

ADVANTAGE PARTNERSHIP LAWYERS

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The Carbon Tax: Are You Ready?

The *Clean Energy Bill* 2011 has now been passed in Federal Parliament. The legislation will operate on a financial year basis, so it will come into force in the next Australian financial year, being on 1 July 2012.

The new legislation will have the effect of putting a tax on the carbon dioxide (CO₂) emissions of companies, which, will in turn, affect profits.

So, it is crucial that all companies are well aware of the new legislation - both how it operates and how it will affect their business.

If you wish to know, or are concerned about, how the new tax will affect your business, please read on.

Effects on Triple Bottom Line Accounting

The carbon tax will have a significant impact on corporate accounting by augmenting the environmental aspect.

The three lines of accounting adhered to are financial, social responsibility and environmental. Previously, companies have focussed solely on their financial performance in preparing annual reports. However, in more recent decades, the other two arms of accounting have also become important.

Companies consider the social responsibility impacts of their activities, including the consequences for health, safety, and effects on communities (for example employment and education programs) as well as contributing to charitable institutions.

Environmental impacts of company activities are also taking into account when preparing annual reports.

However, the new carbon tax will generate a more onerous and cost-incurring responsibility on companies with respect to environmental matters. The difference is that whilst environmental reporting has often previously been

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conducted as a voluntary undertaking, with the introduction of the carbon tax by way of the *Clean Energy Act* 2011, companies will now be placed under a positive obligation.

The *Clean Energy Act* 2011

Objects:

The focal objects that the Act aims to achieve are as follows:

- to give effect to Australia's obligations under the Climate Change Convention and Kyoto Protocol;
- to support the global response to climate change; and
- to put a price on greenhouse gas emissions in such a way that encourages investment in clean energy as well as supporting Australia's economic growth, whilst simultaneously reducing pollution.

How does the legislation work?:

The Clean Energy legislation sets up a mechanism to combat climate change by effectively encouraging the use of clean energy. This mechanism will be administered by the Clean Energy Regulator ("the Regulator").

The first three financial years that this Act is in force will be the so-called "fixed charge years" (during these years, carbon units will be issued on the basis of a fixed charge). The later financial years will be known as "flexible charge years" (during which carbon units will be issued as the result of an auction).

Coal-fired Electricity Generators

If your company is one that generates electricity, or if you have business dealings with a company that conducts such activities, the new carbon tax will affect you.

The *Clean Energy Act* 2011 will require companies that generate electricity to pay for their carbon emissions. Yet the Act allows generators to obtain some assistance in paying for these emissions by receiving free carbon units.

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However, the legislation is complex and lengthy, and requires professional legal assistance to enable clients to navigate through their rights and responsibilities.

The following is a brief overview of how the legislation generally operates in relation to coal-fired electricity generators. Yet, in order to obtain detailed legal advice tailored to your specific business, please contact our experienced legal professionals.

How it works:

Free carbon units will be issued in relation to coal-fired electricity generation complexes. In order to receive such assistance, generation complexes must meet the criteria of the power system reliability test. However, there will be restrictions on the number of free units that may be issued in relation to the particular generation complex.

Under the Act, the Regulator must issue a certain number of free carbon units to generation complexes each financial year. The complexes must have a certificate of eligibility in order to receive the free units. These units are calculated in accordance with a complex formula set out in the Act.

How do you apply:

A person, who owns, controls or operates a generation complex, may apply for a certificate of eligibility for coal-fired generation assistance. The person must prepare a written application and may be requested by the Regulator, in writing, to provide further information with the application.

The next step is that the Regulator considers the application and then issues a certificate of eligibility, if they believe that the generation complex fulfils the relevant criteria.

The criteria that are to be met, when considering whether to issue the certificate, are as follows:

- the Regulator must be satisfied that the generator complex meets the eligibility test; and

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- that the complex was in operation and was connected to a grid with a capacity of at least 100 megawatts (for the period between 1 July 2008 to 30 June 2010); and
- at least 95% of the electricity was generated by the generation complex (during the period 1 July 2008 to 30 June 2011); and
- the electricity was attributable to the combustion of coal; and
- the emissions intensity of the generation complex is greater than 1.0.

Jobs and Competitiveness Program

Assistance by way of issuing free carbon units will also be provided with respect to activities that are considered to be emissions intensive and trade exposed, or "EITE" activities. EITE activities are categorised as being either 'highly emissions-intensive activity' or 'moderately emissions-intensive activity' (which receive a lower rate of assistance).

Further Information and Advice

We are able to provide you with further legal information and specially tailored legal advice to assist your company with its specific business questions, such as impacts on your business, assets and liabilities, as well as impacting profit and loss as they relate to the carbon tax under the *Clean Energy Act 2011*.

Our first consultation is free!

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