THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS (MANUFACTURE LEVY) AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary for Sustainability and Urban Water, Senator the Hon Don Farrell)
OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS (MANUFACTURE LEVY) AMENDMENT BILL 2011

OUTLINE

The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 (the Bill) is part of the Clean Energy Legislative Package, which sets up the carbon pricing mechanism (the mechanism) as part of the Government’s climate change plan, as set out in Securing a clean energy future: the Australian Government’s climate change plan.

The full policy context and background to the mechanism are set out in the explanatory memorandum for the Clean Energy Bill 2011. A description of the bills which will introduce the mechanism is set out below.

Table 1: The Clean Energy Bill 2011 and related bills

<table>
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<tr>
<th>Main Bill</th>
<th>The Clean Energy Bill 2011 creates the mechanism. It sets out the structure of the mechanism and process for its introduction. These include:</th>
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<td>• entities and emissions that are covered by the mechanism;</td>
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<td>• entities’ obligations to surrender eligible emissions units;</td>
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<td>• limits on the number of eligible emissions units that will be issued;</td>
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<td>• the nature of carbon units;</td>
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<td>• the allocation of carbon units, including by auction and the issue of free units;</td>
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<td>• mechanisms to contain costs, including the fixed charge period and price floors and ceilings;</td>
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<td>• linking to other emissions trading schemes;</td>
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<td>• assistance for emissions-intensive trade-exposed activities and coal-fired electricity generators;</td>
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<td>• monitoring, investigation, enforcement and penalties;</td>
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<td>• administrative review of decisions; and</td>
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<td>• reviews of aspects of the mechanism over time.</td>
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<tr>
<th>Statutory bodies</th>
<th>The Clean Energy Regulator Bill 2011 sets up the Regulator, which is a statutory authority that will administer the mechanism and enforce the law. The responsibilities of the Regulator include:</th>
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<td>• providing education on the mechanism, particularly about the administrative arrangements of the mechanism;</td>
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<td>• assessing emissions data to determine each entity’s liability;</td>
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<td>• operating the Australian National Registry of Emissions Units (the Registry);</td>
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<td>• monitoring, facilitating and enforcing compliance with the mechanism;</td>
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<td>• allocating units including freely allocated units, fixed charge units and auctioned units;</td>
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<td>• applying legislative rules to determine if a particular entity is eligible for assistance in the form of units to be allocated administratively, and the number of other units to be allocated;</td>
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<td>• administering the National Greenhouse and Energy Reporting System</td>
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(NGERS), the Renewable Energy Target (RET) and the Carbon Farming Initiative (CFI); and
- accrediting auditors for the CFI and NGERS.

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<tr>
<th>The Climate Change Authority Bill 2011 sets up the Authority, which will be an independent body that provides the Government with expert advice on key aspects of the mechanism and the Government’s climate change mitigation initiatives. The Government will remain responsible for carbon pricing policy decisions. This Bill also sets up the Land Sector Carbon and Biodiversity Board which will advise on key initiatives in the land sector.</th>
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| The Clean Energy (Consequential Amendments) Bill 2011 makes consequential amendments to ensure:
- NGERS supports the mechanism;
- the Registry covers the mechanism and the CFI;
- the Regulator covers the mechanism, the CFI, the Renewable Energy Target and NGERS;
- the Regulator and Authority are set up as statutory agencies and regulated by public accountability and financial management rules;
- that emissions units and their trading are covered by laws on financial services;
- that activities related to emissions trading are covered by laws on money laundering and fraud;
- synthetic greenhouse gases are subject to an equivalent carbon price applied through existing regulation of those substances;
- the Regulator can work with other regulatory bodies, including the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Transaction Reporting and Analysis Centre (Austrac);
- the taxation treatment of emissions units for the purposes of GST and income tax is clear; and
- the Conservation Tillage Refundable Tax Offset is established. |
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| Those elements of the mechanism which oblige a person to pay money are implemented through separate bills that comply with the requirements of section 55 of the Constitution. These bills are the Clean Energy (Unit Shortfall Charge—General) Bill 2011, Clean Energy (Unit Issue Charge – Fixed Charge) Bill 2011, Clean Energy (Unit Issue Charge – Auctions) Bill 2011, Clean Energy (Charges—Excise) Bill 2011, Clean Energy (Charges—Customs) Bill 2011, Clean Energy (International Unit Surrender Charge) Bill 2011, Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 and Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011. |
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| Other elements of the Government’s Climate Change Plan are being implemented through other legislation. These are:
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imposes an effective carbon price on aviation and non-transport gaseous fuels through excise and customs tariffs;

• the *Clean Energy (Fuel Tax Legislation Amendment) Bill 2011*, which reduces the business fuel tax credit entitlement of non-exempted industries for their use of liquid and gaseous transport fuels, in order to provide an effective carbon price on business through the fuel tax system; and

• the *Clean Energy (Household Assistance Amendments) Bill 2011, Clean Energy (Tax Laws Amendments) Bill 2011* and the *Clean Energy (Income Tax Rates Amendments) Bill 2011*, which will implement the household assistance measures announced by the Government on 10 July 2011. These bills amend relevant legislation to provide payment increases for pensioners, allowees and family payment recipients and provide income tax cuts and establish new supplements for low- and middle-income households.

The Bill needs to be read in the context, in particular, of the Clean Energy Bill 2011 and the amendments that will be made to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act) by the Clean Energy (Consequential Amendments) Bill 2011 (the Consequential Amendments Bill).

**Policy objectives**

The Bill amends the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act) to apply an equivalent carbon charge to the manufacture of synthetic greenhouse gases (SGGs) (comprising hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6)). The carbon charge component will be in addition to the existing levies which currently apply to the manufacture of SGGs.

The amendments will also allow the manufacture of SGGs to be exempted from the levy, or the carbon charge component of the levy, in appropriate circumstances. For example, the Minister may exempt licensees by written notice from the carbon charge component when satisfied that the SGG to be manufactured is to be used in medical equipment or the manufacture of medical equipment.

**Proposal announced**

The measures are based on the Government’s announcement of its *Clean Energy Future Plan* on 10 July 2011 as set out in *Securing Australia’s clean energy future: the Australian Government’s climate change plan*.

**Regulation Impact Statement**

The Regulation Impact Statement (RIS) for the mechanism, entitled *Australia’s plan for a clean energy future*, is available at [http://ris.finance.gov.au](http://ris.finance.gov.au). The RIS was prepared by the Department of Climate Change and Energy Efficiency and has been assessed as adequate by the Office of Best Practice Regulation.
Financial Impact Statement

The financial impact statement is included in the explanatory memorandum for the Clean Energy Bill 2011.
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NOTES ON CLAUSES

Clause 1 - Short title

1. Once enacted, the short title of the Bill will be the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011*.

Clause 2 - Commencement

2. The table in this clause sets out when the Bill’s provisions commence.

3. Sections 1 to 3 and anything else in the Bill not elsewhere covered by the table will commence on the day that the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011* receives Royal Assent.

4. Schedule 1 will commence on 1 July 2012. However, if section 3 of the *Clean Energy Act 2011* does not commence before 1 July 2012, then the provisions contained in Schedule 1 do not commence at all.

Clause 3 – Schedule(s)

5. Clause 3 is a formal provision specifying that each Act specified in the Schedule to the Bill be amended as indicated by the Schedule.

SCHEDULE 1 – AMENDMENTS

*Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*

Item 1 – Title

6. Item 1 changes the long title of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act) to reflect that the Manufacture Levy Act now imposes a new separate levy on the manufacture of SGGs.

Item 2 – After section 2

7. This item inserts a new section 2A in the Manufacture Levy Act, which defines a series of new terms that are used in the Bill. The terms ‘benchmark average auction charge’, ‘carbon unit’, ‘fixed charge year’, ‘flexible charge year’, ‘issue’ and ‘vintage year’ will have the same meaning as in the *Clean Energy Act 2011*. These new terms are used in the calculation of the carbon charge component of the levy. An additional term defined by section 2A is ‘medical equipment’. This term is used in new section 3A and, for avoidance of doubt, it includes ‘a pharmaceutical product’ (see item 3 below for further information).
8. This item also inserts a new section 2B, which provides that for the purpose of the Manufacture Levy Act, the carbon dioxide equivalence of an amount of SGG is the amount of the SGG multiplied by the value specified in the regulations for that kind of SGG. However, as the Ozone Act manages SGGs that are not currently listed under the Kyoto Protocol (and therefore not subject to the carbon price mechanism), subsection 2B(2) clarifies that the carbon dioxide equivalence of SGG that is not a greenhouse gas is zero. A greenhouse gas has the same meaning as in the National Greenhouse and Energy Reporting Act 2007.

9. The carbon dioxide equivalency is the global warming potency of a particular substance in comparison to carbon dioxide. For example, the carbon equivalence of HFC-134a is 1300 which means its effect on the climate is 1300 times greater than carbon dioxide. The carbon dioxide equivalence of an amount of SGG is used in the calculation of the carbon charge component of the levy.

**Item 3 – After section 3**

10. Item 3 inserts a new section 3A in the Manufacture Levy Act which imposes a levy on the manufacture of SGGs. Synthetic greenhouse gas or SGG is defined in subsection 7(1) of the Ozone Act (as amended by the Consequential Amendments Bill) to mean a HFC, a PFC or sulfur hexafluoride.

11. Subsection 3A(1) provides that the levy will be payable if a person has a controlled substances licence to manufacture SGGs and the licensee manufactures SGG during a quarter during which the licence is in force. A ‘controlled substances licence’ (defined in subsection 13A(2) of the Ozone Act) allows the import, manufacture or export of hydrochlorofluorocarbons (HCFCs), methyl bromide or SGGs. The levy imposed under subsection 3A(1) only applies with respect to the manufacture of bulk SGGs and not the manufacture of equipment which contains a SGG (see the new definition of ‘SGG equipment’ inserted into the Ozone Act by the Consequential Amendments Bill). Imports of bulk SGGs for the manufacture of any such equipment and the import of SGG equipment are dealt with separately under the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995.

12. Subsection 3A(2) clarifies that the manufacture levy applicable to SGGs does not apply to the manufacture of SGG in circumstances prescribed for the purposes of paragraph 13(1A)(b) of the Ozone Act. The effect of prescribing circumstances for the purposes of paragraph 13(1A)(b) is that a controlled substances licence is not required for the manufacture of SGGs, and the levy (including the carbon charge component) is not payable. Currently, the only circumstance that has been prescribed for the purposes of paragraph 13(1A)(b) of the Ozone Act is the manufacture of PFCs as a by-product during the manufacture of aluminium or where a permit has been granted for the manufacture of SGGs for use in the production or casting of magnesium.

13. Subsection 3A(3) clarifies that the manufacture levy applicable to SGGs does not apply to the manufacture of SGG that is to be used for a purpose prescribed by the regulations. However, before regulations can be made for the purposes of subsection 3A(3), the Minister must be satisfied that it is either impracticable to impose levy on the manufacture of SGG that is to be used for a purpose to be prescribed by the regulations or a purpose to be prescribed by the regulations is a medical, veterinary, health or safety purpose (subsection 3A(10)).
14. Subsection 3A(4) provides that where a licensee is granted a licence for only a part of a quarter (subsection 7(1) of the Ozone Act defines quarter as any three month period commencing on the first day of January, April, July or October), then the levy will only be payable for any SGG manufactured during the period that the licensee held a licence.

15. Subsection 3A(5) provides that the amount of the levy to be imposed is to be ascertained in accordance with the formula specified in the sub-section. The two parts of the formula reflect the component relating to the carbon charge (number of tonnes of the carbon dioxide equivalence of the SGG x applicable charge) and the component reflecting the existing licence levy (number of tonnes of the SGG x prescribed rate). The total levy imposed on the manufacture of the SGG will be the amount determined by the addition of these two separate components.

16. The applicable charge will be dependent on whether it is in a fixed charge period or a flexible charge year. In the fixed charge year the ‘applicable charge’ will be the per unit charge applicable under the Clean Energy Act 2011 for the issue of a carbon unit with a vintage year of that fixed charge year. For the first three years of the carbon charge the ‘applicable charge’ will be:
   - $23.00 in 2012-13;
   - $24.15 in 2013-14; and
   In a flexible charge year, the ‘applicable charge’ will be the benchmark average auction charge under the carbon charge mechanism for the previous financial year. The Department of Sustainability, Environment, Water, Population and Communities will publish on its internet site the applicable charge for each financial year to provide licensees with this information directly.

17. The effect of this amendment is that a manufacturer of SGGs will be subject to a carbon charge which equates with the liability that the manufacturer would have incurred if they were liable entities responsible for an equivalent quantity of greenhouse gas emissions under the Clean Energy Act 2011.

18. Subsection 3A(6) provides that the maximum amount of the prescribed rate of the levy is $165 per tonne. This maximum amount is consistent with the current levy amounts.

19. Subsection 3A(7) enables the Minister to determine that a licensee is exempt from paying the carbon charge component (calculated in accordance with the formula set out in subsection 3A(7)) of the levy where the Minister is satisfied that the SGG is to be used in medical equipment, used in the manufacture of medical equipment, is to be used in a product or equipment prescribed for the purposes of paragraph 8D(1)(c) of the Ozone Act, is to be used in the manufacture of a product, or in equipment, specified in an instrument in force under paragraph 8D(1)(d) of the Ozone Act, or is to be used for a purpose prescribed by the regulations. In making a determination under subsection 3A(7), the Minister must have regard to matters specified in the regulations (see proposed subsection 3A(9)).

20. Before regulations can be made for the purposes of paragraph 3A(7)(v), the Minister must be satisfied that it is either impracticable to require payment of the carbon charge...
component of the amount of levy imposed on the manufacture of SGG that is to be used for a purpose to be prescribed by those regulations or a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose (subsection 3A(11)).

21. The effect of this amendment is that a licensee, subject to this Ministerial determination, will not have to pay the carbon charge component of the levy, but will still be required to pay the component reflecting the existing levy (the prescribed rate component). An example of the exemptions contemplated under this provision is pharmaceutical inhalers (e.g. asthma inhalers) which use SGGs as a propellant. This exemption is also intended to provide the same treatment of situations where the gas is to be used in, or used to manufacture ‘SGG equipment’, and equivalent equipment imports have been exempted under paragraphs 8D(1)(c) or (d) of the Ozone Act.

Item 3A – Section 4 (heading), Item 4 – Paragraph 4(1)(a), Item 5 – Subsection 4(2), Item 6 – Paragraph 4(4)(b), Item 7 – Section 5

22. Items 3A to 6 amend sections 4 and 5 and are required as a consequence of Item 3 which inserts a new section 3A setting out the levy payable for the manufacture of SGGs.

Item 8 – Application of amendments

23. This item provides for the application of those sections amended as a result of this Bill.

24. Subsection 8(1) provides that section 3A of the Manufacture Levy Act (as amended) applies in relation to the manufacture of SGGs during the quarter beginning on 1 July 2012 or a later quarter.

25. Subsection 8(2) provides that the amendments to section 4 of the Manufacture Levy Act relating to the manufacture under a controlled substances licence (other than the manufacture of a substance containing SGG) will apply in relation to the manufacture of a substance during the quarter beginning on 1 July 2012 or a later quarter.