

CG LAW BULLETIN

AN OVERVIEW OF THE ‘CLEAN ENERGY LEGISLATIVE PACKAGE’

On Tuesday 13 September the Australian Government introduced bills to Parliament with the intention of making law the Government’s proposed ‘clean energy future’ policy – or ‘carbon tax’ - and associated initiatives.

The bills contain the ‘black letter’ detail of what exactly the Government proposes the rules of a ‘low carbon economy’ will be.

It remains very difficult to predict what might yet happen with this ‘diabolical’ policy area (to borrow Ross Garnaut’s notorious description). Many of you will recall that the Rudd Government’s climate change policy – the Carbon Pollution Reduction Scheme – also made it all the way to Parliament, only to be rejected by the Senate.

But here we are again – we again have bills introduced to Parliament arguably for the biggest reform proposed for the Australian economy since the GST, and – at least for the moment – the Government has the numbers in both houses of parliament to make the bills into law.

SUMMARY OF THE LEGISLATIVE PACKAGE

Perhaps inevitably given the scale of the reform, the bills run to many hundreds of pages.

The bills can be found here:

<http://www.climatechange.gov.au/government/legislation.aspx>

Some of the key points are summarised below.

WHAT’S THE PLAN?

The Australian Government’s current policy is to ‘take action on climate change’. The Government is describing their policy as a ‘plan’ which they’re calling ‘Australia’s clean energy future’. We’ll call it the ‘CEF Plan’.

The CEF plan has four elements:

1. Introducing a price on ‘carbon’ – by way of the ‘carbon pricing mechanism’.
2. Promoting innovation and investment in renewable energy (with the mandatory renewable energy ‘target’ remaining – as it has been these last few years - at 20 percent of our electricity being generated by renewable sources by 2020).
3. Encouraging energy efficiency.
4. ‘Taking action on the land’ (reducing emissions in the agricultural and land sector).

The CEF plan is intended to:

1. Cut emissions by at least 5 percent (of 2000 levels) by 2020 (and by 80 percent by 2050).
2. Dramatically increase renewable electricity generation, and decrease ‘high-polluting’ generation (with a target 40 percent of total electricity generation by 2050).

3. Store carbon in the landscape (through the 'Carbon Farming Initiative').

THE CARBON PRICING MECHANISM

The key idea that underpins the CEF plan is to put a price on greenhouse gas emissions (or 'carbon'). The Government intends to do that by way of something that they are calling 'the carbon pricing mechanism'.

Under the carbon pricing mechanism, around 500 of Australia's biggest emitters will be required to pay for each tonne of 'carbon' they release into the atmosphere. That will cover around 60 percent of Australia's 'carbon' emissions.

For the three year period commencing on 1 July 2012 there will be a fixed price payable by liable emitters for every tone of 'carbon' they emit. The price will start at \$23 per tonne and will rise at 2.5 per cent per annum 'in real terms'.

From 1 July 2015 onwards (the 'flexible price period') the price will be set by the market (although for the first three years of the 'flexible price period' there will be a price 'ceiling' and 'floor' to try to avoid any wild price movements) and the number of permits issued by the Government each year will be capped. Effectively Australia will have a 'cap and trade' scheme, as was originally proposed by the (now defunct) Carbon Pollution Reduction Scheme.

A 'cap and trade' system aims to reduce emissions by setting a limit on emissions, then issuing permits based on that 'cap' to emitters caught by the scheme. Liable emitters have to surrender a 'permit' for every tone of GHG they emit. The idea is that the emitter will find it more affordable to invest in reducing emissions rather than buying permits.

Australia's 'cap and trade' system will work in the following way:

- Emitters will be monitored and audited (which has actually been happening for several years already).
- A finite 'cap' on 'carbon' emissions will be set for each year.
- Liable emitters will have to 'surrender' a permit for every tonne of 'carbon' they emit.
- An amount of 'permits' (equal to the 'cap') will be auctioned (or given away) each year.
- Each permit will entitle the permit holder to emit one tonne of 'carbon'.
- Penalties will apply to any emitter caught emitting without permits.
- Permits will be tradeable, transferable, chargeable (that is, they can be used as security against borrowings), and will never expire.
- At least half of a liable party's compliance obligation must be met through the use of 'domestic' units or credits, as opposed to those which could be sourced from overseas.

Agricultural emissions will be excluded from the plan, as will 'household' transport and 'light on-road' transport.

Heavy transport will however face an 'effective carbon price' from 2014-15 (through reduced fuel tax credits), and the plan will also apply to domestic aviation, domestic shipping, and rail transport.

CLEAN ENERGY REGULATOR

The new laws will be administered and enforced by a body called the 'Clean Energy Regulator'. Apart from monitoring and enforcing compliance the responsibilities of the CER will include providing education on the mechanism and how it works, assessing emissions

data to determine who is liable for what, operating the Registry of 'permits', and allocating units.

CONCLUSION

If your business is or could be one of the 500 (or so) emitters that will be liable under the (likely) new laws, then clearly you will need to take urgent action to understand and meet your obligations.

For the rest of the business community, your priority will be to understand what costs are likely to 'flow' through the system, and to take steps to ensure that – if at all possible – you are not left 'holding' those costs. If possible, you will want to pass the costs on 'down the line' and anyone entering into a contract of any significant duration should take particular care to understand how the passage of this legislation might affect their rights and obligations under that contract.

If you have any questions in relation to this bulletin please do not hesitate to contact CG Law's climate law team.

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