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CPRS and Carbon Compliance: Legislation, Policy and Business Response

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Stop press: Bills introduced into Parliament

- » 14/5/09: CRPS Bills introduced into Parliament
- » Due date for Senate Select Committee on Climate Policy to report extended until 15/6/09

CPRS Bills

- *Carbon Pollution Reduction Scheme Bill 2009*
- *Australian Climate Change Regulatory Authority Bill 2009*
- *Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009*
- *Carbon Pollution Reduction Scheme (Charges – General) Bill 2009*
- *Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009*
- *Carbon Pollution Reduction Scheme (Charges – Excise) Bill 2009*

Differences from Exposure Drafts

- » Start date now 1 July 2011 (delayed for a year)
 - But some things commence earlier (eg time to apply for assistance for coal-fired generation)
- » One year fixed price period: \$10/permit
- » Target if international agreement: 25% below 2000 levels by 2020 (otherwise 5% to 15%)
- » Increased compensation to EITEs

Overview of CPRS

- » Cap and trade emissions trading scheme
- » Key concepts:
 - Target and caps
 - Liable entities and emissions
 - Emissions units
 - Penalties
- » Measurement and reporting under *National Greenhouse and Energy Reporting Act 2007*

Target and caps

- » Fix quantity and let market set price (vice versa in carbon tax)
- » Targets in Objects clause:
 - 25% below 2000 levels by 2020 if international agreement
 - Otherwise:
 - 60% below 2000 levels by 2050
 - Between 5% and 15% below 2000 levels by 2020

Target and caps (cont)

- » Caps and gateways in regulations
 - Regard to Objects?
- » Caps for each year:
 - Regulations to be made before 1/7/10 for financial years commencing in 2012 – 2014
 - Subsequent years: regulations to be made 5 years before the end of the relevant year
 - No cap for 2011 (fixed permit prices)

Target and caps (cont)

- » Gateways from 1/7/15: upper and lower bounds for caps (but no requirement)
- » No certainty on caps (all we have is Objects)
- » But some price certainty in the short term through fixed permit prices

Liabile entities and emissions

- » Large direct emitters
- » Some upstream liability
- » All 6 Kyoto greenhouse gases
- » Industries:
 - Stationary energy
 - Transport
 - Fugitive emissions
 - Industrial processes
 - Waste

Liable entities and emissions (cont)

» Large direct emitters: thresholds

- Facilities emitting 25kt CO₂-e/year
 - Landfill facilities: 10kt CO₂-e threshold in some cases
 - Thresholds pro-rated for part of a year
- Scope 1 only (cf NGER scopes 1 and 2)
- No corporate group threshold (cf NGER)

Liable entities and emissions (cont)

- » Large direct emitters: which emissions?
 - Fugitive emissions
 - Industrial process emissions
 - Emissions from a waste source
 - Emissions from the combustion of energy sources

Liable entities and emissions (cont)

- » Large direct emitters: emissions not covered:
 - Agriculture sources
 - Forestry sources
 - Fugitive emissions from decommissioned underground mines
 - Emissions of synthetic greenhouse gases from the use of commercial air conditioning
 - Emissions from the combustion of biomass

Liabile entities and emissions (cont)

- » Large direct emitters: who liable?
 - Controlling corporation
 - Operator where no controlling corporation
 - May need to consider:
 - Allocation of costs within corporate group
 - Pass through clauses (who party to contract)

Liable entities and emissions (cont)

- » Liability transfer certificate: may transfer liability:
 - From controlling corporation to subsidiary; or
 - From operator to financial controller
 - Certificate issued by Authority; Authority's discretion
- » Anti-avoidance provisions

Liable entities and emissions (cont)

» Upstream liability:

- Importers, producers and suppliers of eligible upstream fuels (or if apply fuel for own use)
- Importers, manufacturers and suppliers of synthetic greenhouse gas (25kt CO₂-e/year threshold)

Liable entities and emissions (cont)

Eligible upstream fuels:

- » Liquid petroleum fuels
- » Liquid petroleum gas
- » Black coal
- » Brown coal
- » Coking coal
- » Brown coal briquettes
- » Coke oven coal
- » Coal-based char
- » Natural gas that is distributed or transmitted in a pipeline
- » Coal seam methane that is captured for combustion
- » Coal mine waste gas that is captured for combustion
- » Ethane
- » Town gas
- » Liquefied natural gas
- » Compressed natural gas
- » Syngas
- » Refinery grade propene (propylene)
- » Fuels specified in the regulations

Liabile entities and emissions (cont)

- » Eligible upstream fuels: who liable?
 - Generally, top of the supply chain
 - Defined at different points depending on fuel
 - Liquid petroleum fuel: aligns with fuel tax arrangements (person who pays import or excise duty)
 - Other: rules about identifying first point of supply
 - Some resuppliers: eg resupplier of natural gas out of prescribed wholesale gas market
 - Own use

Liable entities and emissions (cont)

- » Synthetic greenhouse gases: who liable?
 - Similar rules (generally about identifying top of supply chain)

Liable entities and emissions (cont)

» Obligation Transfer Numbers (OTNs)

- May shift liability downstream
- Person may quote OTN in relation to supply and take on CPRS liability
- Sometimes mandatory, eg:
 - Large users of eligible upstream fuels
 - Gas retailer

Emissions units

- » Types of units:
 - Australian emissions units
 - Kyoto units
 - Non-Kyoto international units
- » Cap limits number of auctioned and free Australian emissions units

Emissions units (cont)

- » Role of fixed prices
 - \$10/unit (2011)
 - \$40 + 5% (indexed)/unit (2012 – 2015)
- » Auctioning and market trading commences 2012
 - Most permits auctioned
 - Fixed prices from then a backup (probability of use low)

Emissions units (cont)

» Free units:

- Emissions-intensive trade-exposed industries
- Coal-fired electricity generators

Emissions units (cont)

- » Coal-fired electricity generators:
 - Free allocation of units over financial years 2011 - 2015
 - Need to apply within 180 days after scheme commencement
 - Generator asset assistance eligibility test:
 - Power stations in existence or committed before 3 June 2007
 - Connected to a major electricity grid
 - At least 95% coal-fired

Emissions units (cont)

- » Coal-fired electricity generators (cont):
 - Annual assistance factor: based on historical emissions intensity exceeding 0.86t CO₂-e/MWh (over 2004 to 2007 financial years)
 - Power system reliability test each year
 - Last 2 instalments may be withheld if “windfall gain declaration”
 - Must make a submission about this before 30/9/13

Emissions units (cont)

» Emissions reduction

- Reforestation
- Destruction of synthetic greenhouse gases

Penalties

- » Failure to surrender sufficient units:
 - Administrative penalty
 - \$11 for 2011/12
 - Subsequent years: regulations: maximum and default rate is 110% benchmark average auction price
 - Make-good
- » Civil penalties
 - Liability of executive officers
- » Criminal provisions

Preparation

- » Compliance systems
 - Creating a “culture of compliance”
 - Risk assessment
 - Control points
 - Adequate documentation
 - Identified positions that are accountable
 - Continuous improvement

Preparation (cont)

- » Cost pass-throughs
 - By suppliers
 - To customers
 - Change in tax and change in law clauses
 - Parties who are directly liable vs those who are not
- » Allocation of responsibility
 - Liability transfer certificates and OTNs
- » Transitional assistance

Thank you

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