's position was that the Liberal Party should not support the *2010 CPRS Bills*<sup>66</sup>. After winning the leadership, Opposition Leader Tony Abbott withdrew the Liberal Party's support for it which he variously classified as "a great big new tax" and "a giant new tax on everything"<sup>67</sup>.

On 2 February 2010, the Coalition released its Direct Action Plan which outlined its Climate Change policy as an alternative to an ETS<sup>68</sup>. This policy was taken to the 21 August 2010 election and subsequently remained the Liberal Party policy during its time in opposition.

As Opposition Leader, Tony Abbott was highly critical of the Gillard Government's climate change policy agenda. He maintained it was a policy that Prime Minister Gillard had not taken to the election and that, while in opposition, he would continue to oppose it<sup>69</sup>.

In August 2013, in the lead up to the 5 September 2013 election the Coalition released a position paper titled "The Coalition's Policy to Scrap the Carbon Tax and Reduce the Cost of Living"<sup>70</sup>. The key themes identified in this position paper were that the "carbon tax indisputably adds to the cost of living" and that "[o]nly the Coalition will reduce your cost of living by abolishing the carbon tax".

After winning the election Prime Minister Abbott indicated that he would repeal the *Clean Energy Act* and the 2011 Carbon Legislation after 1 July 2014 when the composition of the Senate changed. On 17 July 2014, after successfully negotiating with a number of key independent senators, the *Clean Energy Act* and the 2011 Carbon Legislation was repealed.

As at the date of writing this article<sup>71</sup>, the Abbott government is yet to release draft legislation to implement its Direct Action Plan, leaving Australia, following 17 July 2014, without any legislative mechanism to price carbon emissions.

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<sup>66</sup> See <http://www.theaustralian.com.au/archive/politics/tony-abbott-will-challenge-malcolm-turnbull-on-monday/story-e6frgczf-1225804446518>

<sup>67</sup> See <http://www.theaustralian.com.au/news/tony-abbotts-next-policy-vow-anything-but-a-great-big-new-tax/story-e6frg6n6-1225805927737>

<sup>68</sup> See <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2FLIOX6%22>

<sup>69</sup> See <http://www.news.com.au/national/julia-gillard-strikes-deal-with-the-greens-on-climate-change/story-e6frfkvr-1226011300660>

<sup>70</sup> See <http://www.liberal.org.au/scrapping-carbon-tax-and-reducing-cost-living>

<sup>71</sup> 19 August 2014.