

2013-2014

The Parliament of the  
Commonwealth of Australia

THE SENATE

## Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 [No. 2]

*(Amendments to be moved by the Leader of the Palmer United Party, Senator Lazarus, in committee of the whole)*

- (1) Schedule 2, heading, page 71 (lines 1 and 2), omit “**Price exploitation in relation to the carbon tax repeal**”, substitute “**Carbon tax price reduction obligation**”.  
*[carbon tax price reduction obligation]*
- (2) Schedule 2, item 3, page 71 (lines 13 and 14), omit “**Price exploitation in relation to the carbon tax repeal**”, substitute “**Carbon tax price reduction obligation**”.  
*[carbon tax price reduction obligation]*
- (3) Schedule 2, item 3, page 71 (after line 24), after the third dot-point in section 60, insert:

- An entity may be required to explain and substantiate:
  - (a) how the carbon tax repeal has affected, or is affecting, the entity’s regulated supply input costs; and
  - (b) how reductions in the entity’s regulated supply input costs that are directly or indirectly attributable to the carbon tax repeal are reflected in the prices charged by the entity for regulated supplies.
- An entity that sells electricity or natural gas to customers must:
  - (a) give a carbon tax removal substantiation statement to the Commission; and
  - (b) include in the statement the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, attributable to the carbon tax repeal and that have been, are being, or will be, passed on to customers during the financial year that began on 1 July 2014; and
  - (c) provide information with the statement that substantiates such an estimate; and
  - (d) communicate to customers a statement that identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings to customers that are for the financial year that began on 1 July 2014.

*[carbon tax price reduction obligation]*

- (4) Schedule 2, item 3, page 72 (line 1), after “for”, insert “certain”.

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**[carbon tax price reduction obligation]**

- (5) Schedule 2, item 3, page 72 (after line 2), after section 60, insert:

**60AA Objects etc.**

- (1) The main objects of this Part are:
- (a) to deter price exploitation in relation to the carbon tax repeal at each point in the supply chain for regulated goods; and
  - (b) to ensure that all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods.
- (2) The intention of the Parliament in enacting this Part is to ensure that all cost savings attributable to the carbon tax repeal are passed on to consumers of regulated goods through lower prices.

**[carbon tax price reduction obligation]**

- (6) Schedule 2, item 3, page 72 (after line 9), after the definition of *carbon charge component* in section 60A, insert:

*carbon tax removal substantiation notice* has the meaning given by subsection 60FA(3).

**[carbon tax price reduction obligation]**

- (7) Schedule 2, item 3, page 72 (before line 10), before the definition of *carbon tax repeal* in section 60A, insert:

*carbon tax removal substantiation statement* has the meaning given by subsection 60FD(3).

**[carbon tax price reduction obligation]**

- (8) Schedule 2, item 3, page 73 (after line 34), after the definition of *carbon tax scheme* in section 60A, insert:

*electricity customer* means an entity that purchases electricity.

*electricity retailer* means:

- (a) an entity that:
  - (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; or
  - (ii) sells electricity to electricity customers; or
- (b) an entity that is a retailer within the meaning of the *Electricity Industry Act 2000* (Vic.); or
- (c) an entity that is a retail entity within the meaning of the *Electricity Act 1994* (Qld); or
- (d) an entity that:
  - (i) holds a retail licence within the meaning of the *Electricity Industry Act 2004* (WA); or
  - (ii) holds an integrated regional licence within the meaning of the *Electricity Industry Act 2004* (WA) that authorises the entity to sell electricity; or
- (e) an entity that is an electricity entity within the meaning of the *Electricity Reform Act* (NT) and the licence of which under that Act authorises the entity to sell electricity; or

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(f) any other entity that sells gas or electricity in Australia.

**[carbon tax price reduction obligation]**

- (9) Schedule 2, item 3, page 73 (after line 36), after the definition of *engages in price exploitation in relation to the carbon tax repeal* in section 60A, insert:

*entity* means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) an entity sole;
- (d) a body politic;
- (e) a partnership;
- (f) any other unincorporated association or body of entities;
- (g) a trust;
- (h) any party or entity which can or does buy or sell electricity or gas.

**[carbon tax price reduction obligation]**

- (10) Schedule 2, item 3, page 74 (after line 6), after the definition of *listed corporation* in section 60A, insert:

*National Energy Retail Law* means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA).

**[carbon tax price reduction obligation]**

- (11) Schedule 2, item 3, page 74 (after line 9), after the definition of *natural gas* in section 60A, insert:

*natural gas customer* means an entity that purchases natural gas.

*natural gas retailer* means:

- (a) an entity that:
  - (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; or
  - (ii) sells natural gas to natural gas customers; or
- (b) an entity that is a gas retailer within the meaning of the *Gas Industry Act 2001* (Vic.); or
- (c) an entity that is a retailer within the meaning of the *Gas Supply Act 2003* (Qld); or
- (d) an entity that holds a trading licence under the *Energy Coordination Act 1994* (WA); or
- (e) an entity that holds a licence under the *Gas Act 2000* (Tas.) to sell gas by retail; or
- (f) any other entity that sells gas in Australia.

**[carbon tax price reduction obligation]**

- (12) Schedule 2, item 3, page 74 (after line 18), after the definition of *regulated supply* in section 60A, insert:

*regulated supply input costs* of an entity means the entity's input costs in relation to the making by the entity of regulated supplies.

*Royal Assent day* means the day on which the Act that inserted this Part receives the Royal Assent.

**[carbon tax price reduction obligation]**

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- (13) Schedule 2, item 3, page 75 (lines 3 and 4), omit “**Price exploitation in relation to the carbon tax repeal**”, substitute “**Carbon tax price reduction obligation**”.  
*[carbon tax price reduction obligation]*
- (14) Schedule 2, item 3, page 71 (line 17), omit “A corporation”, substitute “An entity”.  
*[carbon tax price reduction obligation]*
- (15) Schedule 2, item 3, page 71 (line 21), omit “A corporation”, substitute “An entity”.  
*[carbon tax price reduction obligation]*
- (16) Schedule 2, item 3, page 75 (line 6), omit “A corporation”, substitute “An entity”.  
*[carbon tax price reduction obligation]*
- (17) Schedule 2, item 3, page 75 (line 8), omit “a corporation”, substitute “an entity”.  
*[carbon tax price reduction obligation]*
- (18) Schedule 2, item 3, page 75 (lines 11 to 17), omit paragraphs 60C(2)(b) and (c), substitute:  
(b) the price for the supply does not pass through all of the entity’s cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal.  
*[carbon tax price reduction obligation]*
- (19) Schedule 2, item 3, page 75 (after line 17), at the end of section 60C, add:  
(3) For the purposes of this Part, in determining whether the price for a supply made by an entity does not pass through all of the entity’s cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal, have regard to the following matters:  
(a) the entity’s cost savings that are directly or indirectly attributable to the carbon tax repeal;  
(b) how the cost savings mentioned in paragraph (a) can reasonably be attributed to the different supplies that the entity makes;  
(c) the entity’s costs;  
(d) any other relevant matter that may reasonably influence the price.  
*[carbon tax price reduction obligation]*
- (20) Schedule 2, item 3, page 75 (line 18), omit “**corporation**”, substitute “**entity**”.  
*[carbon tax price reduction obligation]*
- (21) Schedule 2, item 3, page 75 (line 20), omit “a corporation”, substitute “an entity”.  
*[carbon tax price reduction obligation]*
- (22) Schedule 2, item 3, page 75 (line 21), omit “corporation”, substitute “entity”.  
*[carbon tax price reduction obligation]*
- (23) Schedule 2, item 3, page 75 (line 26), omit “corporation”, substitute “entity”.  
*[carbon tax price reduction obligation]*
- (24) Schedule 2, item 3, page 75 (line 29) to page 76 (line 2), omit paragraph 60D(2)(c), substitute:  
(c) state that, in the Commission’s opinion, the price for the supply did not pass through all of the entity’s cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal.  
*[carbon tax price reduction obligation]*
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- (25) Schedule 2, item 3, page 76 (lines 9 to 13), omit all the words from and including “the notice” to and including “60C(2)(c).”, substitute:

the notice is prima facie evidence that the price for the supply did not pass through all of the entity’s cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal.

***[carbon tax price reduction obligation]***

- (26) Schedule 2, item 3, page 76 (line 15), omit “corporation”, substitute “entity”.

***[carbon tax price reduction obligation]***

- (27) Schedule 2, item 3, page 76 (line 16), omit “corporation”, substitute “entity”.

***[carbon tax price reduction obligation]***

- (28) Schedule 2, item 3, page 77 (after line 28), after Division 2, insert:

## **Division 2A—Carbon tax removal substantiation notices**

### **60FA Carbon tax removal substantiation notices**

#### *Scope*

- (1) This section applies to an entity if the entity has made, or is making, one or more regulated supplies.

#### *Carbon tax removal substantiation notice*

- (2) The Commission must within 30 days after the Royal Assent day, by written notice given to the entity, require the entity:
- (a) to give to the Commission, within the period specified in the notice, a written statement that explains:
    - (i) how the carbon tax repeal has affected, or is affecting, the entity’s regulated supply input costs; and
    - (ii) how reductions in the entity’s regulated supply input costs that are directly or indirectly attributable to the carbon tax repeal are reflected in the prices charged by the entity for regulated supplies; and
  - (b) to do either or both of the following:
    - (i) give to the Commission, within the period and in the manner and form specified in the notice, information that substantiates the explanation set out in the statement;
    - (ii) produce to the Commission, within the period and in the manner specified in the notice, documents that substantiate the explanation set out in the statement.
- (3) A notice under subsection (2) is to be known as a ***carbon tax removal substantiation notice***.
- (4) A period specified in a carbon tax removal substantiation notice must be 21 days after the notice is given.
- (5) A carbon tax removal substantiation notice must explain the effect of:
- (a) section 60FB; and
  - (b) section 60FC; and
  - (c) sections 137.1 and 137.2 of the *Criminal Code*.

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*Section does not limit section 60H*

- (6) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

*Section does not limit section 155*

- (7) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

### **60FB Extending periods for complying with carbon tax removal substantiation notices**

- (1) An entity that has been given a carbon tax removal substantiation notice may, at any time within 14 days after the notice was given to the entity by the Commission, apply in writing to the Commission for an extension of the period for complying with the notice.
- (2) The Commission may, by written notice given to the entity, extend the period within which the entity must comply with the notice.

### **60FC Compliance with carbon tax removal substantiation notices**

- (1) An entity that is given a carbon tax removal substantiation notice must comply with it within 30 days of the notice.
- (2) An entity commits an offence if:
  - (a) the entity is subject to a requirement under subsection (1); and
  - (b) the entity is capable of complying with the requirement; and
  - (c) the entity omits to do an act; and
  - (d) the omission breaches the requirement.

Penalty: 200 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) If subsection (2) of this section applies to an individual because of subsection 6(2), subsection (2) of this section has effect, in relation to the individual, as if the reference to 200 penalty units were a reference to 40 penalty units.
- (5) If subsection (1) of this section applies to an individual because of subsection 6(2), the individual is excused from giving information or producing a document in accordance with a carbon tax removal substantiation notice on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

## **Division 2B—Carbon tax removal substantiation statements**

### **60FD Carbon tax removal substantiation statements**

*Scope*

- (1) This section applies to an entity if the entity:
  - (a) is an electricity retailer that sells electricity to electricity customers; or
  - (b) is a natural gas retailer that sells natural gas to natural gas customers.

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*Carbon tax removal substantiation statement*

- (2) Within 30 days after the Royal Assent day, the entity must give to the Commission:
- (a) a written statement that sets out:
    - (i) if the entity has electricity customers—the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of electricity customers during the financial year that began on 1 July 2014; and
    - (ii) if the entity has natural gas customers—the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of natural gas customers; and
  - (b) information that substantiates the estimate or estimates set out in the statement.

Note: Section 137.1 of the *Criminal Code* creates an offence of providing false or misleading information.

- (2A) An entity commits an offence if:
- (a) the entity has electricity customers or natural gas customers; and
  - (b) the entity has cost savings as mentioned in paragraph (2)(a); and
  - (c) the entity does not pass on that saving to a customer as mentioned in that paragraph.

Minimum and maximum penalty: An amount equal to 250% of the saving that has not been passed on to the customer.

- (3) A statement under paragraph (2)(a) is to be known as a ***carbon tax removal substantiation statement***.
- (4) If the entity has given a carbon tax removal substantiation statement to the Commission, the entity must ensure that a copy of the statement is available on the entity’s website, in a way that is readily accessible by the public, until the end of 30 June 2015.

*Compliance*

- (5) An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (2) or (4); and
  - (b) the entity is capable of complying with the requirement; and
  - (c) the entity omits to do an act; and
  - (d) the omission breaches the requirement.

Penalty: 500 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) If subsection (5) of this section applies to an individual because of subsection 6(2), subsection (5) of this section has effect, in relation to the individual, as if the reference to 500 penalty units were a reference to 40 penalty units.
- (8) If subsection (2) of this section applies to an individual because of subsection 6(2), the individual is excused from giving an estimate or information under subsection (2) of this

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section on the ground that the estimate or information might tend to incriminate the individual or expose the individual to a penalty.

*Section does not limit section 60H*

- (9) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

*Section does not limit section 155*

- (10) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

*Report to Parliament*

- (11) The Commission must report to the Parliament on the compliance by relevant entities with this section within 13 months after the Royal Assent day.

## **Division 2C—Statements for customers**

### **60FE Statements for customers**

*Scope*

- (1) This section applies to an entity if the entity:
- (a) is an electricity retailer that sells electricity to electricity customers; or
  - (b) is a natural gas retailer that sells natural gas to natural gas customers.

*Preparation of statement*

- (2) Within 30 days after the Royal Assent day, the entity must prepare a statement that:
- (a) if the entity has electricity customers—identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of electricity customers, that:
    - (i) have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
    - (ii) are for the financial year that began on 1 July 2014; and
  - (b) if the entity has natural gas customers—identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of natural gas customers, that:
    - (i) have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
    - (ii) are for the financial year that began on 1 July 2014.

*Communication of contents of statement to customers*

- (3) During the period:
- (a) beginning 30 days after the Royal Assent day; and
  - (b) ending 60 days after the Royal Assent day;
- the entity must ensure that the contents of the statement prepared by it under subsection (2) that relates to a class of electricity customers or natural gas customers is communicated to each customer of that class.:

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Note: Section 137.1 of the *Criminal Code* creates an offence of providing false or misleading information.

*Compliance*

- (4) An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (2) or (3); and
  - (b) the entity is capable of complying with the requirement; and
  - (c) the entity omits to do an act; and
  - (d) the omission breaches the requirement.

Penalty: 400 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) If subsection (4) of this section applies to an individual because of subsection 6(2), subsection (4) of this section has effect, in relation to the individual, as if the reference to 400 penalty units were a reference to 40 penalty units.
- (7) If subsection (2) or (3) of this section applies to an individual because of subsection 6(2), the individual is excused from:
- (a) preparing a statement under subsection (2) of this section; or
  - (b) communicating the contents of a statement under subsection (3) of this section;
- on the ground that the information in the statement might tend to incriminate the individual or expose the individual to a penalty.

***[carbon tax price reduction obligation]***

- (29) Schedule 2, item 3, page 81 (after line 21), after subsection 60H(5), insert:

*Section does not limit section 60FA*

- (5A) This section does not limit section 60FA (which is about carbon tax removal substantiation notices).

***[carbon tax price reduction obligation]***

- (30) Schedule 2, item 25, page 90 (line 24), omit “section”, substitute “paragraph 60FD(2)(b) or section 60FA or”.

***[carbon tax price reduction obligation]***