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Carbon tax Bills passed by the Senate

On 8 November 2011, the Senate passed the government's controversial Clean Energy Legislative Package (**Package**).

The Package, which consists of 18 bills led by the Clean Energy Bill 2011, seeks to implement the government's 'Securing a Clean Energy Future Plan' (**CEF Plan**).

The CEF Plan seeks to secure a clean energy future through four key activities:

- a price on carbon in the economy;
- development of renewable energy capacity;
- support for increased energy efficiency; and
- improving the condition of the Australian landscape.

Summary of key principles under the CEF Plan and Package

Carbon price

The carbon price will be fixed for the first three years at $23 per tonne of carbon dioxide equivalent (adjusted in real terms by 2.5% per annum). During this fixed price period, the carbon price will operate like a carbon tax and permits will be sold by the government at the fixed price in whatever quantity is required.

From 1 July 2015, the system will switch to a flexible price mechanism. During the flexible price period, the price will be set by the market with reference to the demand for and supply of carbon permits. This mechanism proposes a framework for setting a cap on greenhouse emissions by capping the number of carbon permits available after July 2015, although this cap may be adjusted over time to ensure that the reduction targets are met.

Emissions target reduction

Under the CEF Plan, the Australian government has committed to reduce greenhouse gas emissions by 5% from 2000 levels by 2020 and has increased its long term emissions reduction target to reduce emissions by 80% (compared with 2000 levels) by 2050.

Liable entities

Around 500 of Australia's largest polluters will be liable to buy and surrender a carbon permit for every tonne of carbon pollution produced.

The facility threshold for carbon permit liability has been set at 25,000 tonnes of certain Scope 1 carbon dioxide equivalent emissions. Generally, the ***controlling corporation*** with ***'operational control'*** over the facility will be the liable entity for that facility. The operator may be able to transfer liability for emissions from that facility to another person (eg another member of the corporate group) by applying for a 'liability transfer certificate'. It is expected that operators will look to transfer liability to entities that are in the best position to manage liability, reduce emissions and/or meet obligations.

This means that generally only those companies that are required to report their greenhouse gas emissions and energy usage under the National Greenhouse and Energy Reporting System (**NGERS**) in 'covered sectors' will be liable to purchase and surrender permits. Covered sectors include: stationary energy; waste; rail; domestic aviation and shipping; industrial processes; fugitive emissions; and from July 2014, heavy on-road vehicles.

Allocation and surrender of permits

The system will be based on the allocation and surrender of carbon permits with each permit representing one tonne of greenhouse gas emissions. This means that businesses will either purchase or be allocated permits and will be required to surrender a certain number of permits each year to fulfil their emissions obligations.

Demand for permits will be established by the Climate Change Authority, which will set the forward reduction targets (and hence scarcity of the permits released) in a similar operational manner to the RBA and interest rates. Caps will be announced five years in advance, starting from 31 May 2014.

If emissions obligations are not met through the surrender of eligible emissions permits, the liable entity will be required to pay an emissions charge equal to 1.3 times the fixed price for permits during the fixed price period discussed below, and double the average price of permits for the relevant compliance year during the flexible price period.

Purchasing permits to meet carbon obligations

Liable entities will be able to purchase permits from the government at the fixed price during the fixed price period (2012-2015) to meet their emissions liability. Once purchased, the fixed price permits will automatically be surrendered and cannot be traded or banked for future use. Permits allocated as part of a transitional assistance package are also not able to be banked but can be sold back to the government at their issue price. Up to 5% of annual emissions can be met from eligible permits purchased under the Carbon Farming Initiative (**CFI**) (note: CFI credits are bankable). This creates strong domestic demand for CFI credits.

Once the system transitions to the flexible price period, the government will issue permits according to a decreasing cap set by Australian emission reduction targets. These permits can be banked indefinitely, and there will be no limit on the amount of eligible CFI credits that can be used to meet emission obligations. Businesses can meet up to half of their annual liability through the purchase of international credits.

Greenhouse gases included/excluded sectors and treatment of transport fuels

The carbon scheme will cover four of the six Kyoto Protocol gases. These include carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O) and perfluorocarbon (PFC) gases. Hydrofluorocarbons (HFCs) and sulphur hexafluoride (SF_6) will face an equivalent carbon price to be applied through existing synthetic greenhouse gas legislation.

The agricultural and land sectors will be excluded from the carbon price, with no requirement for farmers to pay for pollution from livestock or fertiliser use. Transport fuels will have some exposure contingent on use.

The carbon price will be applied to transport fuels such as those used in domestic aviation and shipping; rail transport; off-road transport use of liquid and gaseous fuels; non-transport use of liquid and gaseous fuels; and from 2014, heavy on-road liquid fuel use. However the carbon price will not be applied to fuel used by households for transport; light on-road commercial vehicles; off-road fuel use by the agriculture, forestry and fishing industries; gaseous fuels used for on-road transport; ethanol, biodiesel and renewable diesel; and transport fuels when used as lubricants and solvents.

Relationship between the CEF Plan and the NGER Act

The NGER Act underpins the CEF Plan by providing emissions data on which to base reporting obligations. The registering and reporting obligations are placed on a 'controlling corporation' (generally the corporation at the top of the corporate hierarchy and one that satisfies the definition of 'constitutional corporation') and are based on two thresholds; namely, facility and corporate thresholds.

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Registered corporations are required to report all greenhouse gas emissions, energy production and energy consumption from facilities under the operational control of the corporation or a member of its 'Group', which may include subsidiaries, joint ventures and partnerships. A person will have operational control if they have authority to introduce and implement any or all of the operating, health and safety and environmental policies for that facility. Only one corporation can have operational control over a facility at any time.

What should be done now?

The Package outlines a number of implications for businesses; we recommend you consider them carefully.

The development of a carbon management plan is critical to the ability of your business to understand its carbon footprint and develop effective systems to safeguard against increased costs and generate new income streams.

A properly formulated plan should enable your business to:

- understand its carbon exposure;
- reduce costs;
- use carbon to leverage and increase revenue streams; and
- develop new revenue streams.

Cornwall Stodart can assist you in developing and implementing a carbon management plan that:

- identifies potential carbon exposure;
- reviews existing contracts to determine which costs can be passed on to customers;
- helps you identify the key considerations in preparing carbon costs pass through clauses in new contracts;
- investigates options to reduce costs such as capital upgrades;
- identifies available government funding;
- ensures that greenhouse gas reporting mechanisms are operational;
- ensures that disclosure obligations are met; and
- ensures that you do not engage in price gauging, which may attract the attention of the ACCC.

Authored by: **Jane O'Brien**, Cornwall Stodart

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For further information please contact:

Gideon Meltzer, Partner
Phone (direct) **+61 3 9608 2118**
Mobile **+61 409 599 050**
Email **g.meltzer@cornwalls.com.au**