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Date introduced: 13 November 2013
House: House of Representatives
Portfolio: Environment
Commencement: See page 7 of this Bills Digest.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bill’s home page for the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013, the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
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### Glossary

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<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
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<td>ACCI</td>
<td>Australian Chamber of Commerce and Industry</td>
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<td>ACCU</td>
<td>Australian Carbon Credit Unit</td>
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<td>ACF</td>
<td>Australian Conservation Foundation</td>
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<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<td>ACTU</td>
<td>Australian Council of Trade Unions</td>
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<td>ACU</td>
<td>Australian Carbon Unit</td>
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<tr>
<td>AEMC</td>
<td>Australian Energy Market Commission</td>
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<td>AEMO</td>
<td>Australian Energy Market Operator</td>
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<td>AER</td>
<td>Australian Energy Regulator</td>
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<td>AiG</td>
<td>Australian Industry Group</td>
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<td>ALGA</td>
<td>Australian Local Government Association</td>
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<td>ALP</td>
<td>Australian Labor Party</td>
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<td>ARA</td>
<td>Australian Retailers Association</td>
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<td>ARENA</td>
<td>Australian Renewable Energy Agency</td>
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<td>AWU</td>
<td>Australian Workers’ Union</td>
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<td>BAS</td>
<td>Business Activity Statement</td>
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<td>BCA</td>
<td>Business Council of Australia</td>
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<td>CC Act</td>
<td><em>Competition and Consumer Act 2010</em></td>
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<td>CCA</td>
<td>Climate Change Authority</td>
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<td>CE Act</td>
<td><em>Clean Energy Act 2011</em></td>
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<td>CEC</td>
<td>Clean Energy Council</td>
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<td>CER</td>
<td>Clean Energy Regulator</td>
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<td>CFI</td>
<td>Carbon Farming Initiative</td>
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<tr>
<td>CFMEU</td>
<td>Construction, Forestry, Mining and Energy Union</td>
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<tr>
<td>CO₂e</td>
<td>Carbon dioxide equivalent</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>CPM</td>
<td>Carbon Price Mechanism</td>
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<td>DAP</td>
<td>Direct Action Plan</td>
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<tr>
<td>EITE</td>
<td>Emissions-intensive, trade-exposed</td>
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<td>ERF</td>
<td>Emissions Reduction Fund</td>
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<td>ESAA</td>
<td>Electricity Supply Association of Australia</td>
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<td>ESF</td>
<td>Energy Security Fund</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>ETS</td>
<td>Emissions trading scheme</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<td>EUA</td>
<td>European Union Allowance</td>
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<td>FTC</td>
<td>Fuel tax credit</td>
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<tr>
<td>GST</td>
<td>Goods and services tax</td>
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<td>IGCC</td>
<td>Investor Group on Climate Change</td>
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<td>JCP</td>
<td>Jobs and Competitiveness Program</td>
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<tr>
<td>main repeal Bill</td>
<td>Clean Energy Legislation (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>MCA</td>
<td>Minerals Council of Australia</td>
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<td>MPCCC</td>
<td>Multi Party Climate Change Committee</td>
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<tr>
<td>MWh</td>
<td>Megawatt-hour</td>
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<tr>
<td>NEM</td>
<td>National Electricity Market</td>
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<td>NFF</td>
<td>National Farmers’ Federation</td>
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<td>NGERS</td>
<td>National Greenhouse and Energy Reporting Scheme</td>
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<td>NSW</td>
<td>New South Wales</td>
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<tr>
<td>PBO</td>
<td>Parliamentary Budget Office</td>
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<tr>
<td>PUP</td>
<td>Palmer United Party</td>
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<tr>
<td>REC</td>
<td>Renewable Energy Certificate</td>
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<td>RET</td>
<td>Renewable Energy Target</td>
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<tr>
<td>second Bill</td>
<td>True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>SGG</td>
<td>Synthetic greenhouse gas</td>
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<tr>
<td>TCI</td>
<td>The Climate Institute</td>
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<tr>
<td>TEC</td>
<td>Total Environment Centre</td>
</tr>
<tr>
<td>third Bill</td>
<td>True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013</td>
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The Bills Digest at a glance

Purpose and structure of the Bills

- The three Bills repeal the *Clean Energy Act 2011* and associated legislation. The main repeal Bill, the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 repeals or amends Acts that legislate a price on carbon to remove that function; empowers the Australian Competition and Consumer Commission (ACCC) to monitor for price exploitation in relation to the carbon price repeal; removes a 15% tax offset for conservation tillage; ends assistance to the steel industry in relation to a carbon price; and reduces funding to the Australian Renewable Energy Agency (ARENA).

- The other two Bills, the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013, deal with taxation and levy issues in relation to ending assistance to emissions intensive companies that are liable for a carbon price.

Stakeholder and non-government party views

- Stakeholder views are mixed. Industry and business tend to support the repeal in principle but are concerned over the detail which leaves high levels of uncertainty. This is partly because no replacement policy has been finalised. Environmental groups generally do not support the repeal legislation.

- The Opposition and the Greens oppose the Bills.

About the carbon price mechanism

- The carbon price mechanism (CPM) is a cap-and-trade emissions trading scheme that began with a three-year fixed price. This fixed price phase led to the scheme being referred to as a ‘carbon tax’. This phase ends in 2015 when the CPM transitions to a full emissions trading scheme, with links to other carbon markets.

Basis for repeal

- The Government has said that the 2013 election gave it a mandate to repeal the CPM, which it says has increased costs to business and households, has not reduced greenhouse gas emissions, and is not commensurate with international action. The repeal is effective from 1 July 2014.

Implications of the repeal

- Removing the CPM before a replacement has been finalised creates uncertainty for business and investors, and potentially jeopardises Australia’s ability to meet nationally agreed emissions reduction targets.

- Although there was some element of electricity and other price increases with the establishment of the CPM, it is unclear to what extent prices will drop after the repeal. The ACCC will need to accurately and credibly monitor prices to manage this issue.

- The repeal may slow the deployment of renewable energy; firstly because funding to the ARENA is cut; and secondly because the carbon price increased the attractiveness of renewable energy relative to fossil fuels.

- Should the Bills not be passed before 1 July 2014, the repeal would apply retrospectively to that date. This may result in extra costs to the Budget.

Alternative proposals

- The Opposition proposes moving forward to 1 July 2014 the start date of the full emissions trading scheme.

- The Government has outlined, but not detailed, a policy with capped annual budgets for purchasing emissions reduction by reverse auction. The policy penalises companies that emit in excess of emissions baselines.

- Senator Xenophon advocates a baseline-and-credit emissions intensity scheme.
Commencement

In the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013:

- Schedule 1, Parts 1 and 2 and Schedule 1, Part 3, Divisions 1 to 4, commence on 1 July 2014
- Schedule 1, Part 3, Division 5 commences on the day the Act receives Royal Assent
- Schedule 1, Part 4 commences the day after the Act receives Royal Assent, or 1 July 2014 if Royal Assent is received before 30 June 2014
- Schedule 2 commences the day after the Act receives Royal Assent or 1 January 2014, whichever is later
- Schedule 3 commences the day after the Act receives Royal Assent
- Schedule 4 commences on 1 July 2014 and
- Schedule 5 commences the day the Act receives Royal Assent.

In both the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013 the operative provisions (sections 3 to 9) commence at the same time as Schedule 1, Part 4 of the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013.

Purpose of the Bill

Together, the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 (the main repeal Bill), the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 (the second Bill) and the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013 (the third Bill) dismantle the carbon price mechanism (CPM), with some provisions to recover over-allocations of free emissions permits to emissions-intensive, trade-exposed entities.

Specifically, the main Bill repeals:

- the Clean Energy Act 2011 (CE Act)
- the Clean Energy (Charges–Customs) Act 2011
- the Clean Energy (Charges–Excise) Act 2011
- the Clean Energy (Unit Issue Charge–Auctions) Act 2011
- the Clean Energy (Unit Issue Charge–Fixed Charge) Act 2011
- the Clean Energy (Unit Issue Charge–General) Act 2011 and
- the Steel Transformation Plan Act 2011.

It also makes amendments to a number of affected Acts.

Structure of the Bill

The main Bill is divided into five Schedules:

- Schedule 1 repeals the six Acts that legislate a price on carbon and amends 13 related Acts. However, Part 1 includes provisions to preserve certain parts of the repealed Acts as a transitional measure, specifically in relation to CPM liabilities in 2013–14. In conjunction with the second and third Bills, Part 1 of the main Bill also ends industry assistance through the Jobs and Competitiveness Program (JCP)
- Schedule 2 amends the Competition and Consumer Act 2010 (CC Act) giving temporary powers to the Australian Competition and Consumer Commission (ACCC) for the monitoring of price exploitation in relation to the CPM repeal
- Schedule 3 amends the Clean Energy (Consequential Amendments) Act 2011 and the Income Tax Assessment Act 1997 to repeal a temporary 15% tax offset for conservation tillage that was introduced with the CPM
- Schedule 4 repeals the Steel Transformation Plan Act 2011, putting an end to assistance to the steel industry and
- Schedule 5 amends the funding allocated to the Australian Renewable Energy Agency (ARENA) through the Australian Renewable Energy Agency Act 2011.
Structure of the broader legislative package

The broader carbon price repeal package comprises 11 Bills. The purpose of these Bills is to repeal the arrangements implemented by the former Government to establish the CPM.

The CPM is a framework that internalises into the cost of production of certain goods and services, the cost on the economy of greenhouse gas emissions resulting from that production. For this framework, architecture for an emissions trading scheme was established. This comprised a period during which carbon prices would be fixed (2012 to 2015), and a period during which the carbon price would fluctuate with market forces (from 1 July 2015). To support the framework several new government agencies were established. Income tax and transfer payments were also changed. This was to compensate households for the expected higher costs of living.

Among the 11 Bills, five amend existing legislation to remove the equivalent carbon price imposed on aviation fuels and synthetic greenhouse gases. One Bill abolishes the Climate Change Authority (CCA) and transfers some of its functions to the Department of the Environment. One Bill repeals legislated income tax cuts that were part of compensation arrangements upon the implementation of the flexible price period from 1 July 2015. A final Bill abolishes the Clean Energy Finance Corporation.

Not all aspects of the CPM are dismantled. For example, the registry established under the CPM to record and manage carbon credits is maintained but amended to reduce its function. Similar, the Clean Energy Regulator (CER), which administers the CPM, is maintained but with reduced and altered functions.

The 11 separate Bills cover five main areas associated with the repeal (Table 1).

Table 1  Broader carbon price repeal package

<table>
<thead>
<tr>
<th>Bills</th>
<th>Description</th>
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<tbody>
<tr>
<td>• Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 (the ‘main repeal Bill’)</td>
<td>• Repeals the Clean Energy Act 2011, the main piece of legislation that established the CPM. Also facilitates the collection of liabilities relating to the 2013–14 financial year; introduces new powers for the ACCC and removes assistance to the steel industry by repealing the Steel Transformation Plan Act 2011.</td>
</tr>
<tr>
<td>• True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013</td>
<td>• Apply consequential amendments required by the main repeal Bill to recover the value of over-allocated free emissions permits that provide assistance to energy intensive trade-exposed activities under the CPM.</td>
</tr>
<tr>
<td>• True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013</td>
<td></td>
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<tr>
<td>• Customs Tariff Amendment (Carbon Tax Repeal) Bill 2013</td>
<td>• Repeal provisions that apply an equivalent carbon price to aviation fuel and synthetic greenhouse gases.</td>
</tr>
<tr>
<td>• Excise Tariff Amendment (Carbon Tax Repeal) Bill 2013</td>
<td>• Apply transitional arrangements for the import of bulk synthetic greenhouse gases between 1 April and 30 June 2014.</td>
</tr>
<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions)</td>
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</tbody>
</table>

1. The Library will produce five separate Bills Digests covering these 11 Bills. These will cover (1) the Main Repeal Bill and the Bills relating to the true-up levy short fall (this Bills Digest), (2) the repeal of the equivalent carbon price arrangements, (3) the abolition of the CCA and the Land Sector Carbon & Biodiversity Board, (4) the abolition of the CEFC and (5) the repeal of the personal income tax cuts scheduled to commence from 1 July 2015. Each of these Bills Digests will be available from the Library’s Bills Digests alphabetical index 2013-14, accessed 27 November 2013.
Background

The Government is repealing the CPM legislation on the grounds that:

- the CPM places an unfair cost burden on Australian businesses and households
- it is inefficient and wasteful
- it has not led to a reduction in greenhouse gas emissions
- it is not matched by comparable action internationally
- the electorate gave the Coalition a mandate to repeal the CPM, as the election was in essence a referendum on the CPM and
- the previous government had no mandate to establish the scheme in the first place.

During the 2010 Federal Election campaign, then Prime Minister Julia Gillard is on record saying ‘There will be no carbon tax under the Government I lead’. However, in order to form a minority government with the Australian Greens and three independent members, Gillard agreed to establish a Multi-Party Climate Change Committee (MPCCC) to explore ‘options for implementing a carbon price’. The MPCCC was formed but the Coalition refused to take part, despite being invited. Following advice from the MPCCC, the Labor Government announced the CPM, which was legislated, without support from the Coalition, in November 2011. The Coalition dubs this a breach of Gillard’s promise. Whether it is indeed a breach depends on whether the CPM can accurately be described as a carbon tax.


5. G Hunt, ‘Clean energy without the carbon tax’, speech, op. cit.


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<table>
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<tr>
<th>Bills</th>
<th>Description</th>
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<tr>
<td>Clean Energy (Income Tax Rates and Other Amendments) Bill 2013</td>
<td>Repeals personal income tax cuts set to commence on 1 July 2015, and repeals the associated amendments to the low-income tax offset.</td>
</tr>
<tr>
<td>Climate Change Authority (Abolition) Bill 2013</td>
<td>Abolishes the Climate Change Authority and the Land Sector Carbon &amp; Biodiversity Board.</td>
</tr>
</tbody>
</table>
The terms ‘carbon price’ and ‘carbon tax’ are sometimes used interchangeably, yet each term has a distinct meaning. These meanings are examined in more detail below in the section ‘Carbon tax versus carbon price’ under ‘Key issues and provisions’. In this Bills Digest, discussions relating to the CPM utilise the term ‘carbon price’.

Before the 2013 election, then Opposition leader Tony Abbott pledged that a Coalition Government would, as its first item of business, repeal the CPM. According to Abbott, the 2013 election was a ‘referendum on the carbon tax’, with a vote for the Coalition, a vote against the CPM. As promised, the newly-elected Coalition Government released exposure drafts of eight repeal Bills on 15 October 2013. Submissions were accepted until 4 November 2013 to allow for the Bills to be introduced into the House of Representatives on the first day of the 44th Parliament. On 13 November 2013, a package of 11 such Bills was introduced. The Bills passed the House of Representatives on 21 November 2013.

Committee consideration

**Senate Standing Committee on Environment and Communications**

The 11 Bills, including the three that are the subject of this Digest, have been referred to the Senate Standing Committee on Environment and Communications for inquiry and report by 2 December 2013. Details of the inquiry are at: [http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications)

The reasons given for referral were:

> The Carbon Tax has significantly impacted Australian households and businesses. The Committee will review the Bills and report to the Senate on: costs to households and businesses from Labor’s Carbon Tax; and the impact of the Carbon Tax on business costs including mining, manufacturing and small business.

> To ensure proper scrutiny of these Bills and their impact on Australia’s efforts to tackle climate change and carbon pollution.

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills has not reported on these Bills.

**Parliamentary Joint Committee on Human Rights**

At the time of writing, the Parliamentary Joint Committee on Human Rights has not reported on these Bills.

**Policy position of non-government parties/independents**

**The Australian Labor Party**

The CPM was a policy implemented by the Labor Government, developed in collaboration with the Australian Greens. It stands to reason that the ALP opposes the repeal of the CPM legislation. However, the ALP is not opposed to amending the scheme.

The CPM was designed with an initial three-year transition phase, during which the price of carbon is set by legislation rather than the market. This was to provide investment certainty in the early years of the scheme. The fixed price phase ends on 1 July 2015. In the lead up to the 2013 election, the ALP proposed bringing forward by one year the end of the fixed price phase, moving to an emissions trading scheme (ETS) on 1 July 2014.

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14. Officially, the 44th Parliament opened on the 12th of November.
According to the then-Minister for Climate Change, this is the ALP’s pledge to ‘terminate the carbon tax and bring forward the emissions trading scheme’. Costings released alongside the proposal claim that it would reduce the cost of living by $7.20 per week on average per household (totalling $380 in the first year), more than half of which would come from lower electricity and gas bills. To offset reduced Government revenues, funding for a series of other climate programs would be reduced.

The now Opposition ALP has re-stated since the election that it supports the repeal of the CPM ‘provided that a market based mechanism that reduces carbon pollution is put in its place, along with a strong commitment to expanding renewable energy’. It introduced amendments to the main repeal Bill in line with this position. Details of the ALP’s alternate policy are provided under the section ‘Alternative proposals’.

The Australian Greens

Having been a significant and instrumental part of designing and bringing to fruition the CPM, the Australian Greens strongly oppose its repeal. According to Senator Milne, leader of the Greens:

… the Greens will have a mandate on carbon pricing. It is the law. We will uphold the law and we won’t see the law repealed when it comes to carbon pricing but we will work to improve legislation, whoever is in government and we’ll work with all sides of politics to achieve that as we always have.

However, the Greens also opposed Labor’s proposal to move to an early ETS and the associated climate programs cuts.

Senator Xenophon

In a statement on his website, Senator Xenophon outlines that, while he ‘would support the repeal of the current carbon tax, it must be replaced by something more efficient for the economy and more effective for the environment.’ The Senator supports neither the existing CPM nor the Coalition’s alternative policy as it stands. He supports a hybrid model developed in 2009 by independent group Frontier Economics. More details on this hybrid scheme are provided in the section ‘Alternative proposals’.

Democratic Labor Party

Senator Madigan of the Democratic Labor Party could have a deciding vote before 1 July 2014. Media reports suggest that he is likely to support the Bills.

Palmer United Party and the Australian Motoring Enthusiasts Party

To avoid the perception of a conflict of interest, Clive Palmer abstained from voting on the Bills. Palmer is owner of a resources company that is covered by the CPM. The company is said to owe the government a CPM liability of over $6 million.
Should the passage of the Bills through the Senate be delayed until after 1 July 2014, the Palmer United Party (PUP) will also have at least two Senators in Parliament. The PUP policy position on the repeal legislation is to see it ‘abolished from the day it was introduced’, rather than from 1 July 2014 as outlined in the Bill. Mr Palmer has said that ‘Australians under the Palmer United Party policy would have received refunds for carbon tax paid’. 

It is understood that the PUP Senators-elect are free to ‘decide what they want to do’. Tasmanian PUP Senator-elect, Jacqui Lambie, has said that she does not support repeal of the entire CPM, but that the carbon price should be lower than it currently is. The position of Glenn Lazarus, PUP leader in the Senate, is unclear. From 1 July 2014, the Senate will also include one member of the Australian Motoring Enthusiast Party, Ricky Muir. Although Mr Muir hasn’t formally stated his position, media reports suggest that PUP and Muir have agreed to vote as a bloc, with Muir setting the agenda on motoring issues and PUP on all other issues.

**Liberal Democratic Party**

Senator-elect David Leyonhjelm of the Liberal Democratic Party has said that he supports the repeal of the CPM.

**Family First Party**

The Family First policy document states that:

‘Family First opposes the carbon tax and renewable energy targets. It believes it is grossly irresponsible to proceed with these policies that involve major changes to the Australian economy. A proper, independent enquiry eg a Royal Commission, needs to be established to explore the scientific, social, environmental and economic impact of such a change.’

**Position of major interest groups**

The Government released exposure draft Bills of the repeal legislation on 15 October 2013 and called for submissions by 4 November 2013. A total of 158 submissions were received.

**Industry and business views**

During implementation of the CPM, business and industry were divided on whether they supported a market-based mechanism as the cornerstone of climate policy.

Some industry groups seemed resigned to the fact that such an approach, while potentially demanding on business, may be the cheapest way to reduce greenhouse gas emissions. For example, Business Council of Australia (BCA) chief executive Graham Bradley stated that dealing with greenhouse gas emissions will ‘inevitably’ require a market-based mechanism and ‘that market-based mechanism is inevitably going to be an emissions trading mechanism of some kind’. After seeing the CPM legislation, the BCA issued a statement advocating ‘…a slow and steady start, with a low initial carbon price during the fixed-price period.

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34. ‘Libertarian David Leyonhjelm supports some Coalition polices but not others’, The Australian, (online version), 9 September 2013, accessed 27 November 2013.
Other industry groups were steadfastly opposed to the CPM. The Australian Chamber of Commerce and Industry (ACCI) asserted that it ‘remains opposed to the Government proposed Clean Energy Legislative Package, in the absence of a legally binding agreement and concerted international action to reduce global greenhouse gas emissions’. 39 The Australian Retailers Association (ARA) issued a statement claiming that the ‘carbon tax announcement spelt disaster for the retail sector as planned tax cuts failed to adequately compensate retailers’. 40 For the Minerals Council of Australia (MCA), the CPM represented ‘the world’s biggest carbon tax to fund a package that will not reduce greenhouse gas emissions’. 41

After considering the exposure drafts of the repeal legislation, these groups now seem more unified in their views. Some groups do categorically oppose the legislation. For example the Investor Group on Climate Change prefers the Opposition’s policy of moving to a floating price by 1 July 2014. 42 However, overwhelmingly industry and business groups support the repeal legislation. Both the BCA and Australian Industry Group (AiG) believe that the Parliament should respect the elected Government’s mandate to repeal the CPM. 43 The MCA recently announced that abolishing the CPM ‘will be a positive first step in an industry where our international competitors face no such comparable impost’. 44 And according to an ACCI press release from October 2013, ‘the sooner the carbon tax is repealed the better’. 45

Nonetheless, there is a call for some continuity in Australian climate policy. For example, since the 2013 election, Matthew Warren, Chief Executive of the Energy Supply Association of Australia (ESAA), has been quoted as saying:

> It is not in this nation’s broader interest to legislate and repeal and legislate and repeal energy policy. At some point the major parties will need to sit down and agree on a sensible, workable direction for Australia’s energy future. It would be better for everyone if that day came sooner rather than later. 46

Specific concerns raised in relation to the detail of the repeal legislation have been:

- **Retrospective repeal provisions should the legislation not pass before 1 July 2014**: The BCA, AiG, BHP Billiton and ESAA are among those that have raised concern that existing legislation would not be repealed before 1 July 2014. This will introduce additional costs for companies reviewing contracting arrangements, and will create uncertainty for industry. According to a joint submission to the exposure drafts from Australia’s electricity generators, gas transmission companies, electricity and gas networks and retailers a ‘retrospective repeal, even for a short period, would add further complexity’. 47

- **Price pass-through and monitoring powers of the ACCC**: Almost all industry groups called for clarification on the proposed price monitoring powers of the ACCC. According to the BCA and the AiG, the majority of businesses in the manufacturing, services and construction sectors have been unable to pass through most of their carbon price-related energy cost increases. 48 The implication is that buyers will see minimal price impacts from the repeal. The ACCI added to this, suggesting that the carbon footprint of companies varied significantly as it depended on direct and indirect emissions. As such the ACCC may find it difficult to assess the accuracy of cost pass-throughs. 49 The ACCI has also used this reasoning to call for existing industry assistance schemes to be maintained for ‘as long as they are needed’. 50

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47. ESAA and the Energy Retailers Association of Australia, the Energy Networks Association, the National Generators Forum and the Australian Pipeline Industry Association, Carbon Tax Repeal, 4 November 2013, p. 2, accessed 13 November 2013
and gas groups outlined that the impacts of the carbon price on gas and electricity prices specifically are complex and vary ‘by region, by supplier, by retailer and in many cases by individual contract’. These groups seek an early and carefully-executed CPM repeal, flagging that some benefits will be passed on to customers straightaway but full pass-through will only happen over time. However, they suggest that giving the ACCC price monitoring powers is likely to ‘duplicate existing regulatory arrangements and interfere with otherwise efficient energy markets’. The ARA is confident that ‘as retail businesses find savings from the abolition of the carbon tax ... retailers will pass those saving on’.  

- Flow-on effect to renewable energy certificate (REC) prices: According to some business and industry groups, electricity prices will be affected not just by the repeal of the carbon price but by the increase in costs under the Renewable Energy Target (RET) scheme. As such, the RET should also be reviewed. In its submission on the exposure drafts, AiG commented that the carbon price repeal will have an upward effect on certificate prices under the RET scheme. Because of this, AiG supports revisiting the review schedule for the RET scheme to assess whether biennial or four-yearly reviews would be most appropriate.  

**Environmental and renewable energy group views**

Environmental groups strongly welcomed the introduction of the CPM. These groups also oppose the repeal legislation. They believe the parliament should keep the current climate laws because they are working. ‘Until stronger laws are on the table, nothing should be repealed.’ The slogan ‘Reveal before repeal’ has been coined. If nothing else, WWF-Australia urges the Government to ‘retain a legislated mechanism for setting 2020 and 2050 targets.’

In its submission on the exposure draft legislation, the peak body for Australia’s clean energy sector, the Clean Energy Council (CEC), outlined that it supported ‘a long term carbon reduction target that takes us beyond the current 5 per cent by 2020 reduction target’. In that light, the CEC suggests that the removal of the carbon price legislation and the uncertainty around the design and implementation of the [Coalition’s plan to succeed the CPM] has created uncertainty across the whole energy industry.

**Research from independent think-tanks**

Independent research organisation The Climate Institute (TCI) welcomed the implementation of the CPM. In response to the release of the repeal exposure drafts, TCI put out a press release calling on the Government to ‘reveal the details of how its policies can achieve emission reduction targets before repealing the current carbon laws, which while not perfect, are already working towards achieving the targets’.

In its submission to the exposure drafts, TCI commented that:

Abolition of the price and limit on carbon emissions removes the principal mechanism by which Australia can achieve its target range. To repeal the carbon pricing legislation before developing robust replacement policies and

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52. Ibid.
59. WWF-Australia, WWF, *“Reveal before repeal” on climate laws*, op. cit.
62. Ibid.
efficient transitional arrangements jeopardises Australia’s 2020 targets, international influence and thereby its national climate interest. 65

Independent research and advisory firm RepuTex, which specialises in carbon risk analytics for global companies and investment professionals, also provided input into the Government’s consultation process. RepuTex considered that the Senate is unlikely to pass the repeal legislation before 1 July 2014, and as such, “The earliest point for any repealing bill to pass the new Senate is likely to be mid-September 2014”. 66 RepuTex calculated that:

Should the CPM be concluded from end September 2014, the government may face a liability of over A$2 billion to buy-back free permits, falling to $138 million should any repeal be held back until the end of Q3 FY15 (March 2015). 67

To minimise this cost, RepuTex suggests that the government explore the possibility of transferring allocated permits into any new replacement scheme.

Other interest groups views
The Australian Local Government Association (ALGA) was cautiously supportive of the CPM legislation in 2011, although it did express concerns over ‘incremental and disproportionate impact of this legislation on local government costs’. 68 With respect to the exposure draft repeal legislation, ALGA has raised some issues for further attention: ensuring that communities are kept informed of the impacts of the repeal and councils are clear on their responsibilities, especially in relation to reporting of emissions; deciding how unused carbon price liability funds will be spent; and ensuring that ‘councils that invested in abatement technology, in good faith, are not disadvantaged”. 69

The Australian Council of Trade Unions (ACTU), the Construction, Forestry, Mining and Energy Union (CFMEU) and the Australian Workers’ Union (AWU) accepted the CPM when it was first announced. 70 They now generally oppose the repeal claiming that ‘workers would struggle to get the same deal under a future carbon price as they had negotiated under Labor’s package’. 71 The AWU National Secretary asked of Coalition parliamentarians:

... are they guaranteeing that the day that they repeal a carbon price, if they win government at the next election, will be the day that job losses in the manufacturing stop? Are they saying they’re going to reverse a 15-year decline in the contraction of Australian manufacturing by the repealing of a pricing mechanism. 72

The National Farmers Federation (NFF) has always opposed the CPM because of costs that ‘erode the competitiveness of the agricultural industry in the domestic and international markets’. 73 As such, the NFF welcomes the repeal. 74

Financial implications
The Explanatory Memorandum notes that the net financial impact of the measures proposed by the Bills is a cost to the budget of $6.1 billion over the forward estimates. 75 In cash terms, the net financial impact is a cost to the budget of $7.4 billion over the forward estimates. 76

67. Ibid.
76. Ibid.
These estimates are only marginally different to those costed by the Parliamentary Budget Office (PBO) in relation to the Coalition’s pre-election policies relating to the removal of the CPM.\(^77\) The PBO’s estimate of the net cost of the package to the budget was $6.1 billion over the forward estimates and $7.3 billion in cash terms.\(^78\)

It is important to note that the estimates relating to the cost of removing the tax incorporate certain assumptions about the level of the carbon price that would have applied in each respective financial year. The most recent carbon price assumptions by the Treasury in the August 2013 \textit{Pre-Election Economic and Fiscal Outlook} were that prices would be $6.20 in 2014–15, $12.50 in 2015–16 and $18.90 in 2016–17.\(^79\)

\textbf{Special appropriations}

Some 40 million carbon units are required to be auctioned by the CER prior to 30 June 2014.\(^80\) \textbf{Item 343A(3)} of \textbf{Schedule 1} of the main repeal Bill provides that the Consolidated Revenue Fund is appropriated for the purposes of making payments to holders of auctioned carbon units at the amount equal to the charge paid for the issue of the unit. The need to utilise this special appropriation is dependent on the timing of the passage of the main repeal Bill. If required, the value of the special appropriation would likely be in the order of several hundred million dollars.\(^81\)

\textbf{Statement of Compatibility with Human Rights}

As required under Part 3 of the \textit{Human Rights (Parliamentary Scrutiny) Act 2011} (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^82\)

\textbf{Key issues and provisions}

\textbf{About the current scheme: the CPM}

\textbf{Outline of the CPM}

The CPM requires that any facility with greenhouse gases emissions above an annual threshold must surrender emission permits to the government, where one permit represents one tonne of carbon dioxide equivalent (\(\text{CO}_2\text{e}\))\(^83\) emitted. The annual threshold is 25,000 tonnes of \(\text{CO}_2\text{e}\) per facility and applies only to industrial processes, stationary energy, waste, and fugitive emissions.\(^84\) As at 22 November 2013, the CPM imposed obligations to surrender permits on 351 liable entities,\(^85\) accounting for about 60% of Australia’s greenhouse gas emissions.\(^86\)

Domestic aviation, shipping and rail transport, and non-transport use of fuels are included through an equivalent carbon price enacted through separate legislation. Agriculture, forestry and fishing sectors have no liability under the CPM but may participate through a scheme known as the Carbon Farming Initiative (CFI).

\textbf{Transitioning in 2015 to an ETS}

The CPM is rolled out in two phases:

- the first phase is the fixed price period. It covers the first three years of the scheme, running from 2012 to 2015. During this period, the price of permits is fixed at $A23 per tonne of \(\text{CO}_2\text{e}\) emissions (rising 2.5% annually in real terms) and

78. Ibid.
81. Parliamentary Library estimates based on the issue of 40 million units with a price range of $6–10 per unit.
82. The Statement of Compatibility with Human Rights can be found at pages 13-18 of the Explanatory Memorandum to the Bills.
83. Carbon dioxide equivalent is the amount of carbon dioxide (\(\text{CO}_2\)) and/or non–\(\text{CO}_2\) greenhouse gases that equal the global warming potential of an equivalent amount of \(\text{CO}_2\) over a given timeframe, usually 100 years.
84. Fugitive emissions are unintended emissions of gas or vapour, for example from leaks.
86. CER, ‘\textit{About the carbon pricing mechanism}’, CER website, accessed 27 November 2013.
• the second phase is the flexible price period. It starts on 1 July 2015 when the fixed price for permits moves to a floating price under a cap-and-trade system. A cap-and-trade system is an ETS where there is a national cap on emissions that translates into facility-level caps. Facilities that reduce their emissions below the cap can sell excess permits. Conversely, facilities that emit more than allowed by the cap must buy extra permits from the market. The idea is that emissions reduction occurs where it is cheapest. Permits can be banked for future use and up to 5% can be borrowed from the following year.

Industry assistance
In Australia, the national cap has been determined from a bipartisan agreement to reduce greenhouse gas emissions by at least 5% on 2000 levels by 2020. Under the CPM, carbon permits—up to the cap—will generally be auctioned by the government. These permits are known as Australian Carbon Units (ACUs). However, to ease the transition for facilities with emissions-intensive and trade-exposed (EITE) activities, a certain number of permits will be distributed for free under the Jobs and Competitiveness Program (JCP) (the JCP also applies in the fixed price period). Facilities considered highly emission-intensive, receive enough free permits to cover up to 94.5% of the industry average baseline. Moderately emission-intensive facilities receive free permits covering up to 66% of the industry average baseline. These factors decline 1.3% each year.

The CPM has a provision for additional assistance to be provided to coal-fired generators under the Energy Security Fund (ESF). The ESF provides to eligible power stations:
• cash payments of up to $1 billion in 2012–13, plus
• allocations of ‘free’ permits (capped at 41.705 million permits annually) over the period 2013–14 to 2016–17.

Each generator’s share of free permits under the ESF is calculated using a formula that combines historical electricity generation and emissions intensity above an ‘average’ estimated emissions intensity of electricity generation in Australia. Permits allocated under the program for each year are a specific vintage for that year only. Banking and borrowing provisions that apply to other permits do not apply to free permits under the ESF or the JCP.

Linking with the EU ETS
The European Union (EU) also has a cap-and-trade scheme. In August 2012 the Australian Government and European Commission announced the intention to link emissions trading schemes (ETSs) from 2015. Initially a one-way link would allow EU permits into the Australian scheme. After 2018 ACUs would be allowed in the EU ETS.

From 2015 until 2018, up to 50% of a facility’s liability can be met by importing emissions units from overseas. The types of international units accepted are:
• from the EU ETS—known as EU Allowances (EUAs)—or
• from the Kyoto Protocol (only certain types are eligible).

A sublimit of 12.5% is imposed on the import of Kyoto Protocol units.

The Carbon Farming Initiative
Under the CFI, farmers and landowners can voluntarily undertake projects to reduce or store greenhouse gas emissions. If these abatement projects are covered by approved CFI methodologies, the landowners generate emission reduction ‘credits’, known as Australian Carbon Credit Units (ACCUs). CPM scheme participants can purchase ACCUs to offset their own emissions liabilities. The CFI has a limited scope of included activities and within those activities only those projects covered by approved methodologies can generate ACCUs. As at 4 November 2013, a total of 21 methodologies exist within the categories of agriculture, vegetation and landfill and alternative waste treatment.

**Assistance to households**
Within the CPM package of legislation, assistance was also factored in for households. Specifically, low and middle income households benefit from increases in the tax free threshold, in the Family Tax Benefit and in pensions and allowances.  

**Carbon tax versus carbon price**
Proposed section 60A of the CC Act, at item 3 of Schedule 2 of the main repeal Bill inserts definitions of ‘carbon tax repeal’, ‘carbon tax repeal transition period’, and ‘carbon tax scheme’. This is consistent with the Coalition government’s view that the CPM is in fact a tax.

The political argument about the CPM has included a debate about whether it is a ‘carbon tax’ or a ‘carbon price’. This debate may have been sparked by the two-phase roll-out that included a fixed price period. The CPM meets many of the various technical definitions of a ‘tax’. However, in the economic policy literature the term ‘carbon tax’ is generally used to describe a specific economic policy instrument; one that does not match the CPM, particularly in the flexible price period.

‘Tax’ on carbon—what is a ‘tax’?
There are a number of definitions of a ‘tax’ across various areas and in common usage. Under these definitions it is not entirely clear whether, under the CPM arrangements, both the fixed price period and flexible price period be viewed as a ‘tax’, or only the fixed priced period.

**Government budgeting**
The revenue from the sale of permits is considered to be tax revenue. The 2013–14 Budget papers include revenue from the sale of carbon permits under the CPM as part of ‘total taxation revenue’. This treatment is the same under the fixed price period as well as under the ETS from 1 July 2015.

**Statistical treatment**
The Australian Bureau of Statistics (ABS) considers that various policy instruments available to reduce emissions, including a carbon tax and ETS, are taxes for statistical purposes.

**Common usage**
A simple reading of dictionary definitions suggests that the compulsory nature of the CPM for liable entities and the receipt of this revenue to support government operations would be viewed as a ‘tax’:

- the primary Macquarie Dictionary definition of a tax is ‘a compulsory monetary contribution demanded by a government for its support and levied on incomes, property, goods purchased, et cetera’
- the primary Oxford English Dictionary definition is ‘a compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions, etc., now at fixed rates, mostly proportional to the amount on which the contribution is levied’.

**Constitutional interpretation**
The Constitution includes several references to the word ‘tax’ including in relation to the taxation power of the Commonwealth Parliament. In particular, for the purposes of this discussion, sections 53 to 55 are considered relevant.

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Section 55 of the Commonwealth Constitution provides:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Until recently, the courts have interpreted the phrase ‘imposition of taxation’ narrowly. The practical effect of this is that legislation imposing a tax cannot contain provisions which, for instance, also impose penalties.\(^96\) Section 55 of the Constitution requires that laws that impose taxation deal only with taxation. The possibility that certain provisions in the CE Act may be construed as a tax appears to have been contemplated by the drafters of the CE Act, for example, in relation to an (administrative) charge paid by a person for the issue of a fixed price carbon unit, which is distinct from the actual price of the fixed price of the carbon units themselves ($23 per unit/tonne of emissions in 2012-13). For the purpose of the issuing charge, the subsections in section 100 of the CE Act provide:

10. If a carbon unit is issued to a person in accordance with this section, the person is liable to pay a charge for the issue of the unit.

11. Subsection (10) has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.\(^97\)

It is not possible to base an assessment of whether the CE Act is a law with respect to taxation by focusing solely on section 100. Indeed, the fact that section 100 deals with the issue of fixed charge units does not detract from whether the CE Act might be construed as a law with respect to taxation or taxes. One needs to look at the legislation as a whole. Also, the unit shortfall charge cannot properly be characterised as a penalty because the liability to pay it does not arise because of a failure to fulfil some pre-existing legal obligation. It may be characterised as a tax because it is a compulsory extraction of money by a public authority for a public purpose, is not a fee for services rendered nor is it arbitrary.\(^98\)

In regards to the price for the 2012-2015 fixed price carbon units regime, an argument may be made that it amounts to an imposition of a tax within the meaning of section 55 of the Constitution, rather than representing a type of licence to emit atmospheric carbon. This is because fixed price carbon units seem to satisfy the classic definition of a tax provided by Latham CJ:

a tax ... is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered.\(^99\)

However, Latham’s baseline definition of a tax has been the subject of extensive reflection and clarification by the High Court. In *Air Caledonie International v Commonwealth*,\(^100\) the High Court unanimously decided that the definition provided by then Chief Justice Latham, should not be understood as being an exhaustive definition of

99. [Matthews v Vicary Marketing Board (Vic)](1938) 60 CLR 263; [1938] HCA 38, accessed 29 November 2013. However, note that Dawson and Toohey JJ in their dissenting judgments in *Air Caledonie* said that these features of a tax do not provide an exhaustive definition and that some of them are dispensable (at 521-522).
a tax. Furthermore, the High Court has ruled that the practical effect of an Act of Parliament is irrelevant when determining whether or not the Act in question is ‘with respect to taxation’.

The ultimate purpose of the CE Act is also not the sole consideration. In this respect, Mason CJ, Deane, Toohey and Gaudron JJ have stated that:

... the fact that the revenue-raising burden is merely secondary to the attainment of some other object or objects is not a reason for treating the charge otherwise than as a tax.

Thus, the fact that the object of the CE Act is to, among other things, reduce Australia’s greenhouse gas emissions, give effect to our international obligations in this regard and put a price on greenhouse gas emissions does not mean that the creation of a fixed price on carbon is not a tax. The CE Act operates to create a strong incentive for certain emitters to acquire eligible emissions units even though it does not explicitly prescribe or prohibit conduct. Arguably, the raising of revenue is not the primary purpose of the CE Act. If, however, its substantive operation gives rise to an obligation to pay a charge that is used for a scheme that has a public purpose, this would arguably make it a law with respect to taxation. In addition, the imposition of a charge is not an arbitrary one but one that is based on specified criteria.

The post-2015 carbon units are tradable instruments purchased at government auction or on the open market at prices determined by the market. However, they remain instruments that emitters captured by the scheme effectively have no choice but to purchase.

Finally, section 307 of the CE Act sets out the alternative Constitutional basis for the legislation. As explained in the Explanatory Memorandum:

... subclause 307(3) gives the provisions of the bills the effect they would have if they applied only to the extent that they related to taxation. The unit shortfall charge is a tax and the provisions imposing and otherwise dealing with the charge are laws with respect to taxation and relate to taxation. The provisions of the bills which do not deal directly with the unit shortfall charge nevertheless deal with the charge because they establish the liability for the charge or are incidental to establishing that liability. The provisions are supported by the taxation power in the alternative to the external affairs power.

Environmental economic policy literature

Environmental economic policy literature often cites a ‘carbon tax’ and an ‘emissions trading scheme’ as distinct and separate policy instruments. A ‘carbon tax’ is typically described as an environmental tax that is levied on the associated emissions from the use of a particular fuel. The term ‘carbon price’ is often used in the context of an ETS, which incorporates a market-based price for emissions permits within an overall emissions cap. Such an approach is used by the Organisation for Economic Co-operation and Development in its analysis of economic policy instruments to address climate change. However, the term ‘carbon price’ is broad enough to include an ETS arrangement, a tax, or a combination of these.

After one year of the CPM

A range of economic and environmental outcomes following the implementation of the CPM on 1 July 2012 have been used to support arguments for or against the retention, modification or abolition of the CPM. The following ‘scorecard’ (Figure 1) presents a range of this type of material. In all cases, the CPM is only one contributing factor to these outcomes. Later parts of this Bills Digest examine causality where possible.

101 Osbourne v Commonwealth (1911) 12 CLR 321 at 344; [1911] HCA 19, accessed 29 November 2013. See also Fairfax v Federal Commissioner of Taxation (1965) 114 CLR 1 at 17 per Menzies (‘whether or not a law is one with respect to taxation cannot be determined by looking at its economic consequences’); [1965] HCA 64, accessed 29 November 2013.


106 See for example, OECD, Climate and carbon: aligning prices and policies, OECD environment policy paper, 1, October 2013.
**Figure 1  Scorecard: selected economic and environmental indicators influenced by the carbon price mechanism**

**Consumer prices—electricity**
Increase in overall consumer price index (CPI) to June 2013 for electricity by 17% compared to June 2012 in nominal terms.

**Manufacturing costs—electricity**
Increase in manufacturing producer price index to June 2013 for electricity by 14% compared to June 2012 in nominal terms.

**CPM liability**
Directly liable businesses surrender or were required to surrender emissions units to the value of $4.9 billion in relation to 2012–13. Some of these businesses shared in the allocation of free permits under the JCP valued at $2.4 billion in the same year.
Employment in selected EITE industries

Employment in the primary metal and metal product manufacturing (which includes aluminium smelting) declined by 20% in the 12 months to August 2013 compared to the previous year. Employment over the same period in the fabricated metal product manufacturing industry (which covers iron and steel forging) increased by 26%.

Emissions

Emissions in the 12 months to March 2013 (including the first nine months of 2012–13) almost unchanged compared to the same period to March 2012.

Emissions intensity of electricity generation

Emissions intensity of electricity generation in the National Electricity Market (NEM) fell by 4% in 2012–13 compared to the previous year.

Basis for repeal
As mentioned, the Government considers that it has a mandate to repeal the CPM.107 The Government opposed the CPM on the grounds that it places an unfair cost burden on Australian businesses and households,108 has not led to a reduction in greenhouse gas emissions,109 is not matched by comparable action internationally,110 and is contrary to the will of the people.111 These issues are discussed in this section.

Cost to Australian businesses and households
While only directly applying to around 350 businesses, costs incurred by liable businesses in complying with the CPM may be passed on to downstream businesses and final consumers. The expectation was that the CPM would add only 0.7% to the CPI (or $9.90 per week), in the context of significant expected increase in electricity prices of 10%.112 For some, the ‘cost’ of the CPM includes not only these direct costs but also foregone production and employment opportunities.

Households
Impacts of rising prices on most households were designed to be largely offset by a compensation package that consisted of increasing the tax-free threshold and making additional transfer payments to eligible persons and households. The then Government claimed that households would receive a combination of increased payments or tax cuts worth an average of $10.10 per week113 and that nine out of 10 Australian families would receive assistance.114

The CPI increase for the year to June 2013—at 2.3%—suggests that the overall impact of the CPM was moderate.115 However, determining the extent of the CPM’s contribution to this CPI increase is not simple. The ABS noted that:

The ABS will not be able to quantify the impact of carbon pricing, compensation or other government incentives and will not be producing estimates of price change exclusive of the carbon price or measuring the impact of the carbon price. Any changes in the prices charged by companies for their outputs, paid by companies for their inputs or paid by consumers, will be reflected in the suite of price indexes compiled and published by the ABS.116

There was a significant rise in electricity and gas prices following the implementation of the CPM in July 2012. This followed significant annual increases in most jurisdictions over the previous five years. It is important to note that not all of the increase in 2012–13 can be attributed to the CPM. Other components of electricity provision—poles and wires and retail services—also contributed to the increase. For example, of the 20%
increase in regulated household prices in NSW in 2012–13, almost 50% was due to higher charges for ‘poles and wires’ and 10% was due to higher retail charges.\footnote{117}

**Businesses**

The impact of the CPM on businesses is likely to have varied across industries.

Rises in energy prices due to the CPM will have affected the profitability of businesses that had been unable to pass on to their customers the increased costs. A survey by AiG of 485 businesses confirmed that energy costs increases due to the CPM averaged 14% for these businesses and that only half of them had been able to pass on the increased costs.\footnote{118}

Another cost to business is any lost production opportunity. Treasury modelling conducted as part of the initial CPM package—the results of which are included in the Explanatory Memorandum for the current Bills—found that the most affected industries would be coal mining, gas and coal-fired electricity generation.\footnote{119}

‘Carbon leakage’, which is a shift in the production of EITE products to countries that do not price carbon emissions, was originally acknowledged as one of the risks to the international competitiveness of some industries. To mitigate this risk, businesses operating in EITE industries were eligible for free carbon permits to offset part of their CPM liability.

Since the announcement of the CPM in July 2011 there have been a number of high-profile manufacturing closures, including the Kurri Kurri aluminium smelter in New South Wales (NSW) in October 2012 and cutbacks at a steel mill in Hastings Victoria in January 2013.\footnote{121}

In opposition, the Coalition noted that the CPM was only one factor involved in these decisions but that the timing of implementation was important. Following the decision about the steel mill at Hastings Victoria, the then Opposition environment spokesman stated that:

> [W]hile there are many factors involved, in terms of market conditions, the price of metals and in particular the lack of confidence in the Australian economy, adding new and additional multi-million dollar taxes, such as the Carbon Tax to Australian manufacturing jobs and production, comes at the worst possible time.\footnote{122}

It is not clear that the announcement and implementation of the CPM were factors in these and other decisions to close major manufacturing operations. Any such analysis needs to be done on a case-by-case basis, taking into account the full range of factors that can affect short- and long-term profitability.

**International action**

According to a Coalition press release, ‘in the absence of action by other nations, all that the Gillard Government has done today is export jobs and emissions overseas’.\footnote{123} Determining whether the pace and scale of action on climate change internationally is comparable to that of the CPM is difficult and open to criticism. This is because there is no simple metric for comparing different countries’ domestic actions and measures.

Legislated and mandatory ETs exist at the national level in 36 countries: Switzerland, New Zealand, South Korea, Kazakhstan, and the 28 member states of the EU plus Iceland, Liechtenstein and Norway (and of course Australia). Subnational schemes are legislated in ten American states, five Canadian provinces, three Japanese


\footnotesize\textsuperscript{119}Explanatory Memorandum, op. cit. pp. 86–87.


\footnotesize\textsuperscript{123}T Abbott (Leader of the Opposition), *Carbon tax vote*, op. cit.
cities, and at least one Chinese region (with six more Chinese ETSs expected within the next few months). Ten nations have carbon taxes in some form (in some countries this is in addition to an ETS).

According to a report from the CCA, ‘all the major emitting economies now have domestic policies and measures to support their 2020 emission reduction targets’ and Australia would need to triple, or even quintuple, its own 2020 targets to be ‘broadly comparable’.

A mandate from the Australian people

The Coalition has said that the previous Government had no mandate to establish the ‘carbon tax’ and the current Government has a mandate from the Australian people to repeal the tax. Each of these claims is addressed in turn.

The first claim goes to the heart of the debate about whether the CPM is a carbon tax. The discussion on this in the section above suggests that there are conflicting views and room for interpretation.

The second claim suggests that when Australians voted on 7 September 2013 their clear intent was to choose between a government that would repeal the CPM and one that would not. A similar debate took place in 1998 over the Howard Government’s claim of a mandate to implement its tax reforms, particularly the goods and services tax (GST). Surveys of Australian voters do not support the Government’s argument that ‘the 2013 election was a referendum on the carbon tax’.

Essential Polling on 5 September 2013 asked voters ‘Which of the following are the main reasons why you will vote for that party?’:

- for the totality of respondents, the three answers chosen the most were: ‘Better at handling Australia’s economy’; ‘They are more likely to represent the interests of all Australians’; and ‘Better at looking after the interests of people like me’
- out of 13 options, having ‘better policies on things like the environment and climate change’ ranked only 10th when the totality of respondents was included
- for Coalition voters ‘better policies on things like the environment and climate change’ ranked last after ‘no reason’ and ‘don’t know’
- only 1% of Coalition voters ranked climate change policies within their three top reasons for voting for the party. However, it could be argued that many respondents might not consider the repeal a climate change issue.

JWS Research election exit polling (commissioned by TCI) asked 1591 voters ‘Which one issue was most important to you this election?’:

- the most popular answer, at 31%, was ‘economy and jobs’
- only 3% of respondents selected ‘repealing the carbon tax’
- when 771 were asked ‘In this election, the Liberal National Coalition campaigned on six specific policies. Which one of the following Coalition policies was most important to your vote?’, just 3% chose the answer ‘scrapping the carbon tax’.

Nevertheless, as the Coalition was open about its intentions to repeal the CPM upon taking government, it cannot be argued that Coalition voters expected anything different.

No reduction in emissions

As noted in Figure 1, emissions in Australia in the 12 months to March 2013 (including the first nine months of 2012–13) were almost unchanged compared to the same period the previous year. This result was used to argue both in favour—and against—the CPM. The Minister for the Environment noted that:

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124 A Talberg and K Swoboda, *Emissions trading schemes around the world*, Background note, Parliamentary Library, Canberra, 6 June 2013.
126 Ibid., p. 54.
We already knew that the carbon tax is a multi-billion hit on the economy, a burden on households and an unfair impost on business. Now we know that in the first year of the carbon tax there has been no change in our emissions.\textsuperscript{132}

In contrast, Senator Milne noted:

\[
[t]\text{he price on pollution is working to bring down emissions from our dirtiest power plants} \ldots \text{Our emissions have stayed the same while our economy has gotten bigger. Deeper cuts have to be made, and now is not the time to abandon what is working.}
\]

\[
\ldots \text{It is good news that overall emissions covered by the inventory have flat lined after rising for the past two decades. The bad news is abandoning carbon pricing will take the pressure off the old coal fired generators.}\textsuperscript{133}
\]

It is difficult to be conclusive about the contribution of the CPM to domestic emissions reductions after less than 18 months of operation. The most recent emissions projections for Australia, released in October 2012, noted that net domestic emissions will continue to increase with and without the CPM (and CFI) to 2020 (Figure 2).

**Figure 2**  
Australia’s emissions projection 2012, 2010 to 2020 (megatonnes (Mt) of CO2-e)

[Diagram showing emissions projections from 2010 to 2020]

Establishing causality between the CPM and emissions outcomes is complex. Studies examining the impact of the EU ETS (operating since 2005) on emission reductions have used a range of methodologies including data collected at a firm level and sectoral econometric modelling.\textsuperscript{134} With only a single year of operation, it would be difficult to attribute causality on changes to emissions.

\textsuperscript{131}Department of the Environment, Quarterly Update Australia’s National Greenhouse Gas Inventory: March Quarter 2013, op. cit., pp. 22–23.

\textsuperscript{132}G Hunt (Minister for the Environment), No change in domestic emissions under the carbon tax, media release, 24 October 2013, accessed 24 November 2013.

\textsuperscript{133}C Milne (Leader of the Australian Greens), Inventory provides more evidence price on carbon pollution is working, media release, 24 October 2013, accessed 24 November 2013.

Annual projections are ordinarily released at the end of each year and the Minister for the Environment has said that another report on projections will be released in late 2013. The next update will provide further information about how the CPM may be influencing emissions.

**Implications of repealing the CPM**

The repeal of the CE Act and cognate legislation dismantles a range of measures that assume that a multi-dimensional approach to climate change is the most effective. In the absence of a detailed plan of the Government’s alternate policy, the Direct Action Plan (DAP), it is not possible to provide meaningful commentary on the implications of the CPM repeal—in terms of its comparable efficacy—in achieving Australia’s agreed emissions reduction targets.

The repeal will however have an impact on affected businesses in the following key ways:

- businesses will need to undo changes that were made to their business practices for the purposes of complying with the CPM and further required changes may become apparent over time. This may result in an amount of investor uncertainty, even though the repeal is supported by many businesses
- the CE Act will continue to have effect until 30 June 2014, thus liable businesses and other entities remain obliged to pay all CPM liabilities incurred up to 30 June 2014 under the CPM, the fuel tax credits system, excise or excise-equivalent customs duties, or synthetic greenhouse gas levies
- entities with a CPM liability must comply with current CPM compliance and reporting arrangements
- once final commitments are met the CER will provide refunds for any auctioned units. Any carbon units which remain after the final compliance date will be cancelled and over-surrendered ACCUs issued under the CFI will be re-credited
- industry assistance under the JCP, the ESF and the Steel Transformation Plan will continue in 2013–14 for the purpose of meeting CPM liabilities.

The ACCC will be given new powers for the duration of the CPM repeal transition period. This is to monitor prices and take action against businesses that attempt to exploit consumers and other businesses by charging unreasonably high prices or making false or misleading claims about the impact of the CPM repeal on prices. This is aimed at ensuring businesses are quick to pass on any price reductions to consumers following repeal. However, the previous government did not pass legislation to give the ACCC such powers during the initial years of the CPM’s operation. Also, it is unclear whether the CPM repeal will be the significant determining factor driving both energy and general price levels in the coming years.

At least until the DAP is up, running and having the desired impact, it seems that the repeal may have a dampening impact on the development of industry and employment around renewable energy. This is because the CPM will cease to be a price incentive to seek alternative fuels and because ARENA will have its budget reduced.

**Policy uncertainty**

**Leaving a policy void**

With the Government’s alternative policy not yet finalised, environmental groups are concerned that the repeal legislation leaves a policy gap. Since the implementation of the CPM, state governments have dismantled climate programs under their own jurisdictions to ‘avoid duplication with federal policies’ The NSW ETS (Greenhouse Gas Reduction Scheme) was terminated with the introduction of the CPM. There were also said to be a series of cuts to other NSW climate programs. In Victoria, the Government abandoned its commitment to reduce its emissions by 20% by 2020. In Queensland, the Government dismantled eight renewable energy

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and climate change programs. Environmental groups are concerned that to ‘repeal without reveal’ is to cement the policy void created at both the federal and state levels.

Industry groups are also voicing concern over the potential void in climate and energy policy and the uncertainty that is likely to ensue, but for different reasons. For example, the Clean Energy Council has said that

... policy stability is the most critical element of effective energy policy ... The removal of the carbon price legislation and the uncertainty around the design and implementation of the Direct Action Plan has created uncertainty across the whole energy industry.

And the Waste Management Association of Australia said that:

Seeking to repeal the existing carbon legislation prior to Direct Action being implemented, or known with greater certainty, risks a period of great uncertainty between repeal and Direct Action.

However, delaying the repeal to allow for an alternative policy to be finalised, would not address that uncertainty, as the possibility of a retrospective repeal creates additional confusion. According to the MCA:

Companies face uncertainty from 30 June 2014 over supplies of electricity and gas through the relevant trading markets. The costs of the carbon tax remain embedded in these supplies from July. If the carbon tax is repealed at a later stage, the inclusion of these costs would, retrospectively, not be legally valid. As large energy users, minerals companies are concerned at the scope for markets to be distorted as a result of ongoing uncertainty about the application of this additional cost.

... The decision to participate in an auction should normally be a simple commercial choice, but uncertainty over the fate of the Bill will distort this decision making. Businesses seeking to manage their liabilities will be conflicted between the expectation of repeal and good practice of managing permit acquisition across several years if the legislation is not repealed as proposed.

Further discussions on the implications of a late repeal are included under the section ‘Impact of not repealing before 1 July 2014’.

One proposed solution to the policy void has been to adopt an interim strategy:

Minimise uncertainty for business by extending an interim approach with a carbon price similar to the EU price until the actual start date of the Direct Action scheme or introduction of a bi-partisan approach that guarantees Australia’s achievement of abatement to at least our fair share of global action while encouraging additional voluntary abatement.

Further policy uncertainty surrounds the temporary price-monitoring powers given to the ACCC. Companies may be uncertain as to the ACCC’s new powers to penalise for price exploitation, and whether these will also be able to be applied retrospectively. In this respect, the National Environmental Law Association recommends ‘that the government consider “switching off” the application of penalty provisions from 1 July 2014 until the repeal legislation is enacted, in order to provide a safe harbour’. Further discussions on the ACCC’s price monitoring powers are included under the section ‘Will prices fall with the repeal?’.

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**Australia’s bipartisan targets**

Both major parties support a target of reducing greenhouse gas emissions by 5% on 2000 levels by 2020 on an unconditional basis.\(^\text{147}\)

As the CCA explains in its recent report, ‘since Australia first announced its target range, the estimated effort required to achieve the 5 per cent (or any stronger) target has fallen.’\(^\text{148}\) In line with the 5% target, the CPM legislates annual default carbon pollution caps.\(^\text{149}\) However, the CCA estimates that the emissions reduction resulting from the default caps would now be consistent with a 15% drop in Australia’s national emissions by 2020.\(^\text{150}\) The CCA thus recommends that the national target be increased to at least match the legislated effort.\(^\text{151}\)

The alternative approach would be to maintain the 5% target and welcome the fact that a significantly reduced effort is necessary to reach it. This seems to be the approach adopted by the Government. Minister for the Environment, Greg Hunt, recognises that ‘estimates have been moved in [their] favour\(^\text{152}\), but has said that:

> We will make our judgement on the targets in the lead up to the 2015 conference at the end of 2015. We have a commitment to the current targets and we will assess any change in the context of what the world is doing as we’ve always said we'd do in the lead up to the 2015 conference.’

The CPM had the advantage of setting a firm reduction target. Its repeal will open that target to reconsideration leading to uncertainty until the government sets a defined level of emissions reduction. To minimise this uncertainty, it would be helpful if the Government translated the 5% target into a firm volume of emissions reduction in absolute terms. For, as it currently stands, a number of analysts suggest that repealing the CPM legislation may jeopardise the country’s ability to meet the 5% target.

Analysis from Climate Action Tracker, an EU-based association of independent research groups, found that ‘the Abbott Government’s plans to repeal this legislation would most likely lead to Australia failing to meet its 5% emissions reduction below 2000 levels by 2020 commitment.’\(^\text{153}\) This echoes the results of a study undertaken by economic consultancy SKM–MMA and Monash University’s Centre of Policy Studies, ‘under all Coalition scenarios Australia’s emissions continue to increase to 2020 and beyond. Additional emissions range from +8 to +10% above 2000 levels by 2020.’\(^\text{154}\)

**Will prices fall with the repeal?**

The abolition of the CPM will result in the removal of an input cost for those with a direct liability under the CPM or through equivalent carbon price arrangements. It will also potentially remove the additional costs that those with a direct liability have been able to pass on to their customers.

The discussion of the responsiveness of changes in prices (‘stickiness’) to changes in input costs and demand in the economic literature usually focuses on the trade-off for a business between the cost of adjusting prices (such as changing price tags, contracts with customers, etc) and the benefits of changing prices. One of the benefits of price changes can include the impact on profitability, which is sensitive to a number of factors including:

- market structure—the more competitive an industry is, the more likely prices will change in response to shocks

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\(^{148}\)CCA, op. cit., p. 10.

\(^{149}\)Clean Energy Act 2011 (Cth), sections 17 and 18.

\(^{150}\)CCA, op. cit., p. 158.

\(^{151}\)Ibid., p. 10.

\(^{152}\)G Hunt (Shadow Minister for Climate Action, Environment and Heritage), *Interview with Tony Jones, Campaign debate with Greg Hunt & Mark Butler, ABC Lateline*, transcript, 4 September 2013, accessed 18 November 2013.


• the structure of input costs—the presence of economies of scale or fixed labour costs may influence price decisions that affect output

• customer markets—if customers incur costs in collecting the information they need to make their purchases optimally, increases in prices may trigger existing loyal customers to search elsewhere for their products. On the other hand, price cuts may not generate much increase in demand as loyal customers would not be aware of competitors’ prices.\(^{156}\)

**Expected price decreases from repeal of the CPM—relative or absolute?**

In discussing the possible falls in energy prices, it is important to distinguish between a relative fall, where a power bill (say) is lower than what it would have been if the CPM remained, and an actual or absolute fall, where the power bill is lower than the last one.

In the case of retail energy prices, the Government has stated that the repeal of the CPM will lead to electricity prices falling by 9% and gas prices falling by 7%, and that households will be on average $550 better off each year.\(^{157}\) These price decreases were expressed in relative terms by the Minister for the Environment, who noted that:

> Repealing the carbon tax will lower retail electricity by around nine per cent and retail gas prices by around seven per cent, as opposed to what they would otherwise be in 2014-15 with the carbon tax.\(^{158}\)

The basis for the Government’s claim that prices will decrease in the absence of the CPM is Treasury modelling that the repeal of the CPM will reduce the CPI by 0.7 percentage points compared to what it would otherwise be in 2014–15.\(^{159}\) This modelling is based on the CPM arrangements as legislated (at a price of $25.40 for 2014–15) and the policy intention of the former Government to apply equivalent carbon price arrangements to heavy on-road transport from 1 July 2014.\(^{160}\) Of the $550 benefit associated with the CPM repeal, around $200 was attributed to lower than otherwise electricity prices and $70 was attributed to lower than otherwise gas prices.\(^{161}\)

Some media reporting about the price decreases gives the impression that electricity bills are expected to fall in absolute terms. For example, a report in The Age stated that:

> Announcing the repeal of the carbon tax, the government predicted electricity prices would fall by 9 per cent and gas would go down by 7 per cent, wiping $200 off the average power bill and making gas $70 a year cheaper.\(^{162}\)

**Factors affecting electricity prices**

There are a broad range of factors influencing energy prices, such as the costs of generating electricity (wholesale costs), transmission and distribution network costs, retail billing and service costs and government policies. A major driver of rising retail electricity prices has been the significant investment in new and ageing transmission and distribution infrastructure required to support increasing demand for electricity.\(^{163}\)

The CPM component of a typical small household customer’s electricity bill is small. In 2012, the Australian Energy Regulator (AER) estimated that the CPM accounted for 4% of a typical small customer’s electricity bill in


\(^{157}\) T Abbott (Prime Minister of Australia), Transcrip of the Prime Minister the Hon Tony Abbott MP joint press conference with the Hon Greg Hunt MP, Minister for the Environment, 15 October 2013, accessed 24 November 2013.


\(^{159}\) Explanatory Memorandum, op. cit., p. 84.

\(^{160}\) Ibid.

\(^{161}\) Ibid.

\(^{162}\) M Kenny, ‘*Abbott climate plan to be tested*’, The Age, p. 16, 6 November 2013, accessed 24 November 2013.

South Australia, 5% in Tasmania, 8% in New South Wales, 10% in Queensland and 11% in the Australian Capital Territory (ACT).\(^{164}\)

While electricity price increases are expected to moderate and perhaps even fall over the next few years in some jurisdictions,\(^{165}\) it could be that the repeal of the CPM is not sufficient to see prices fall in absolute terms in all jurisdictions. For example, moves by the Western Australian Government and Queensland Government to implement cost reflective pricing in the next few years may see some households experience price increases that are unrelated to other regulatory changes.\(^{166}\) Conversely, there may be some falls that are not attributable to the repeal of the CPM.

*Electricity wholesale price pass-through*

In the supply of electricity, the liability under the CPM primarily falls on electricity generators that use fossil fuels to generate electricity.

The transmission of changes in wholesale electricity prices is complex. The types of generation technology deployed (such as coal-fired, gas-fired, wind generation and hydro electricity generation) differ across jurisdictions, meaning that the repeal of the CPM will not have a uniform effect on wholesale prices.

In the eastern states electricity networks are interconnected, forming the National Electricity Market (NEM). Within the NEM, wholesale prices are set for each jurisdiction and changes to demand and supply can lead to considerable variability within each day in wholesale prices. The implementation of the CPM from 1 July 2012 was associated with an immediate increase in NEM wholesale prices, with the Australian Energy Market Operator (AEMO) calculating that volume weighted wholesale prices averaged $58.13 per megawatt-hour (MWh) in the period 1 July to 18 October 2012, $21.44 per MWh higher compared to the average price over the period 1 to 30 June 2012.\(^{167}\)

Average annual wholesale prices in NEM states have been higher in the first full year of the CPM (2012–13) compared to the previous year (Figure 3). However, the extent of the difference varies across NEM states, from a low of $15.72 in Tasmania to $39.47 in South Australia.

Figure 3  Average NEM annual prices, 2011–12 and 2012–13 ($ per MWh)


There are many factors other than the CPM which may have affected NEM wholesale prices, including weather, power demand, plant and transmission outages, fuel prices and market behaviours generally. Some of the factors that have been cited as impacting on NEM prices over this period (that are unrelated to the implementation of the CPM) include:

- flooding of an open-cut brown coal mine in early June 2012 limiting output from the Yallourn Power Station and increasing wholesale prices\(^\text{168}\) and

- downward pressure on wholesale prices in recent years across the NEM with falling electricity demand, increasing penetration of roof top solar photovoltaic installations and improved energy efficiency.\(^\text{169}\)

**Price setting in retail markets**

Changes in wholesale prices will generally not be visible to most electricity customers. This is because customers typically pay for electricity in a single bill that bundles the components of supply including wholesale costs, transmission and distribution (the ‘poles and wires’) and retail charges.

Only Victoria and South Australia no longer have any form of retail price regulation. In other jurisdictions except Tasmania, ‘full retail contestability’ has been introduced, allowing customers to enter a supply contract with their retailer of choice. However, in these jurisdictions competition between retailers is underpinned by price regulation for some, or all, households.

**Impact of the CPM on electricity bills**

The contribution of the CPM to general regulated household electricity retail prices from 1 July 2012 was different across jurisdictions, ranging from an average percentage increase of between 4.6% in South Australia to 14% in the ACT (Table 2). The extent of ‘average’ price increases in regulated retail prices attributed to the CPM needs to be interpreted with caution, as averages are usually calculated on the basis of a representative consumer (usually using average annual consumption in the relevant jurisdiction). Individual households may face different increases depending on their consumption patterns. Further, differences in the structure of tariffs, such as the use of fixed supply charges and variable charges may mean that the CPM can impact on individual households differently depending on the type of tariff structure that applies.

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## Table 2  
Retail electricity price regulatory arrangements and impact of CPM on price increases granted in relation to 2012–13, by jurisdiction

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Regulator</th>
<th>Average price increase from regulator’s decision on implementation of CPM from 1 July 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>South Australia</td>
<td>Not applicable (a)</td>
<td>18% (CPM contributes 4.6 percentage points)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be around $69.85 per year for residential customers</td>
</tr>
<tr>
<td>NSW</td>
<td>Independent Pricing and Regulatory Tribunal</td>
<td>18.1% (CPM contributes 8.9 percentage points)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be between $165 and $171 per year for residential customers</td>
</tr>
<tr>
<td>Queensland</td>
<td>Nil—Set by government in 2012–13 (b)</td>
<td>10.6% (CPM contributes full amount of increase)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be $127.86 per year for residential customers on standard domestic tariff.</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Nil—Set by government</td>
<td>12.63% (CPM contributes 9.13 percentage points)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be around $130 per year for residential households.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Office of the Tasmanian Economic Regulator</td>
<td>10.56% (CPM contributes 5.6 percentage points)</td>
</tr>
<tr>
<td>ACT</td>
<td>Independent Competition and Regulatory Commission</td>
<td>17.74% (CPM contributes around 14 percentage points)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be between $124 per year and $313 per year for residential customers depending on level of consumption.</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Nil—Set by government</td>
<td>9.6% (CPM contributes 6.8 percentage points)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• CPM component estimated to be $129.17 per year for residential customers</td>
</tr>
</tbody>
</table>

Note: (a) South Australia deregulated retail electricity prices from 1 February 2013. (b) The Queensland Government froze the main residential retail tariff for 2012–13.

Sources: multiple

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What is the ‘average’ electricity bill?

Differences in the quantity of electricity used and price differences between states and territories will mean that the benefit of a repeal of the CPM to individual households is likely to vary significantly from the ‘average’ modelled benefit of around $200 in 2013–14.

In 2012–13, the Australian Energy Market Commission (AEMC) estimated ‘average’ electricity bills based on average household consumption and estimates of average per unit prices in each jurisdiction. These estimates of an average annual electricity bill in 2012–13 ranged from of $1,375 in Queensland to $2,290 in Tasmania (Table 3).

Table 3  ‘Average’ household electricity bills by jurisdiction, 2012–13

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Average annual consumption (kWh)</th>
<th>Average per unit cost (cents per kWh)</th>
<th>Average electricity bill ($)</th>
<th>Estimated annual CPM component ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>7841</td>
<td>29.2</td>
<td>$2,290</td>
<td>Not available</td>
</tr>
<tr>
<td>New South Wales</td>
<td>7000</td>
<td>30.4</td>
<td>$2,128</td>
<td>$140</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>8904</td>
<td>23.8</td>
<td>$2,119</td>
<td>$116</td>
</tr>
<tr>
<td>South Australia</td>
<td>5000</td>
<td>33.7</td>
<td>$1,685</td>
<td>Not available</td>
</tr>
<tr>
<td>Western Australia</td>
<td>5801</td>
<td>27.4</td>
<td>$1,589</td>
<td>$122</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>8156</td>
<td>19.1</td>
<td>$1,558</td>
<td>$163</td>
</tr>
<tr>
<td>Victoria</td>
<td>4636</td>
<td>31.9</td>
<td>$1,479</td>
<td>$111</td>
</tr>
<tr>
<td>Queensland</td>
<td>5370</td>
<td>25.6</td>
<td>$1,375</td>
<td>$129</td>
</tr>
</tbody>
</table>


The carbon component of the average bill in 2012–13 as calculated by the AEMC is significantly lower than the ‘average’ modelled benefit of $200. Even allowing for the lower carbon price in the AEMC estimates for 2012–13 ($23 compared to $24.50) it is not clear how a $200 ‘average’ annual saving is calculated.

Powers of the ACCC—prohibition on price exploitation

With the implementation of the CPM, the ACCC was not provided with any additional powers to examine price increases. If a business makes misleading claims falsely linking a price rise with the carbon price, the ACCC can only take actions that rely on the general provisions in the CC Act. However, the ACCC was provided with an additional $12.8 million over four years to 2014–15 and directed by the Treasurer to:

- give priority to investigating businesses which make statements about the impact of a carbon price on their goods and services
- encourage compliance with the CC Act by informing and educating businesses about their responsibilities concerning such statements and
- raise consumer awareness about their rights under the Australian Consumer Law and the ban on misleading and deceptive business conduct or false or misleading claims about the impact of a carbon price on the supply of goods and services.

Action taken by the ACCC in 2012–13 relating to CPM issues included obtaining two enforceable undertakings, issuing one infringement notice and resolving 44 matters administratively (including formal warning letters and informal undertakings).^174^ 

To place additional pressure on businesses with respect to keeping a check on the bases for their prices following the repeal of the CPM, Schedule 2 of the main Bill inserts proposed Part V into the CC Act to prevent price exploitation in relation to the CPM repeal.

Proposed Part V of the CC Act contains two prohibitions. First, a corporation is prohibited from engaging in price exploitation in relation to the supplies of electricity, gas and other regulated goods,^175^ during the carbon tax repeal transition period, being the period 1 July 2014 to 30 June 2015. A corporation engages in price exploitation in relation to a supply of regulated goods where the price is ‘unreasonably high’, when factors such as the suppliers’ costs and supply and demand conditions are taken into account. Second, a corporation is prohibited from making false or misleading representations about the effect of the CPM repeal or the CPM on prices in relation to the supply of goods or services in the CPM repeal transition period. These are infringement notice provisions. ^179^ 

Where the ACCC has reasonable grounds to believe that a person has contravened an infringement notice provision it may issue an infringement notice to the person. ^180^ The penalties to be specified in an infringement notice are:

- for a listed corporation—600 penalty units,^181^ being equivalent to $102,000
- for a body corporate other than a listed corporation—60 penalty units, being equivalent to $10,200 and
- for a person that is not a body corporate—12 penalty units, being equivalent to $2,040.^182^ 

In the alternative, where the ACCC considers that a corporation has engaged in price exploitation it may give the corporation written notice to that effect.^183^ In proceedings before a court for a pecuniary penalty order, injunction or other order in relation to price exploitation, the evidential burden is on the defendant to disprove the matters set out in the notice (that is, that the price was unreasonably high, taking into account all relevant factors). ^184^ This is based on the fact that these matters are peculiarly within the defendant’s knowledge.

The pecuniary penalties which may be imposed by a court are:

- for each act or omission in relation to proposed section 60C or proposed section 60K by a body corporate, $1,100,070 (6,471 penalty units)^185^ 
- for each act, or omission, in relation proposed section 60C or proposed section 60K by a person other than a body corporate, $220,150 (1,295 penalty units).^186^ 

Powers of the ACCC—price monitoring

Proposed Part V also gives the ACCC broad powers to monitor prices to assess the general effect of the CPM repeal on prices of relevant goods. The term relevant goods means regulated goods in addition to other goods that have been specified in a legislative instrument. ^187^ The monitoring power extends to prices which have been

^175^ Regulated goods are defined in proposed section 60B of the CC Act, inserted by item 3 of Schedule 2 of the Bill, as natural gas, electricity, synthetic greenhouse gas (SGG), SGG equipment or other kinds of goods specified in a legislative instrument. 
^177^ Proposed section 60C of the Competition and Consumer Act 2010. 
^178^ Proposed section 60K of the Competition and Consumer Act 2010. 
^179^ Proposed subsection 60L(1) of the Competition and Consumer Act 2010. 
^180^ Under section 4AA of the Crimes Act 1914, a penalty unit is equivalent to $170. 
^181^ Proposed subsection 60L(5) of the Competition and Consumer Act 2010. 
^182^ Proposed subsections 60D(1) and (2) of the Competition and Consumer Act 2010. 
^183^ Proposed paragraph 76(1A)(ba) of the Competition and Consumer Act 2010, at item 6 of Schedule 2 of the main Bill. 
^184^ Proposed paragraph 76(1B)(aa) of the Competition and Consumer Act 2010, at item 7 of Schedule 2 of the main Bill. 
^185^ Proposed subsections 60G(11) and (12) of the Competition and Consumer Act 2010.
advertised, displayed or offered for supplies of relevant goods in the carbon tax repeal transition period as well as in the pre-repeal transition period.

This monitoring role is supported by specific information gathering powers and ministerial reporting arrangements.

Price monitoring powers—introduction of the GST

The additional temporary powers proposed to be granted to the ACCC are similar to those provided to the ACCC between 1 July 1999 and 1 July 2002 on the implementation of the GST from 1 July 2000.

Introducing the Bill that provided the ACCC with these powers to the Parliament on 10 December 1998, the then Minister for Financial Services and Regulation noted that:

Competitive pressures that already exist in the economy should largely ensure that the benefits of reductions in tax rates are passed on to consumers in the form of lower prices. Nevertheless, this bill is necessary to deal with those instances where price exploitation could occur. The substantial penalties that can be imposed demonstrate this government’s determination to ensure that consumers receive the full benefits of the changes to the tax system.

Additional funding totalling $28 million over three years was provided to the ACCC in the 1999–2000 Budget to implement the measures. This is around $39 million expressed in 2013 dollars.

While not separately identified as part of the financial impact in the Explanatory Memorandum, the Coalition proposed prior to the 2013 election to provide $16 million to the ACCC to support the expanded powers. The PBO’s costing of this policy allocated $3 million to 2013–14, $6 million to 2014–15 and $1 million in 2015–16. It is unclear where the remaining $6 million is allocated.

Action taken by the ACCC using the earlier temporary powers was summarised in the ACCC’s 2001–02 annual report. These actions included:

- information activities
- price surveys
- enforcement action such as obtaining refunds to consumers, court action and undertakings.

During a parliamentary committee review of the ACCC’s 1999–00 annual report, allegations about ACCC ‘bullying’ were presented in relation to its price exploitation powers. On the ACCC’s overall role during the monitoring period, the committee noted:

With only minimal resort to litigation the ACCC was able to report in July 2001 that most businesses have complied fully with its guidelines and that the overall net effect of the new tax system on prices was 2.5 per cent. This was less than the Government’s estimate of around 2.75 per cent in the 2000-2001 budget. Whether this outcome is

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188. Proposed subsections 60G(1)–(4) of the Competition and Consumer Act 2010.
189. The pre-repeal transition period is defined in proposed subsection 60G(13) as the period beginning at the commencement of proposed section 60G and ending on 30 June 2014.
primarily attributable to the ACCC’s education campaign, business fear of the Commission or competitive conditions in the market is a matter where there is insufficient evidence for the committee to draw a conclusion.200

**Price monitoring powers—this Bill**

Of note is that the price monitoring powers given to the ACCC with the introduction of the GST required it to formulate and publish guidelines about when price increases may constitute price exploitation.201 Whilst such a requirement is not included in this Bill, it is a function of the ACCC to disseminate information and general guidance to persons engaged in trade or commence with respect to the carrying out of its functions, or the exercise of its powers.202 That being the case, it is expected that the ACCC will publish relevant guidance about the manner in which it will examine and assess claims about price exploitation.

With a team of analysts scrutinising the impact of the CPM repeal, the ACCC will be able to levy hefty fines if companies are found not to be complying with the new laws, thus impacting on the savings which the government has been promoting. However, ACCC chair Rod Sims has emphasised that it is important to keep in mind that there are a multitude of factors unrelated to the CPM that combine to determine the price of electricity and gas and that the CPM is but one factor. Mr Sims pointed out that in the five years to September 2012, just after the introduction of the CPM, electricity price rose almost 70%, with only an insignificant amount of that increase being attributed to the CPM.203

Hugh Saddler, an energy consultant with infrastructure specialist Pitt & Sherry has explained that the rise in electricity prices experienced by consumers in recent years has been due to, among other things, the AER allowing electricity transmission and distribution companies to pass on to consumers the cost of new and necessary infrastructure. Significantly, these price setting agreements are created on a five-yearly basis and new determinations will be made from 2014. Thus in the context of enhanced ACCC powers, the regulator will be in a stronger position to keep in check pushes by the electricity companies for high fixed rates of return on their investment. Saddler therefore argues that with or without the CPM repeal, while electricity prices may not come down, consistent double-digit growth in energy bills is likely to be a thing of the past.204

The implication of these proposed changes is that businesses will need to be mindful of additional factors when creating pricing arrangements for ‘regulated goods’. In particular, prices would need to be considered reasonable by the ACCC, and would need to have regard to the CPM repeal, supply and demand and other relevant factors. It will be interesting to see if the ACCC applies its powers so as to require electricity and gas wholesalers and retailers to provide information on the impact of the CPM on their costs and prices. Such information would assist the ACCC in ascertaining if prices are or remain unreasonably high following the repeal of the CPM.

**Impacts on renewable energy**

There are two elements of the Bill that are likely to impact on renewable energy generation in Australia. The first is the abolition of an explicit carbon price, and the likely effect of that on the Renewable Energy Target (RET) scheme. The second is the announced budget cut to ARENA.

**Budget cuts to ARENA**

Schedule 5 of the main Bill amends the funding allocated to the ARENA through the Australian Renewable Energy Agency Act 2011.205 This part of the Bill was not included in the exposure draft and there was therefore no stakeholder commentary on this aspect during the consultation process.

In the lead up to the 2013 election, the Coalition flagged that it intended to make budget savings from ARENA funding over the forward estimates, but that the Agency would continue to operate as planned.206

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200.Ibid., pp. 46–47.
204.Ibid.
ARENA was originally allocated $3.2 billion to 2020 (of which $1.5 billion was already allocated through existing schemes rolled into ARENA).\(^{207}\) In May 2013, the then Government announced that ARENA’s funding would be extended by two years to 2022 with finance subsequently reduced in the earlier years.\(^{208}\) The Budget set out funding in the order of $776.2 million for 2014-2017, deferring $370 million beyond the forward estimates period.\(^{209}\) These announced changes were never legislated.

The Coalition’s ‘fiscal budget impact of federal Coalition policies’, which was released a couple of days before the election, showed $40 million of ARENA funding reallocated to further geothermal and tidal power specifically.\(^{207}\) The Explanatory Memorandum states that the May 2013 announced Budget changes are retained and an extra $434.9 million of savings is made between 2014 and 2017.\(^{210}\) The cuts may be seen as significant given the amount of money that is normally required to develop new technology. It is therefore likely that these cuts will impact on the facilitative capacity of ARENA to make a material contribution to the development of renewable technology and skills in Australia.

Figure 4 shows the profile of ARENA funding as originally legislated, as announced in the May 2013 Budget and as amended in the main Bill.

**Figure 4 ARENA funding changes**

Sources: Australian Renewable Energy Agency Act 2011 (Cth); Australian Renewable Energy Agency (ARENA), *Annual report 2012–13*, ARENA, accessed 18 November 2013; and **proposed subsection 64(1) (table)** of the Australian Renewable Energy Agency Act 2011, at item 1 of **Schedule 5** of the main repeal Bill.

**Renewable Energy Target scheme**

The RET scheme is a market-based mechanism that requires electricity retailers to source a certain percentage of their electricity from renewable sources. Retailers demonstrate compliance with the scheme by submitting Renewable Energy Certificates (RECs) to the Government, with one REC representing one MWh of electricity generated from renewable energy sources. These RECs are tradable and thus their prices fluctuate on the market with changes in supply, demand, government policy, risk et cetera.

The CPM had the effect of reducing the cost of renewable energy relative to fossil fuels. As a price on carbon increases, the price of RECs decreases. Similarly, repealing the CPM will increase the cost of RECs. The RET scheme includes a penalty price of $65 per REC for non-compliance. According to independent research group Reputex, in response to the repeal of the CPM, the price of RECs may reach $65, at which point electricity

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\(^{207}\) M Ferguson (Minister for Resources and Energy), *Bills to establish ARENA pass the House of Representatives*, media release, 2 November 2011, accessed 18 November 2013.

\(^{208}\) W Swan (Deputy Prime Minister and Treasurer) and G Combet (Minister for Climate Change), *Clean Energy Future Package working in Australia’s interest*, media release, 15 May 2013, accessed 18 November 2013.


retailers will choose to pay the penalty rather than invest in renewable energy.\textsuperscript{212} This may stunt the growth of renewable energy in Australia, which in turn may impact on Australia’s ability to meet emissions reduction targets in the long-term.

The package of repeal Bills also includes provisions to amend the periodic review cycle of the RET scheme. A discussion of this issue is included in the Bills Digest on the Climate Change Authority (Abolition) Bill 2013.

Changes to the NGERS

The National Greenhouse and Energy Reporting Scheme (NGERS) is a national system for the calculation and reporting of greenhouse gas emissions and the use of energy (including primary fossil-fuel energy, renewable energy and electricity) by companies. It was introduced by the Howard Government in 2007 to underpin the development of an ETS.\textsuperscript{213} As it was first introduced, NGERS only required registration and participation by ‘controlling corporations’ (more specifically; by the highest corporation in a group, not its subsidiaries).

‘Controlling corporation’ means a constitutional corporation that does not have a holding company incorporated in Australia.\textsuperscript{214} Only those corporations that exceeded certain thresholds were required to report their emissions.\textsuperscript{215}

With the implementation of the CPM, the NGERS coverage was extended to include all liable entities under the CE Act.\textsuperscript{216} The implication of this change was that some municipal authorities (which in some cases are not constitutional corporations) became obliged to register and make reports to the regulator.

With the repeal of the CPM, the NGERS regime reverts to requiring only constitutional corporations to register. Item 288 of Schedule 1 of the main repeal Bill repeals Subdivision B of Division 1 of Part 2 of the National Greenhouse and Energy Reporting Act 2007. This essentially repeals sections 15A and 15AA from that Act. Furthermore, subitem 337(7) of Schedule 1 directs the CER to deregister persons who are registered only by virtue of being a liable entity.

Municipal authorities have expressed confusion over how and when they might be required to report their emissions in the future after deregistration.\textsuperscript{217} As it stands, the implication is that they will not be able to participate in future emissions reduction projects where a baseline of historical emissions may need to be established.

Impact of not passing legislation before 1 July 2014

Clause 2 of the main repeal Bill establishes 1 July 2014 as the commencement date for the repeal of the CPM arrangements. According to the Explanatory Memorandum:

\begin{quote}
2013-14 will be the last financial year that the carbon tax will apply, even if the Parliament does not pass the Carbon Tax Repeal Bills until after 1 July 2014.\textsuperscript{218}
\end{quote}

If the repeal Bills are passed by the Parliament after 1 July 2014 in their current form, there will be no liability under the CPM beyond 1 July 2014. However, there may be some additional costs and transitional issues if the legislation passes after 1 July 2014.

The existing framework for the CPM provides for a number of actions to be taken by liable parties and government agencies after 1 July each year. As a result, some businesses will continue to incur a carbon price or be involved in the CPM in purchasing or selling emissions permits until the repeal takes place. These issues are discussed below.

\textsuperscript{212} Reputex, Renewable Energy and the Carbon Price, Policy brief, August 2013.
\textsuperscript{214} Section 7 of the National Greenhouse and Energy Reporting Act 2007 (as made), accessed 28 November 2013.
\textsuperscript{215} Section 13, National Greenhouse and Energy Reporting Act 2007 (Cth), as made.
\textsuperscript{216} Item 352 of Schedule 1 of the Clean Energy (Consequential Amendments) Act 2011 (Cth) inserted sections 15A and 15AA into the National Greenhouse and Energy Reporting Act 2007 (as amended).
\textsuperscript{217} Hunter Council, Submissions on the draft Clean Energy Legislation Repeal Bills, accessed 22 November 2013.
\textsuperscript{218} Explanatory Memorandum, op. cit., p. 6.
Auctions, allocation and surrender of permits

Should the Bill not pass until after 1 July 2014, CPM liable entities and government agencies will be required to continue to implement the CPM according to the existing arrangements. Some key dates regarding the auction, issue and surrender of permits (Table 4) have given rise to the argument that if the Bill is passed after 1 July 2014, the Government may be liable to pay compensation to holders of permits and be faced with some businesses being able to capture windfall gains associated with the repeal. However, carbon units are personal property under the legislation and the main repeal Bill seeks to address this by providing at subitem 345D(1) of Schedule 1 that:

If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms ... the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Provision is made in the Bill for a compensation mechanism which would enable carbon units purchased at any auctions held prior to the date of the passage of the Bills to be cancelled by the CER. The purchase price of those carbon units would be paid as a refund by the CER to the person who holds the carbon units at the time of their cancellation—which will be after 3pm ACT time on the fifth business day after the main repeal Bill receives Royal Assent (items 343 and 343A of Schedule 1).

However, there may still be an issue in the case of holders of carbon units who have purchased them in a secondary market at a higher price than the auction price. In that case, the ‘compensation’ or refund they receive will not reflect the whole of the purchase price they have paid. Thus, signalled changes may cause a market disinterest in acquiring carbon units, causing the value of personal property in these units to fall. This may be used as grounds for a claim for compensation on just terms, however it is unclear how strong this argument might be.219 Minister Hunt has previously been reported as stating that through its repeal, the government is not acquiring property but rather extinguishing it.220 Such a perspective would appear to be informed by High Court decisions on the nature of the rights of the ‘acquirer’, reinforcing that acquisition requires:

- not only that property is lost or extinguished, but also that
- the acquiring party obtain for itself a corresponding benefit, however slight or insubstantial that may be.221

Table 4  Key dates for carbon price mechanism framework that are affected by the date of the repeal

<table>
<thead>
<tr>
<th>Date</th>
<th>Action required</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between November 2013 and July 2014</td>
<td>The CER is required to hold two auctions of 20 million permits (2015–16 vintage) per auction prior to 1 July 2014.</td>
<td>Auction dates are determined by the CER but requirements to hold a certain number of auctions are included in regulations. Should auctions proceed as required there will be up to 40 million permits held for future years by 1 July 2014. A further three auctions are required in 2014–15 and depending on the date of repeal some or all of these auctions may have taken place.</td>
</tr>
<tr>
<td>1 September 2014</td>
<td>2014–15 vintage units must be issued by the CER to eligible electricity generators under the Energy Security Program.</td>
<td>The program is capped at 41.705 million units. The total value of these units would be around $1.059 billion at $25.40 per unit.</td>
</tr>
<tr>
<td>1 September</td>
<td>Buy-back period for free</td>
<td>The buy-back period ends 1 February 2015. The buy-back</td>
</tr>
</tbody>
</table>


### Specific considerations affected by the timing of repeal

#### Jobs and Competitiveness Program—Schedule 1 Part 4

The repeal of the CPM means that the JCP will be discontinued. One of the effects of Schedule 1, item 323, Table 3 is that the 2013-2014 compliance year will be the last year in which assistance is provided under the JCP. As a result, JCP activities will not be entitled to free carbon units after that year. There will also be a true-up process to correct under and over allocations of 2013-2014 JCP carbon units. This will enable the issue of extra free carbon units or imposition of a levy if carbon units are not relinquished.

For the purposes of the true-up process, the main repeal Bill creates a reporting requirement for persons (known as designated person) who received 2013-2014 free carbon units. The details of the reporting requirements and the calculation of under and over-allocations will be set in rules made by the Minister in consultation with stakeholders. The CER will issue additional 2013-2014 carbon units to correct an under-allocation of carbon units. It is expected that many entities would probably experience an under-allocation problem given increasing production levels over time.

Ministerial rules will set out the how an under or over allocation of units is calculated. A person who has an over-allocation of free units under the JCP could relinquish the over-allocated units under section 212 of the CE Act or pay a true-up shortfall levy, as provided by the True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013 or the True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013 (Schedule 1, items 354 and 355).

Until the legislation commences, the CER continues to have statutory obligations in relation to the JCP. Thus if the repeal legislation is not passed by 30 June, from 1 July 2014 eligible businesses would be entitled to apply for

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222 Item 351 of Schedule 1 provides that a person is a designated person if free carbon units with a vintage year beginning on 1 July 2013 are or were issued to the person in accordance with the Jobs and Competitiveness Program.

223 Explanatory Memorandum, op. cit., p. 29.
assistance for the 2014-15 compliance year. And if the repeal legislation is not passed by 1 September 2014, then from that date recipients of free units may sell them back to the CER for a buy-back amount.

**Steel Transformation Plan**

Under the *Steel Transformation Plan Act 2011*, eligible steel producers are able to receive a share of $75 million in capped expenditure. The timing of the passage of the legislation will affect payments under the Plan because the *Steel Transformation Plan Act 2011* sets out specific dates for applications to six-monthly payments. Key dates are:
- 1 March 2014—deadline for the lodgement of returns for the half year July 2013 to December 2013. Maximum allocation $37.5 million
- 29 August 2014—deadline for the lodgement of returns for the half year January 2014 to June 2014. Maximum allocation $37.5 million.224

**Schedule 4** of the main repeal Bill repeals the *Steel Transformation Plan Act 2011*. **Item 1** repeals the whole of the *Steel Transformation Plan Act 2011* effective from 1 July 2014. **Item 2** clarifies that the effect of the repeal would mean that eligible corporations would not receive any payments for competitive assistance for the half-year ending 30 June 2014. They would also not be required to maintain registration and lodge a return for the half-year ending 30 June 2014. However, passage would not affect the competitive assistance advances provided to the eligible corporation in the 2012–13 financial year. If the repeal of the CE Act does not happen within the Coalition’s expected timeframe then the Government may have another legislative avenue. It may be possible for the Government to amend the legislative instrument that provides for the administrative arrangements for the Steel Transformation Plan so as to stop further payments.225

**Certain fuels subject to an equivalent carbon price**

Fuel for vehicles and machinery is already taxed via an excise duty. Thus a fuel tax credit (FTC) enables businesses to claim back the tax that has already been ‘paid’ on the fuel that they use in machinery, plant equipment and heavy vehicles for business purposes.226 FTCs are also available to non-business users for taxable fuel they acquire or manufacture in or import into Australia to the extent that they use the fuel to generate electricity for domestic use.227 FTC rates vary depending on what fuel is used and the activity it is used in. An equivalent carbon price (‘carbon charge’) applies to certain taxable fuels where the fuel is combusted, by reducing FTC rates by the relevant carbon charge. It is an amount equal to the price of carbon emissions from the use of liquid or gaseous fuels. The carbon charge amount varies for different fuels, depending on their carbon emissions rate.

The proposed changes will remove the carbon charge imposed through the fuel tax credit system, excise and excise-equivalent customs duties, and synthetic greenhouse gas levies from 1 July 2014. The practical consequences of this for FTCs and excise are:
- Many fuel tax credit rates for eligible off-road activities will increase.
- FTCs for non-transport gaseous fuels used in specified agricultural, fishing and forestry activities would no longer be available (*Schedule 1, item 119* which repeals Division 42A of the *Fuel Tax Act 2006*).228
- There will be a reduction in excise duty on aviation fuels.
- The opt-in229 scheme for designated opt-in persons will draw to a close. Also, FTCs would no longer be available for aviation fuels (aviation gasoline and aviation kerosene) for designated opt-in persons (*Schedule 1, items 117 and 126*, which repeal subsection 41-30(2) and section 43-11 of the *Fuel Tax Act*).
Should the passage of the legislation take place later than 1 July 2014, some consumers of fuels and gases that are subject to an equivalent carbon price will be paying an amount that incorporates the $24.15 carbon price. The liability for the equivalent carbon price component will depend on when payments are made:

- For fuels subject to the equivalent carbon price arrangements through a reduction in the tax credit received under the FTC scheme, the receipt of a lower tax credit (in the order of six cents per litre depending on the fuel used) will continue until the passing of the legislation. As FTCs are claimed as part of the regular monthly, quarterly or annual Business Activity Statement (BAS), the reduction in the FTC will depend on the timing of a business submitting their BAS to the Australian Tax Office. In general, the later the passing of the Bills beyond 1 August 2014, the more likely businesses will be receiving a lower FTC, reducing cashflows.
- For aviation fuels (where the equivalent carbon price is applied through an excise or import duty), fuel users would be incurring the additional cost (in the order of six cents per litre) for any fuel purchases made from 1 July 2014 onwards.
- For purchasers of synthetic greenhouse gases (SGGs) and appliances containing SGGs, a requirement to pay the equivalent carbon price is part of quarterly reporting arrangements, with levies payable within 60 days after the end of the quarter. For example, for gases or products imported between 1 July 2014 and 30 September 2014, the levy would be payable by 60 days after 30 September 2014; that is, by 29 November 2014.

Other goods and services

There are other goods and services where a company has a direct CPM liability and may need to pass this on to consumers until the CPM is repealed. For example, there are a number of local governments that have a CPM liability related to their control over landfill sites, including Albury City Council and Griffith City Council. Where a local government controls a landfill directly, the CPM liability for waste may be levied as an additional component of annual rates payments. In some cases, an additional fee is also payable for a single use of a local government landfill by individuals. A delayed passing of the legislation may therefore lead to CPM-related costs being incurred until the CPM is repealed—costs which may be difficult for individuals to recover.

Possible double dissolution

The ALP has stated that it would be voting in line with the position that it took to the 2013 election with respect to the Clean Energy legislation. That is, the ALP would vote to abandon the fixed price on 1 July 2014 in favour of bringing forward the commencement date of the ETS. The ALP has not indicated that the threat of a double dissolution would outweigh it from this course. The Coalition made an election pledge to seek a double dissolution of both Houses of Parliament in the event that the ALP combines with the Greens to block the CPM repeal Bills.

In simple terms, a trigger for a double dissolution election under section 57 of the Constitution is achieved when the following steps have taken place:

229. The opt-in scheme allows certain businesses that are currently paying a carbon price through the fuel tax regime to instead elect to pay by acquiring and surrendering units under the carbon pricing mechanism, provided that they meet criteria set out in the Clean Energy Amendment Regulation 2012 (No. 7), accessed 29 November 2013.
234. See for example, City of Rockingham, ‘Waste Services, Scale of fees: Millar Road Landfill and Recycling Facility, effective 1 July 2013.’ City of Rockingham website, accessed 24 November 2013; City of Rockingham, Budget focus on rebuilding and low rates rise, media release, 10 August 2012, accessed 24 November 2013.
237. Section 57 of the Commonwealth Constitution provides: If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the
The House of Representatives passes a Bill.

The Senate rejects the Bill, *fails to pass* the Bill or passes the Bill with amendments to which the House does not agree. The High Court has held that a ‘reasonable time’ must be allowed before it can be concluded that the Senate has failed to pass a Bill. This derives from the fundamental function of the Senate as a house of review. 238

At least three months (in the same or the next session of Parliament) after the date the Senate failed to pass (or failed to act), the House of Representatives passes the Bill again. 239

The same Bill is sent to the Senate, which rejects the Bill, fails to pass the Bill or passes the Bill with amendments to which the House again does not agree.

The Prime Minister may therefore ask the Governor-General to dissolve the House and the Senate, leading to an election. It is up to the Prime Minister to decide when this will occur. While the trigger does not have to be used at once, it must be used before six months from the end of the term of the House.

If all of these steps occur before 1 July (when the new Senators take office) then the whole of the existing Senate and House of Representatives go to an election. In that case, a new Parliament will test the Bill. If the House of Representatives passes the Bill again and the Senate again rejects the Bill, fails to pass the Bill or passes the Bill with amendments to which the House does not agree, the Prime Minister may ask the Governor-General to convene a joint sitting of the House of Representatives and the Senate. If an absolute majority of members and senators support the Bill at the joint sitting, it can receive royal assent and become law. 240

However, if these triggers are in place but double dissolution does not happen before 1 July 2014, they would have to test the Bills on the new Senate before going to the Governor-General for a double dissolution. That is, section 57 has to be tested again.

**Alternative proposals**

**Moving to an early ETS**

As previously mentioned, the ALP’s alternate policy is to transition to an ETS. In July 2013, then Prime Minister Rudd announced that the Government would bring forward the full ETS by one year to 1 July 2014. 241 Then Minister for Climate Change Mark Butler framed this as terminating the ‘carbon tax’. 242 More recently, Mr Butler clarified the ALP’s policy:

> Labor stands by its election commitment to support the termination of the Carbon Tax provided that a market based mechanism that reduces carbon pollution is put in its place, along with a strong commitment to expanding renewable energy. 243

According to Treasury modelling, moving to an early ETS would:

- reduce the carbon price to around $6.20 in 2014–15 244
- reduce the cost of living by $7.20 on average per week per family, or $380 in total in 2014–15:
  - saving the average household around $3 a week on electricity bills, or over $150 in the year and
  - saving the average household around $1.10 per week on gas bills, or $57 in the year. 245

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240. Ibid.
241. K Rudd (Prime Minister), *Australia to move to a floating price on carbon pollution in 2014*, op. cit.
245. K Rudd (Prime Minister), *Australia to move to a floating price on carbon pollution in 2014*, op. cit.
• Cost the budget around $3.8 billion over the next four years.\textsuperscript{246}

The ALP’s plan was to offset the cost to the budget through savings in other measures.\textsuperscript{247}

In line with this overall policy, the Opposition moved amendments to the Bills to ensure that the ‘carbon tax is replaced by an emissions trading scheme’.\textsuperscript{248} The ALP proposed in its amendments:

• a carbon emissions cap for the 2014–15 year, since under the CE Act no cap was needed until 2015–16
• auction dates and volumes for 2014–15 vintage carbon units and
• arrangements for allowing international permits from 2014–15 to 2015–16.\textsuperscript{249}

The amendments proposed matched policy consultation papers released in July 2013. These papers outlined for 2014–15 a cap of ‘25 million tonnes below total covered emissions for 2012-13’, and a revised auction schedule that included 2014–15 vintage units (Table 5).\textsuperscript{250}

Table 5 Revised auction schedule for emissions trading starting on 1 July 2014

<table>
<thead>
<tr>
<th>Unit Vintage</th>
<th>Compliance Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>40m</td>
</tr>
<tr>
<td></td>
<td>(2/7-40m)</td>
</tr>
<tr>
<td>2015-16</td>
<td>40m</td>
</tr>
<tr>
<td></td>
<td>(2/8-40m)</td>
</tr>
<tr>
<td>2016-17</td>
<td>20m</td>
</tr>
<tr>
<td></td>
<td>(1/8-20m)</td>
</tr>
<tr>
<td>2017-18</td>
<td>1/8</td>
</tr>
<tr>
<td>2018-19</td>
<td>1/8</td>
</tr>
<tr>
<td>2019-20</td>
<td>1/8</td>
</tr>
<tr>
<td>2020-21</td>
<td>1/8</td>
</tr>
<tr>
<td>2021-22</td>
<td>1/8</td>
</tr>
</tbody>
</table>


The logic of the proposed 2014–15 cap is to retain the default caps and extrapolate backwards linearly by one year.

The papers also proposed a February 2016 compliance date for the 2014–15 year. Since the link with the EU ETS is planned to begin on 1 July 2015, participants would have seven months to take advantage of the link before

\textsuperscript{246} Ibid.
\textsuperscript{247} Ibid.


needing to surrender units to the Government. However, for the first compliance date a limit of 6.25% would apply to the use of Kyoto units, moving to the legislated 12.5% limit from 1 July 2015. And finally, the papers proposed no changes to the provision of free permits for EITE industries under the JCP, but proposed reducing assistance to emissions-intensive coal-fired generators through the ESP.

Household assistance is not affected, and as such, on average, households would be likely to get a windfall profit from the amendments. However, the May 2013–14 Budget already outlined a deferral of 2015–16 income cuts in response to lower than projected carbon prices from 1 July 2015. These changes were never legislated. The package of Bills before the Parliament at the moment seeks to make permanent the deferral of 2015–16 income cuts.

The Speaker of the House of Representatives did not allow the Opposition’s amendments, ruling them contrary to standing orders 179(a) and 179(b), which reserve for Ministers the right to ‘move an amendment to the proposal which increases or extends the scope of the charge proposed beyond the total already existing under any Act of Parliament’.

The Direct Action Policy

Full details of the Coalition Government’s DAP have not yet been provided. The DAP will consist of a series of measures including a ‘One Million Solar Roofs’ initiative, a ‘Green Army’ initiative and plans for ‘Urban Forests and Green Corridors’. However, the central component of the DAP is an Emissions Reduction Fund (ERF) for financing greenhouse gas emission reduction projects and activities. A consultation process on the design of the ERF is currently underway, but some details have been made available over time.

Emissions Reduction Fund

Through the ERF, which will be administered by the CER, the government will call for tenders and select projects that reduce emissions at least cost. The ERF is not intended to be a grant mechanism; it will function by reverse auction, buying the cheapest abatement first. In an ordinary auction, buyers compete for a good or service by offering increasingly higher prices. In a reverse auction sellers compete—undercutting each other—to obtain business from the buyer.

Depending on the costs, the actual emissions abatement could come from a range of projects, such as energy efficiency projects, cleaning up power stations, reforestation and revegetation projects or improvement of soil carbon. Table 6 shows the Coalition’s estimates of types, volumes and costs of potential abatement through the ERF.

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Table 6  Coalition estimates of types, volumes and costs of potential abatement through the ERF

<table>
<thead>
<tr>
<th>Potential Available Annual</th>
<th>Indicative CO₂ Reduction to be delivered through Fund in 2020</th>
<th>Indicative CO₂ Price Per tonne</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Min</td>
<td>Max</td>
</tr>
<tr>
<td>Soil Carbons</td>
<td>150mt</td>
<td>355mt+</td>
</tr>
<tr>
<td>Electricity Generators &amp; Industry</td>
<td>10mt</td>
<td>30mt</td>
</tr>
<tr>
<td>Forestry Measures</td>
<td>15mt</td>
<td></td>
</tr>
<tr>
<td>Waste Coal Mine Gas</td>
<td>4mt</td>
<td>8mt</td>
</tr>
<tr>
<td>Transport</td>
<td>3mt</td>
<td></td>
</tr>
<tr>
<td>Green Buildings/ Energy Efficiency</td>
<td>20mt</td>
<td>30mt</td>
</tr>
<tr>
<td>Landfills/Compost/Recycling</td>
<td>6mt</td>
<td>9mt</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>208mt</td>
<td>450mt</td>
</tr>
</tbody>
</table>


As indicated in Table 6 (and according to the most recent information published), the Government is aiming to reduce emissions by 140Mt annually by 2020, in line with meeting a 5% target. It is not clear how much total funding is planned for achieving this. In its first year the ERF will be allocated $300 million, $500 million in the second year and $750 million in the third year. Beyond that, it is unclear. Original policy documents from 2010 suggested that the allocation of funding in the fourth year would be $1 billion, but this has not been confirmed since the 2013 election. According to the 2010 document, the entire DAP would cost $3.2 billion over four years, so it is clear that the ERF—at a cost of $2.55 billion—is a major part of the total cost.

When the DAP was first announced the Coalition claimed that it would ultimately cost $10 billion over 10 years. However, the Prime Minister has indicated that the budget for the ERF is capped; at least in the first few years, no monies will be spent beyond what is allocated.

An important feature of the ERF is that recipients will not be remunerated until the abatement is actually delivered and is verified as both real and additional. So although the reverse auction establishes which emissions


reduction projects go ahead, there is no certainty of actual emissions reduction until much later (this differs from an ETS where the permits for each year are proof that the reductions have already occurred).  

**Emissions intensity baselines**

Another essential feature of the ERF, one that the Government is seeking stakeholders’ views on, is a ‘mechanism applying to emissions above the business as usual baseline’.  

Minister Hunt has said that the ERF will use the existing NGERS to determine business-as-usual emission baselines for big businesses. Businesses that can reduce emissions below their baseline will presumably be able to offer that abatement for sale to the ERF. Businesses that exceed the baseline will incur a financial penalty. ‘The value of penalties will be on a sliding scale at levels commensurate with the size of the business and the extent to which they exceed their “business as usual” levels.’  

Those companies not covered by the NGERS (such as small businesses) can participate on an ‘opt-in’ basis. The baselines will be set as an average of emissions from the previous five years.

What is not clear is whether the baselines will be absolute emissions baselines or emissions-intensity baselines. Emissions intensity is a measure of greenhouse gas emissions per unit of output or per unit of revenue. If emissions intensity baselines are to be set, there may be important ramifications and questions regarding the necessary data and how it might be collected. This is because NGERS does not collect output or profit data.

Another question arises around whether the baselines will be calculated on an industry or company basis.

The basic outline of the ERF bears similarities to the market-based scheme operating in the Canadian province of Alberta: the Alberta-Based Greenhouse Gas Reduction Program and Offset Credit System. Under that scheme, facilities emitting more than 100,000 tonnes of greenhouse gases per year (including power stations) must either:

- reduce their emissions intensity to 88% of a baseline, or
- purchase emission credits for the amount that they have exceeded their target, or
- purchase offset credits from other sectors that have voluntarily reduced their emissions, or
- pay $C15 for each tonne over the 88% target into a Climate Change and Emissions Management Fund.

**The CFI**

Under the Government’s plan the CFI will remain. In fact it will assume a crucial role in assuring that abatement is monitored and verified. Although item 92 of Schedule 1 of the main repeal Bill amends the *Australian Securities and Investments Commission Act 2001* to remove ‘a carbon unit’ from regulated financial products, it leaves unchanged the ‘Australian carbon credit unit’, which is a unit deriving from the CFI.

The Government has said that the CFI will be expanded to include more than just forestry, agriculture and waste projects. It seems from Table 6 that the CFI may be expanded to accept methodologies for energy efficiency and measures that reduce emissions in industry, transport and power generation. Abatement from any such CFI projects would then presumably be eligible for purchase through the ERF, if the price is right.

Because the Government is retaining both the CFI and NGERS as central tools for its policy, the CER will also be retained albeit with altered functions.

**International credits**

Minister for the Environment, Greg Hunt, has explicitly ruled out the use of international abatement to help meet Australia’s 5% target: ‘Our five per cent target is to be achieved entirely within Australia, no taxpayers' funds would be spent overseas under the policy we announced’.

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264 See paragraphs 12BA(A)(7)(ka) and (l) of the *Australian Securities and Investments Commission Act 2001*. Item 92 of Schedule 1 of the main repeal Bill repeals paragraph 12BA(A)(7)(ka).

**Timing**

There is still considerable uncertainty on the design of the ERF. Stakeholders are unsure as to the types of projects that might be accepted, what the total funding for the ERF will be to 2020, what measures will be taken if the 5% target is not reached within the capped budget, how company baselines will be set, and how companies that are not covered by NGERS will be able to participate in a credible way. As such, many of the details of the DAP and the ERF are still to be worked through. A consultation process on the design of the ERF opened on 16 October 2013 and closed on 18 November 2013.

The Government has said that:

> Submissions in response to the Terms of Reference will inform the development of a Green Paper setting out the Government’s preferred options for design of the Fund in December 2013 and a White Paper in early 2014 outlining the final design of the Fund.\(^\text{266}\)

**Xenophon’s hybrid scheme**

Senator Xenophon has long advocated a policy response based on emitters being penalised for emissions above a set baseline and rewarded if their emissions intensity is below that baseline.\(^\text{267}\) Under such an approach, once baselines have been determined (based on a desired level of emissions reductions), firms that perform better than the baseline create and sell permits to those that exceed the baseline.

Such a policy would be categorised in the economic policy literature as a ‘baseline and credit’ scheme. The policy was developed by economic consulting firm Frontier Economics for Senator Xenophon and the Coalition, as part of Senate Committee deliberations during the passage of the Carbon Pollution Reduction Scheme (CPRS) legislation through the Parliament in 2009.\(^\text{268}\)

The 2009 Frontier Economics report compared the economic costs of the proposed CPRS with alternatives including greater protection for EITE industries and the introduction of an intensity target for permit allocation to the electricity sector.\(^\text{269}\)

Senator Xenophon’s support for such an approach is largely based on its narrower application and reduced overall price impact. Another benefit of such an approach advocated by Senator Xenophon is that higher abatement targets can be pursued because of both the economic costs savings compared to a broader emissions trading scheme and lower energy price rises, ‘which will make the low carbon transition more acceptable to consumers’.\(^\text{270}\)

**Other provisions**

**Repeal of tax offset for conservation tillage**

Primary producers who purchase new conservation seeding equipment and receive a Research Participation Certificate can apply for a 15% refundable tax offset. The equipment needs to be installed and ready for use between 1 July 2012 and 30 June 2015.

The Conservation Tillage Refundable Tax Offset initiative is part of the Carbon Farming Futures program and is designed to encourage conservation tillage practices in Australian agriculture which reduce greenhouse gas emissions, increase soil carbon and maintain productivity.\(^\text{271}\)

The proposed amendments in **Schedule 3** of the main repeal Bill would have the effect of bringing this scheme to a close one year earlier, on 1 July 2014 The National Farmer’s Federation have stated that:

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269. Ibid., p. 2.


Given the long term enduring sequestration, mitigation and adaptation benefits from conservation tillage, the NFF suggests that it may be appropriate to continue this program using other mechanisms.  

Concluding comments

The unintended effect of these Bills may be to generate high levels of uncertainty. This is in respect of two aspects in particular.

Firstly, the Bills repeal a policy mechanism before an alternative platform has been presented in substantial detail. In the short-term this may create uncertainty as to whether a new mechanism will be introduced before greenhouse gas emissions return to business-as-usual levels that may exceed Australia’s bipartisan, near-term environmental targets. The currently incomplete nature of a replacement policy could seed doubt as to whether the new mechanism will be effective. Parliament may wish to consider the questions that remain surrounding the Direct Action Plan, such as the total cost of the proposed scheme, its efficacy, the credibility of its emissions reduction, its proposed company baselines and its potential penalties. If these questions remain unanswered, the resultant policy uncertainty may have the unintended consequences of deterring investment into low-carbon solutions, such as renewable energy.

A concern is that the lack of a definitely articulated policy could put into question Australia’s ability to meet emissions reduction targets in the longer term to 2050 and beyond. Already, international bodies have professed views that: ‘the back-and-forth debates in Australian politics is sending investment in low carbon technologies towards emerging markets where investment policy is seen as more certain (such as in Brazil)’.  

Secondly, it could be problematic if the repeal is to be effective from 1 July 2014, despite the fact that the legislation is unlikely to be in force by then. The uncertainty surrounding this point may pose a challenge for some businesses that need to negotiate new and ongoing contracts and manage their bottom lines. It could be argued that the ACCC’s temporary powers to monitor cost pass-throughs and penalise exploitation poses additional risk and uncertainty to business. For example, industry and business may be unsure as to whether the ACCC’s powers will be applied retrospectively. They may also be nervous about the ACCC’s ability to accurately calculate the cost pass-throughs on a case-by-case basis when so many other factors can influence the final price of products and services.

Given the partisan and contentious nature of the Australian climate change debate, any potential environmental, economic and legal uncertainties created by these Bills could easily continue to 1 July 2014 and beyond.

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