

Alert - Changes to emissions trading - what you should be doing now

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On 4 May 2009 the Commonwealth Government announced some key changes to its proposed Carbon Pollution Reduction Scheme (**CPRS**), including a one year delay to the start date – from 1 July 2010 to 1 July 2011.

In spite of the delayed start and other changes, there are a number of things businesses should be doing now to prepare for the regulation of climate change issues, such as compliance with National Greenhouse and Energy Reporting Scheme (NGERS).

This alert summarises the key changes to the proposed CPRS and outlines some issues to consider in preparing your business to tackle climate change issues.

What are the changes to the CPRS?

The Commonwealth Government's announced changes, which are designed to assist in managing the impacts of the global recession, include:

- **One year delay:** The start date of mandatory obligations under the CPRS is now 1 July 2011. Some other (non-mandatory) aspects of the CPRS package, such as the ability to earn permits from increased carbon stored in forests, will proceed according to the original timetable outlined in the December 2008 White Paper.
- **One year fixed price:** Permits will cost A\$10 per tonne of carbon in year one (2011-12), with the transition to full market trading from 1 July 2012. Fixed-price permits will not be able to be banked for use in later years. A price cap will also be in place for four years from 2012-13, rising at five per cent per annum in real terms (it has not been stated whether the price cap will start at A40/permit, as originally proposed in the White Paper and exposure draft legislation). At present, details are limited on how the 2011-12 fixed price and subsequent price cap will be implemented.
- **Global Recession Buffer:** A five year Global Recession Buffer will be provided as part of the assistance package for emissions-intensive trade-exposed (**EITE**) industries. The Global Recession Buffer will be applied to the allocation baselines of emissions per unit of output for each EITE activity at a rate of:
 - 10 per cent – for entities eligible to receive EITE assistance at the 60 per cent assistance rate. This would give an effective rate of assistance of 66 per cent to those entities in the first year of the scheme; and
 - 5 per cent – for entities eligible to receive EITE assistance at the 90 per cent assistance rate. This would give an effective rate of assistance of almost 95 per cent to those entities in the first year of the scheme.
- These rates of assistance will decline at a rate of 1.3 per cent per annum as previously stated in the White Paper. The continuation of the Global Recession Buffer beyond five years will be considered as part of the first five-yearly review of the EITE assistance program. The review will also consider the possible extension of the price cap arrangements.
- **Energy efficiency measures:** From 1 July 2009, eligible businesses may receive funding to undertake energy efficiency measures as part of a A\$200 million program established under the Climate Change Action Fund. The assistance will be targeted at businesses and community organisations that do not receive EITE assistance but that do have significant energy costs.

Other key changes announced as part of revised CPRS proposal include:

- **Targets and scheme caps:** A commitment to reduce carbon pollution by 25 per cent of 2000 levels by

2020 if agreement is reached at a global level to stabilise levels of carbon dioxide equivalent in the atmosphere at 450 parts per million or less by 2050. The Government has also indicated that it will take account the purchase by households, businesses and community organisation of accredited GreenPower above 2009 levels in setting scheme caps under the CPRS.

- **Australian Carbon Trust:** The establishment of a A\$75.8 million Australian Carbon Trust, comprising:
 - a A\$25.8 million **Energy Efficiency Savings Pledge Fund**, which will be a 'one-stop shop' for individuals and households to calculate their energy use and buy and retire carbon pollution permits under the CPRS. The fund will be entirely voluntary and contributions to the fund will be tax deductible.
 - a A\$50 million **Energy Efficiency Trust**, which will provide funding to promote energy efficiency in the business sector. The trust would cover upfront capital costs of undertaking energy efficiency investments and put in place arrangements for businesses to repay the capital costs at a commercial rate as energy cost savings flow through.

What should my business be doing now?

While the one year delay in the CPRS start date will provide valuable breathing space for some businesses, there are a number of things business can, and in some cases should, be doing in order to prepare for the regulation of climate change issues.

Importantly, there can be significant lead times in determining liability under the CPRS and implementing a compliance system. Many organisations will need to keep working on these issues in the lead-up to the start date in order to fully evaluate the impact of the CPRS on their business.

In addition to assessing your potential liabilities under the CPRS, there are a number of other important issues to consider in preparing your business to deal with climate change issues, even if you will not have mandatory obligations under the CPRS (eg, because they impact upon your customers and suppliers). These include:

- **Other schemes:** Assessing your potential liabilities under other mandatory schemes, such as the Commonwealth Government's *National Greenhouse and Energy Reporting Scheme* and *Energy Efficiency Opportunities Scheme*. Businesses may have mandatory obligations under these schemes in the current calendar year even though they are not directly liable under the CPRS. There are also a number of other important schemes in State and Territory jurisdictions.
- **Transitional assistance:** Considering whether your business will be eligible for any form of transitional assistance under the CPRS and related measures, such as the Electricity Sector Adjustment Scheme, EITE Scheme and Climate Change Action Fund programs. Some of the programs under the Climate Change Action Fund are available to businesses that do not have direct liability under the CPRS.
- **Contract reviews:** Conducting a review of key contracts, particularly medium- and long-term contracts, that will extend beyond the start date of the CPRS. Some important issues to consider are the effect of any change in law provisions, impacts on pricing and any scope for a pass-through of carbon costs, and whether the contracts adequately deal with some CPRS mechanics, such as 'obligation transfer numbers' and 'liability transfer certificates'. It may be worthwhile to develop a suite of pro-forma carbon clauses for use in certain types of contracts.
- **Other impacts:** Reviewing any planned new projects and acquisitions. You may want to consider building an assessment of climate change risks into economic, physical and legal models for the project. It may also be worthwhile considering other (non-legal) impacts of climate change on your business, such as physical and reputational impacts.
- **New opportunities:** Looking for any opportunities created by the introduction of the CPRS or other climate change schemes and policies. There may be opportunities for some businesses to move into low emissions technologies or create some kinds of offsets or other benefit for sale into mandatory or voluntary carbon markets.

Conclusion

In spite the delay in the start date of the CPRS, there are a number of important issues businesses can, and in some cases should, be considering in order to prepare for climate change issues, such as assessing their liability exposure under existing regulatory schemes such as the National Greenhouse and Energy Reporting

Scheme.

The Commonwealth Government has stated that it will introduce the CPRS legislative package (including the new measures) when Parliament resumes later this month.

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