

COMMONWEALTH OF AUSTRALIASIM

# **Greenhouse Gas Emissions Reduction Bill 2018**

**No. , 2018**

*(phyllicanderer)*

**A Bill for an Act to reduce and eliminate greenhouse gas  
emissions, and for related purposes**

## **PRELIMINARY**

### **1 Short title**

This Act may be cited as the Greenhouse Gas Emissions Reduction Act 2018.

### **2 Commencement**

This Act will commence on 1 July 2019.

### **3 Objects of the Act**

The objects of this Act are to be as follows:

(a) to give effect to Australia's obligations under:

(i) the Climate Change Convention;

(ii) the Paris Agreement; and

(iii) the Kyoto Protocol;

(b) to support the development of an effective global response to climate change, consistent with Australia's national interest in ensuring that average global temperatures increase by not more than 1.5 degrees Celsius above pre-industrial levels;

(c) to bring net national carbon equivalent emissions down to zero by 2040, in a cost-effective and flexible way, that:

(i) encourages investment in clean and renewable energy sources; and

(ii) supports Australia's economic growth while reducing pollution.

### **4 Simplified outline**

The following is a simplified outline of the Act:

- This Act sets up a mechanism to deal with climate change by encouraging the use of clean energy.

- The mechanism begins on 1 July 2019, and operates on a financial year basis.

- The mechanism is administered by the Clean Energy Regulator.
- A carbon pollution cap limits the sum of the total number of auctioned carbon units.
- Carbon units are auctioned to persons who are liable for carbon dioxide equivalent emissions produced by a facility above the specified threshold.

## 5 Definitions

**action** , when used in relation to a carbon unit; in the case of an auction under section 24 - means a process that involves inviting persons to indicate or declare what they would be willing to pay by way of charge for the issue of the unit, conducted by the Regulator.

**carbon dioxide equivalence** or equivalent of an amount of greenhouse gas, means the amount of the gas multiplied by a value specified in the regulations of the National Greenhouse and Energy Reporting Act 2007, in relation to that kind of greenhouse gas.

**carbon pollution cap** has the meaning given by section 12.

**carbon unit** means a unit issued under section 19; the cost of a carbon unit is determined at the auction that sells the carbon unit.

**Commonwealth Registry account** means a Registry account kept in the name of the Commonwealth.

**designated joint venture**, in relation to a facility, means:

- (a) a joint venture that is a mandatory designated joint venture for the purposes of the application of this Act to the facility; or
- (b) a joint venture that is a declared designated joint venture for the purposes of the application of this Act to the facility.

**eligible financial year** means:

- (a) the financial year beginning on 1 July 2017; or
- (b) a later financial year.

**facility** means:

(1) For the purposes of this Act, a facility is an activity, or a series of activities (including ancillary activities), that involve greenhouse gas emissions, the production of energy or the consumption of energy and that:

- (a) form a single undertaking or enterprise and meet the requirements of the Act; or

(b) are declared by the Regulator to be a facility under sections 14 and 15.

(2) Paragraph (1)(a) does not apply if a declaration of a kind referred to in paragraph (1)(b) is in force.

**greenhouse gas** has the meaning prescribed in section 5A.

**hold an eligible emissions unit** means a person holds an eligible emissions unit if the person is the registered holder of the unit.

**identification number**, in relation to a carbon unit, has the meaning given by section 23.

**Information Database** means the Liable Entities Public Information Database kept under section 29.

**liability transfer certificate** means a certificate issued under section 16.

**liable entity** means a person who, under a provision of this Act, is a liable entity.

**person** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a trust;
- (d) a corporation sole;
- (e) a body politic;
- (f) a local governing body.

**registered holder**, in relation to an eligible emissions unit, means the person in whose Registry account there is an entry for the unit.

**Registry** means the Australian National Registry of Emissions Units continued in existence under the Australian National Registry of Emissions Units Act 2011.

**Registry account** has the same meaning as in the Australian National Registry of Emissions Units Act 2011.

**Regulator** means the Clean Energy Regulator.

**scheme**, when used in section 17, means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

vintage year , in relation to a carbon unit, means the eligible financial year that, in accordance with section 24, is the vintage year of the unit.

### **5A Greenhouse gas definition**

(1) For the purposes of this Act, each of the following is a greenhouse gas :

(a) carbon dioxide;

(b) methane;

(c) nitrous oxide;

(d) sulfur hexafluoride;

(e) a hydrofluorocarbon of a kind specified in the *National Greenhouse and Energy Reporting Act 2007*;

(f) a perfluorocarbon of a kind specified in the *National Greenhouse and Energy Reporting Act 2007*.

### **6 Electronic notice transmitted to the Regulator**

(1) For the purposes of this Act, a notice is an electronic notice transmitted to the Regulator if, and only if:

(a) the notice is transmitted to the Regulator by means of an electronic communication; and

(b) if the Regulator requires that the notice be transmitted, in accordance with particular information technology requirements, by means of a particular kind of electronic communication--the Regulator's requirement has been met; and

(c) the notice complies with regulations made for the purposes of subsection (2).

(2) The regulations may make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of an electronic communication.

(3) Regulations made for the purposes of subsection (2) may deal with:

(a) encryption; and

(b) authentication of identity.

(4) Subsection (3) does not limit subsection (2).

(5) For the purposes of this Act, if a notice is transmitted to the Regulator by means of an electronic communication, the notice is taken to have been transmitted on the day on which the electronic communication is dispatched.

(6) Subsection (5) of this section has effect despite section 14A of the Electronic Transactions Act 1999.

(7) This section does not, by implication, limit the regulations that may be made under the Electronic Transactions Act 1999.

## **7 Crown to be bound**

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Crown.

## **8 Extension to external Territories**

This Act extends to every external Territory.

## **9 Extension to exclusive economic zone and continental shelf**

This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

## **10 Extension to Joint Petroleum Development Area**

This Act extends to the Joint Petroleum Development Area.

## **11 Application to foreign ships**

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign ships in:

- (a) the territorial sea; or
- (b) the exclusive economic zone; or
- (c) waters of the continental shelf;

in accordance with the United Nations Convention on the Law of the Sea.



## PART 1 - CARBON POLLUTION CAP AND CARBON EQUIVALENT UNITS

### 12 Carbon pollution cap

(1) A metric tonne of carbon dioxide emissions, or an equivalent amount of greenhouse gas emissions, shall be referred to as a carbon dioxide equivalent unit.

(2) Any number in this Act setting a national limit of yearly carbon dioxide equivalent units that can be emitted into the atmosphere as a consequence of economic activity, shall be referred to as the carbon pollution cap.

(3) This Act shall set the carbon pollution cap for each year to 2040.

### 13 Carbon pollution cap schedule up to 2049/50 and for subsequent years

(1) The carbon pollution cap for each year starting 2019/20 is set according to the following schedule:

Year	Carbon pollution cap (Mt CO <sup>2</sup> e)
2019/20	510
2020/21	500
2021/22	480
2022/23	450
2023/24	400
2024/25	350
2025/26	300
2026/27	250
2027/28	200
2028/29	150
2029/30	100
2030/31	70
2031/32	50
2032/33	40



2033/34	30
2034/35	20
2035/36	10
2036/37	7
2037/38	4
2038/39	2
2039/40	0

4) In all years after 2039/40, this Act shall allow zero net carbon equivalent units to be emitted into the atmosphere as a consequence of economic activity.

## **PART 2 - LIABLE ENTITIES**

### **14 Liable entities - person who has operational control of a facility**

(1) A person who owns a facility, which produces carbon dioxide equivalent emissions of not less than 20,000 tonnes is a liable entity for that eligible financial year.

(2) A person who owns a facility for a number of days in that financial year, which produces carbon dioxide equivalent emissions of not less than 20,000 tonnes is a liable entity for the same number of days in that eligible financial year.

### **15 Liable entities - joint venture which has operational control of a facility**

(1) A person's participating percentage of a joint venture in a facility which produces carbon dioxide equivalent emissions of not less than 20,000 tonnes in that eligible financial year is a liable entity for that percentage of emissions in that eligible financial year.

(2) A person's participating percentage of a joint venture in a facility which produces carbon dioxide equivalent emissions of not less than 20,000 tonnes, for a number of days in that eligible financial year, is a liable entity for that participating percentage of emissions for a number of days in that eligible financial year.

### **16 Transferring liability to another corporate member within a group**

(1) A company that is not the operator, but is the owner of a facility, and is part of the corporate group that is the operator of the facility, may apply to the Regulator for a transfer of liability to the operator of the facility.

(2) The Regulator may issue a liability transfer certificate, stating that liability has been transferred to the operator of the facility.

## 17 Anti-avoidance

### *Scope*

(1) This section applies if:

(a) at any time after 15 December 2008, one or more persons entered into, commenced to carry out, or carried out, a scheme; and

(b) having regard to the following:

(i) the manner in which the scheme was entered into or carried out;

(ii) the form and substance of the scheme;

(iii) the time when the scheme was entered into and the length of the period during which the scheme was carried out;

(iv) the result in relation to the operation of this Act that, but for this section, would be achieved by the scheme;

(v) whether the scheme involves increasing the number of facilities without achieving any significant reductions in the total amount of covered emissions from the operation of the facilities;

(vi) whether the scheme involves establishing a particular number of facilities (instead of a lesser number of facilities) without achieving any significant reductions in the total amount of covered emissions from the operation of the facilities;

it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of enabling a person to obtain the benefit of one or more threshold provisions in relation to a facility (the relevant facility) for an eligible financial year.

(2) For the purposes of subsection (1), it is immaterial whether the person last mentioned in paragraph (1)(b) is the person, or one of the persons, mentioned in paragraph (1)(a).

### *Cancellation of benefit of threshold provision*

(3) The Regulator, may, by writing, determine that this Act has, and is taken always to have had, effect, as if the person last mentioned in paragraph (1)(b) were not entitled to obtain the benefit of the relevant threshold provision or provisions in relation to the relevant facility for that eligible financial year.

(4) If the Regulator makes a determination under subsection (3), the Regulator must publish

a copy of the determination on the Regulator's website.

(5) A determination under subsection (3) is not a legislative instrument.

*Threshold provision*

(6) For the purposes of this section, sections 14 and 15 provide the threshold provision.

**18 Issue of liability transfer certificate**

*Scope*

(1) This section applies if an application has been made for a liability transfer certificate in relation to a facility.

*Issue of certificate*

(2) After considering the application, the Regulator may issue to the applicant a liability transfer certificate in relation to the facility.

*Criteria for issue of certificate*

(3) The Regulator must not issue the liability transfer certificate unless the Regulator is satisfied that:

(a) the applicant has, and is likely to continue to have:

(i) the capacity; and

(ii) the access to information; and

(iii) the financial resources;

necessary for it to comply with obligations that will be imposed on the applicant by this Act and the associated provisions if the certificate is issued; and

(b) if the regulations specify one or more other requirements--those requirements are met.

*Timing*

(4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:

(a) if the Regulator requires the applicant to give further information in relation to the application--within 90 days after the applicant gave the Regulator the information; or

(b) otherwise--within 90 days after the application was made.

### *Refusal*

(5) If the Regulator decides to refuse to issue the liability transfer certificate, the Regulator must give written notice of the decision to the applicant.

## **PART 3 - ISSUE OF CARBON UNITS**

### **19 Issue of carbon units**

The Regulator may, on behalf of the Commonwealth, issue carbon units.

### **20 Identification number**

A carbon unit is to be identified by a unique number, to be known as an identification number.

### **21 Vintage year**

(1) Each carbon unit has a vintage year .

(2) A vintage year must be a particular eligible financial year.

(3) The identification number of a carbon unit must include digits that represent the vintage year of the unit.

### **22 When a carbon unit may be issued**

The Regulator may issue a carbon unit with a particular vintage year at any time before February 1 next following the vintage year.

*Note: For example, the Regulator may, at any time before the end of 1 February 2021, issue a carbon unit with the vintage year beginning on 1 July 2019.*

### **23 How a carbon unit may be issued**

(1) The Regulator is to issue a carbon unit to a person by making an entry for the unit in a Registry account kept by the person.

(2) An entry for a carbon unit in a Registry account is to consist of the identification number of the unit.

(3) The Regulator must not issue a carbon unit to a person unless the person has a Registry account.

## **24 Circumstances in which carbon units may be issued**

The Regulator must not issue a carbon unit otherwise than as the result of an auction conducted by the Regulator.

## **25 Carbon units - total number**

(1) The Regulator must ensure that the sum of the total carbon units within a particular vintage year, issued via auction conducted by the Regulator, equals the carbon pollution cap for that vintage year.

(2) If a carbon unit is offered at auction on 2 or more occasions, the unit is only counted for the purposes of paragraph (1)(a) on the first of those occasions.

## **PART 4 - INFORMATION PUBLICATION BY THE REGULATOR**

### **26 Liable Entities Public Information Database**

(1) The Regulator must keep a database, to be known as the Liable Entities Public Information Database.

(2) The Information Database is to be maintained by electronic means.

(3) The Information Database is to be made available for inspection on the Regulator's website.

(4) The Information Database should include all information pertaining to parts 2 and 3 of this Act.

### **27 Information about holders of Registry accounts**

(1) The Regulator must:

(a) publish on its website:

(i) the name of each person who has a Registry account;

(ii) the person's address last known to the Regulator; and

(b) keep that information up-to-date.

### **28 Information about auction results — General**

(1) For each auction of carbon units conducted by the Regulator, the Regulator must publish the following information on its website:

- (a) the date of the auction;
- (b) the vintage year, or vintage years, of the carbon units auctioned;
- (c) a statement setting out, for the vintage year, or each of those vintage years, as the case may be:
  - (i) each per unit charge that was payable for the issue of carbon units with the vintage year concerned; and
  - (ii) for each such per unit charge--the total number of carbon units with the vintage year concerned that were issued for the per unit charge.

## **PART 5 - FRAUDULENT CONDUCT**

### **29 Units issued as a result of fraudulent conduct--court may order relinquishment**

#### *Scope*

- (1) This section applies if:
  - (a) one or more carbon units were issued to a person on a particular occasion; and
  - (b) the person has been convicted of an offence against:
    - (i) section 134.1 of the Criminal Code ; or
    - (ii) section 134.2 of the Criminal Code ; or
    - (iii) section 135.1 of the Criminal Code ; or
    - (iv) section 135.2 of the Criminal Code ; or
    - (v) section 135.4 of the Criminal Code ; or
    - (vi) section 136.1 of the Criminal Code ; or
    - (vii) section 137.1 of the Criminal Code ; or
    - (viii) section 137.2 of the Criminal Code ; and
  - (c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

*Note: For appropriate court , see subsection (8).*

### *Relinquishment*

(2) The court may, on application made by the Director of Public Prosecutions or the Regulator, order the person:

(a) to relinquish a specified number of carbon units not exceeding the number of carbon units issued as mentioned in paragraph (1)(a); and

(b) to do so by a specified time.

### *Compliance*

(3) The person must comply with an order under subsection (2).

*Note: An administrative penalty is payable for non-compliance with a relinquishment requirement.*

(4) The person does not comply with an order under subsection (2) unless the notice of relinquishment specifies the order.

(5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:

(a) the person is not the registered holder of any carbon units; or

(b) the person is not the registered holder of the number of carbon units required to be relinquished.

### *Conviction*

(6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

### *Copy of order*

(7) A copy of an order under subsection (2) is to be given to the Regulator.

### *Appropriate court*

(8) For the purposes of this section, each of the following courts is an appropriate court :

(a) the court that convicted the person of the offence;

(b) the Federal Court of Australia;

(c) the Supreme Court of a State or Territory.

*Spent convictions*

(9) Nothing in this section affects the operation of Part VIIC of the Crimes Act 1914 (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**PART 6 - MISCELLANEOUS**

**30 Review of the Act**

(1) The Climate Change Authority will review the Act every two years.

(2) The review will be tabled in the Parliament by the Minister for publication.

(3) The review will recommend changes to the Act as it deems necessary to fulfil the objects of the Act, and to amend the Act to conform with new international agreements on taking action to reduce the impact of economic activity on manmade climate change.