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Carbon Price framework announced: Implications for Resources Companies

On 10 July 2011, the Government announced the framework for its Carbon Price scheme. Subject to the legislation passing the scheme is proposed to commence on 1 July 2012 with an initial Carbon Price set at A$23 per tonne of carbon dioxide equivalent (CO2-e). Simone Selkirk, Senior Associate, and Dr Roland M Ryser, Consultant, consider the practical implications of the Carbon Price for the Resources Sector.

Overview of the Carbon Price

The proposed Carbon Price scheme includes the following key elements:

Fixed price period (3 years)	- From 01/07/2012 – 30/06/2015: Fixed price carbon permits - No pollution caps: Unlimited carbon permits available - Carbon Price in 2012-13: A$23 per tonne CO_2-e - Carbon Price in 2013-14: A$24.15 per tonne CO_2-e - Carbon Price in 2014-15: A$25.40 per tonne CO_2-e
Flexible price period	- From 01/07/2015: Emissions trading scheme - Pollution caps: Number of available carbon permits will be capped - Price ceiling applying for the first three years set at A$20 above the expected international price for 2015-16 (rising annually) - Price floor applying for the first three years set at A$15 (rising annually)

In the **fixed price period**, liable entities are obliged to purchase carbon permits from the Government at a fixed price, up to the number of their emissions for each compliance year. Any permits purchased will be automatically surrendered and cannot be traded or banked for future use (exceptions apply for freely allocated permits).

In the **flexible price period**, the number of carbon permits issued by the Government each year will be limited by a pollution cap on annual carbon pollution. The price will then be determined by the market. Businesses will compete to buy the number of permits they need to meet their obligations and will be free to buy and sell the carbon permits they have acquired.

Coverage

The Carbon Price will have broad coverage of emission sources including:

- stationary energy
- business transport
- industrial processes
- fugitive emissions (other than from decommissioned coal mines)
- emissions from non-legacy waste.

The Government expects that around 500 businesses will be directly liable under the scheme.

Compensation and assistance

The Government has announced that some compensation and assistance will be provided to support affected businesses. One of the assistance programs will include a Job and Competitiveness Program to assist emissions-intensive trade-exposed (EITE) industries. Eligibility for assistance will be based on an emissions intensity and trade exposure test.

In addition to the Jobs and Competitiveness Program, further assistance will particularly be granted to businesses in the steel industry, the coal sector, the manufacturing industry (other than EITE industries), and the energy sector. As regards the coal sector, the Government expects the impact of a A$23 Carbon Price to be low, around A$1.80 per tonne of coal produced for coal mine fugitive greenhouse gas emissions. The most emissions-intensive gas mines, however, will be granted assistance under a Coal Sector Jobs Package.

What does this mean for you?

Collating information

Whilst the Carbon Price scheme is still in its formative stages and yet to be passed by Parliament, companies should start to prepare for Carbon emissions assessment of their businesses. In particular, companies should define and implement processes allowing them to account for their carbon emissions.

Contract management

As we have already foreshadowed in previous Resources Alerts, affected businesses should review and design their contractual arrangements to ensure emissions are best managed and carbon costs are effectively accounted for now.

When negotiating contracts that seek to pass on costs under the carbon pricing scheme, the language and terms in the contracts should adequately cover costs under both the fixed price period and the later emissions trading mechanism. Current contracts may be worded in a manner which may produce unexpected cost outcomes between the parties depending on how the Carbon Price is imposed under the law. Contract reviews should be undertaken to make sure both carbon price phases are accounted for in passing on any industry costs.

Continuous disclosure obligations

Companies should be mindful that the Government's proposal may have a material impact on the value of their shares and, as a consequence, could trigger an ASX announcement under the company's continuous disclosure obligations when the Carbon Price is introduced. Section 674 of the *Corporations Act 2001* (Cth) and ASX listing rule 3.1 require a listed company to disclose all price-sensitive information to the market. Companies should consider the potential impact of the Carbon Price on its assets now and start to take measures to manage the impact of the Carbon Price to reduce the risk of needing to make any adverse market disclosures upon introduction of the Carbon Price scheme.

Piper Alderman will continue to monitor the announcements in relation to the proposed Carbon Price mechanism and provide further updates as these are announced. In the meantime, if there are any matters in which Piper Alderman can assist in relation to your current projects that may be affected by the Carbon Price scheme please do not hesitate to contact a member of our Resources team.

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