

Australian carbon tax repeal will force energy companies to prove savings are being passed on to customers

After a flurry of last minute negotiations and amendments in the Australian Senate to obtain the necessary votes, the Coalition Government has achieved its election promise of repealing Australia's "carbon tax" legislation.

Electricity and natural gas retailers now have new obligations to substantiate the impact of the repeal and pass on any cost savings to consumers.

They will be contacted by the ACCC and are required to substantiate how cost savings from the repeal of the carbon tax will be passed on to consumers. Substantial penalties apply for not complying with the new laws.

Background

On 17 July 2014, the Australian Senate finally passed the government's package of repeal bills, by 39 votes to 32, to unwind the carbon pricing scheme introduced by the previous Labor government in 2012.

The repeal bills comprise eight bills in total¹ and will repeal the six Acts that established the carbon pricing scheme and amend 13 other pieces of legislation to make the necessary consequential amendments flowing from the repeal of the carbon pricing scheme.

The new laws and obligations to pass on cost savings

Importantly, Schedule 2 of the Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 (the Main Repeal

Bill) inserts a new Part V into the *Competition and Consumer Act 2010* (Cth) entitled "Carbon tax price reduction obligation".

The new Part V is designed to ensure that all savings attributable to the carbon tax repeal are passed on to consumers of regulated goods, being natural gas, electricity, synthetic greenhouse gas (SGG) or SGG equipment or any other goods that are specified by subsequent regulations.

Measures set out in Part V include:

- Prohibiting an entity from engaging in price exploitation in relation to the carbon tax repeal. If the entity contravenes this provision in the supply of electricity or natural gas, pecuniary penalties equal **to 250% of the cost savings not passed through are payable**
- Prohibiting an entity from making false or misleading representations about the effect of the carbon tax repeal, or the carbon pricing scheme, on the price for the supply of goods or services during the carbon tax repeal transition period (being the 12 months from 1 July 2014)
- Granting new powers to the Australian Competition and Consumer Commission (ACCC) to issue notices, monitor pricing before and during the carbon tax repeal transition period, gather information and issue infringement notices to ensure compliance with the carbon tax repeal obligations
- Requiring the ACCC to issue a "carbon tax removal substantiation notice" to all electricity and natural gas retailers and bulk SGG importers

within 30 days of the commencement of the Main Repeal Bill

- Requiring all electricity and natural gas retailers and bulk SGG importers to provide the ACCC a “carbon tax substantiation statement” within 30 days of the commencement of the Main Repeal Bill

Practical impact of ACCC substantiation notices

The carbon tax removal substantiation notice from the ACCC will require the recipient to provide an explanation of how the carbon tax repeal has affected or is affecting the recipient’s input costs for the supply of electricity, natural gas or SGG during the carbon tax repeal transition period and how the reductions in those input costs are reflected in the prices charged by the recipient.

The carbon tax removal substantiation statement to be given to the ACCC is a statement that sets out the entity’s assessment, on an average annual percentage price or dollar price basis, of the entity’s cost savings that have been or will be attributable to the repeal of the carbon tax and that will be passed onto customers during the 2014/2015 financial year. Carbon tax removal substantiation statements are to be placed on the entity’s website and be easily available to the public until 30 June 2015.

The ACCC has already been actively requesting companies to produce information on carbon price impacts through its existing powers (see our *Energy and Resources Update: May 2014*). Electricity and natural gas retailers can now expect a fresh round of enquiries from the ACCC once the Main Repeal Act formally commences.

¹Clean Energy Legislation (Carbon Tax Repeal) Bill 2014

True-Up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014

True-Up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014

Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014

Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014

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