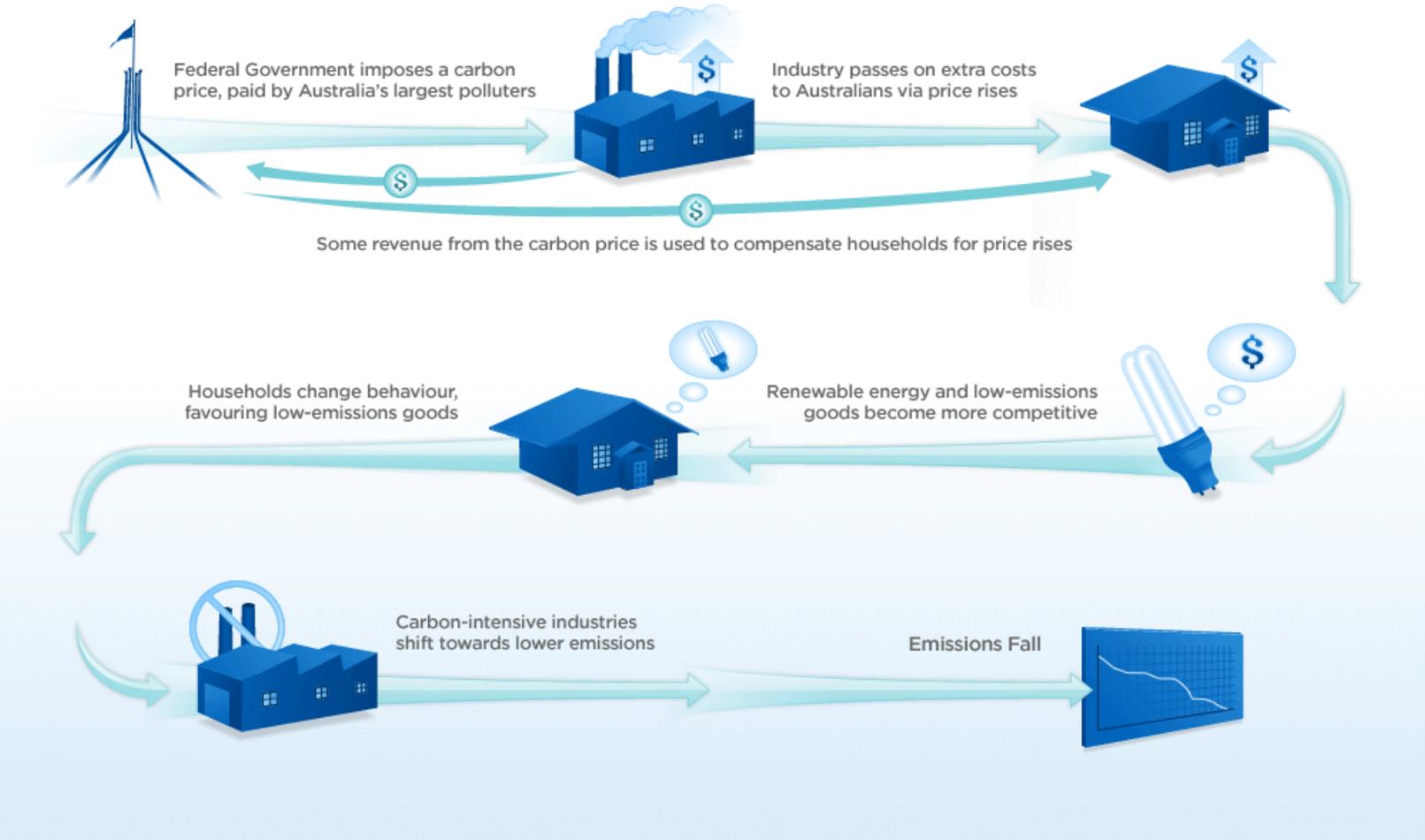


Introduction to the Clean Energy Package and its application to local government

Elisa de Wit
Partner
Head of Climate Change
Norton Rose Australia

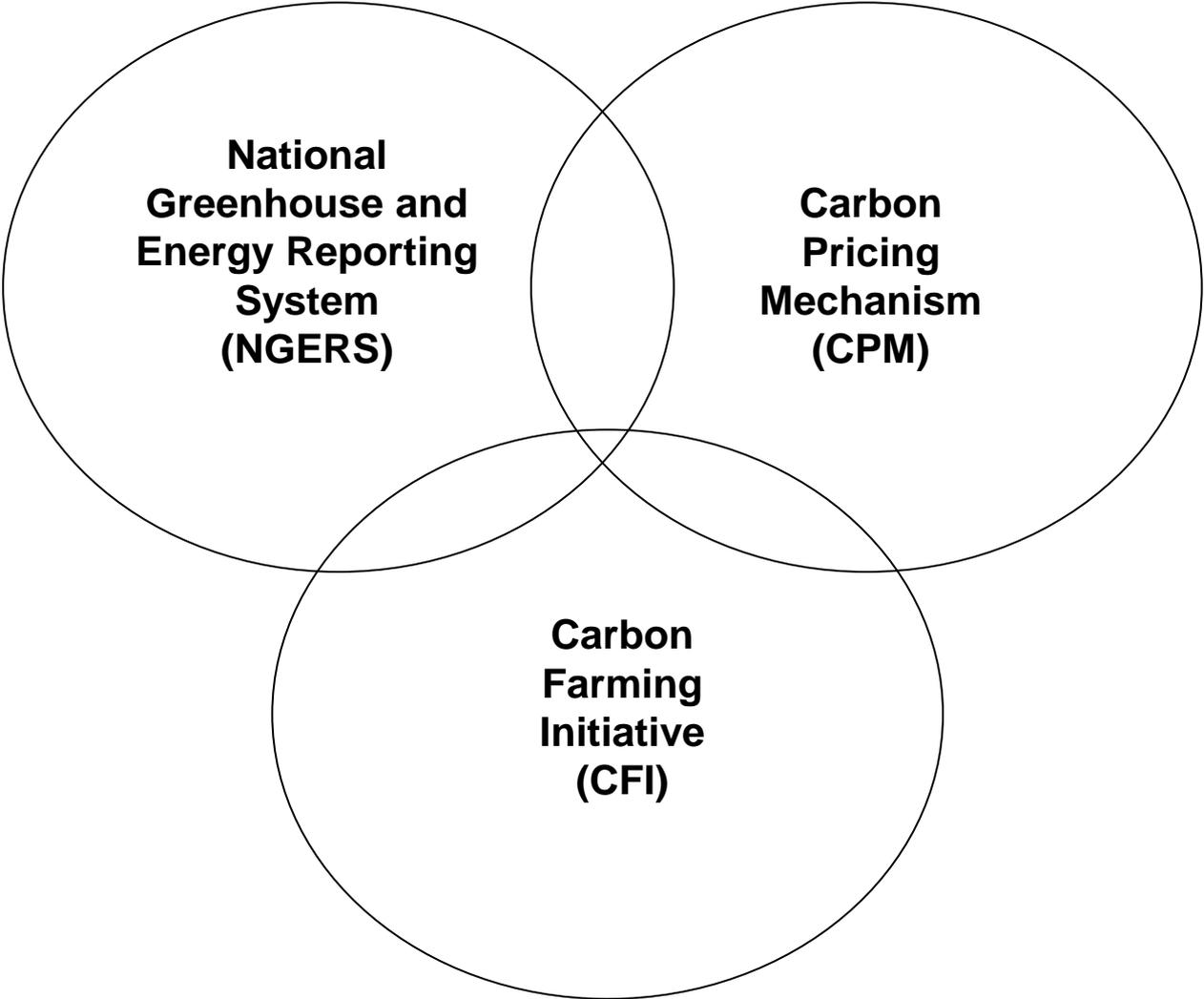


Pricing carbon – the big picture



Source: DCCEE

The Clean Energy Package



NGERS overview

- National framework for reporting greenhouse gas emissions, energy use and energy production
- Applies to “constitutional corporations” (from 1 July 2012 will apply to liable entities under the CPM)
- Thresholds:
 - Facility: 25,000 tCO₂-e/100 tj
 - Corporate: 50,000 tCO₂-e/200 tj
- Requirements to register and report
- Reporting done on financial year basis; reports due 31 October
- Emissions measured or estimated using NGER Measurement Determination

CPM in a nutshell

- 3 year fixed price period, starting from **1 July 2012**
 - \$23 in year 1; then \$24.15; then \$25.40
- Flexible price period, starting from **1 July 2015**
- Applies to 4 greenhouse gas emissions: carbon dioxide, methane, nitrous oxide and perfluorocarbons (from aluminium smelting)
- Applies to stationary energy, industrial processes, fugitive emissions and emissions from non-legacy waste; applies to suppliers of natural gas
- Agriculture and land sector emissions are excluded
- Transport fuel for household and light commercial vehicles and fuel used by agriculture, forestry and fisheries not covered
- Effective carbon price on fuels and some industrial gases (large fuel users can “opt-in” to the CPM)

CFI in a nutshell

- Project based domestic carbon offset mechanism
- Started on **8 December 2011**
- Receive carbon credits for abatement activities in the land sector, by:
 - Reducing or avoiding emissions
 - Removing carbon from the atmosphere, to soil or trees
- Creation of emissions units called Australian Carbon Credit Units (ACCUs)
 - Used for compliance purposes
 - Sold into voluntary markets
- Methodologies needed for projects
 - **Capture and Combustion of Landfill Gas**
 - **Only applies to legacy waste**
- Project must be “additional”
- Transition of GGAS and Greenhouse Friendly™
- Baseline issue

CPM in more detail

Fixed price period

- No cap on supply of permits by Government
- Permits (carbon units) purchased for fixed price are automatically surrendered
- Some permits allocated for free (Jobs and Competitiveness Program)

Flexible price period

- Rolling five years worth of caps (first five years announced in 2014 Budget and legislated in Regulations)
- Default cap setting in Act
- Price collar for first 3 years
 - price floor : \$15 (4% p.a rise)
 - price ceiling : \$20 above international price (5% p.a rise)
 - “top-up” fee applies to surrender of international carbon units
- Permits (carbon units) to be auctioned

Mechanics of liability

- “Liable entity” is person with “operational control” over “facility” that emits over 25,000 tonnes CO₂-e of “covered emissions”
 - Ability to transfer liability (corporate group or financial control)
- Compliance year = financial year
 - Fixed price period: 75% surrender by 15 June; remainder by 1 February (except if under 35,000 tonnes or don’t have interim emissions number, surrender by 1 February)
 - Flexible period: 100% surrender by 1 February
- Compliance units
 - Carbon units (purchased from Regulator)
 - Australian Carbon Credit Units (up to 5% except landfill sector (100%) in fixed period; no limit in flexible period)
 - International units (none in fixed period; up to 50% in flexible price period); qualitative restrictions
- Penalties for non-compliance (shortfall charge)
 - Fixed price period: 1.3 x fixed price
 - Flexible price period: double average price of permits for that year
 - Late payment penalty

Who are the liable entities?

About 500 businesses will be subject to the CPM:

- 130 waste disposal businesses
 - Private sector and local government
- 100 coal or other mining businesses
- 60 electricity generation businesses
- 60 industrial process businesses (cement, chemicals and metal processing)
- 50 businesses from fossil fuel intensive sectors
- 40 natural gas retailers

In addition, some large fuel users (e.g. airlines) can opt in from July 2013

60% of Australia's emissions covered

Who is liable?

“Facility”

- Section 9 NGER Act
- An activity/series of activities that
 - Involve production of GHG emissions, production of energy or consumption of energy
 - Form a single undertaking or enterprise
 - Meet the requirements of the Regulations

“Operational Control”

- Section 11 NGER Act
- Authority to introduce and implement any or all of the following for the facility:
 - Operating policies
 - Health and safety policies; and
 - Environmental policies

“Covered emissions”

- Scope 1 emissions (direct emissions)

What obligations do liable entities have?

- Register and report under NGERS
- Determine Emissions Number (will determine liability)
 - e.g Emissions Number is 50,000 tonnes CO₂e = 50,000 units
- Compliance strategy
 - Purchase carbon units
 - Purchase other compliance permits/units (ACCU, international units)
 - Pay unit shortfall charge
 - Reduce emissions

Waste sector coverage under the CPM

- “Legacy waste” concept
- Facilities for disposal of solid waste – putrescible and solid inert
- Landfills closed before 1 July 2012 not covered
- “Facilities” that emit 25,000 tonnes of “covered CO₂- e”
 - 25,000 CO₂- e = 1190 tonnes methane = 20,000 people
- Lower threshold for some landfills (10,000 tonnes CO₂- e), dependent upon prescribed distance rule (review in 3 years)
- Must count both legacy and non-legacy waste emissions to ascertain liability
- Use NERS methods for emissions estimation
 - Legacy/non-legacy waste profile
- First trigger year - 2011/12
- Calculation of carbon price
 - Waste type
 - Landfill life
 - Gas collection
 - Future cost of permits

Legal issues

- What is facility and who has operational control?
- Carbon cost calculation
 - Direct costs
 - Indirect costs
- Carbon cost pass-through/recovery
 - Contract review
 - Drafting carbon cost pass through clause
- Compliance strategy
- ACCC issues
- Participating in CFI

Disclaimer

The purpose of this presentation is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Norton Rose Australia on the points of law discussed.

No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any constituent part of Norton Rose Group (whether or not such individual is described as a “partner”) accepts or assumes responsibility, or has any liability, to any person in respect of this presentation. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of, as the case may be, Norton Rose LLP or Norton Rose Australia or Norton Rose Canada LLP or Norton Rose South Africa (incorporated as Deneys Reitz Inc) or of one of their respective affiliates.

The logo features a stylized brown house icon above the letter 'N'. The text 'NORTON ROSE' is written in a bold, red, sans-serif font.

NORTON ROSE