



Australian
Competition &
Consumer
Commission

Report to Parliament

Report pursuant to sections
60CA(5) and 60 FD(11) of the
*Competition and Consumer
Act 2010*

August 2015

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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ACCC 08/15_1017

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Report to Parliament

The Australian Competition and Consumer Commission (ACCC) is required to report to Parliament on:

- penalties payable by entities that contravened the prohibition against price exploitation and failed to pass through all of their cost savings attributable to the carbon tax repeal (s 60CA(5) of the *Competition and Consumer Act 2010* (CCA))
- compliance by all entities with the requirement to provide carbon tax removal substantiation statements (s 60FD(11) of the CCA).

The ACCC is required to report to Parliament by 17 August 2015.

The ACCC is pleased to report that:

- No entities were found to have engaged in price exploitation following the carbon tax repeal and accordingly, no penalties were payable pursuant to s 60CA of the CCA.
- Compliance with the carbon tax removal substantiation statement obligation has been strong.

Penalties payable

The legislation provides that electricity and natural gas suppliers, and bulk synthetic greenhouse gas (SGG) importers must not engage in price exploitation by failing to pass through all cost savings attributable to the carbon tax repeal transition period, which ran from 1 July 2014 to 30 June 2015. A pecuniary penalty of up to \$1.1 million applied to a corporation that engaged in price exploitation and thereby contravened s 60C. In addition, it would have been liable to a penalty of an amount equal to 250 per cent of those cost savings that were not passed through (s 60CA(1)).

The ACCC did not institute proceedings against any of the relevant entities regarding price exploitation and accordingly, no penalties were payable by any of the relevant entities pursuant to s 60CA(1). The ACCC is satisfied that they have passed through all cost savings attributable to the carbon tax repeal and have not engaged in price exploitation following the carbon tax repeal.

Compliance with carbon tax removal substantiation statements

Section 60FD of the CCA required electricity and natural gas sellers, and bulk SGG importers that sell SGG to customers to:

- provide to the ACCC carbon tax removal substantiation statements that set out their estimated annual average cost savings attributable to the carbon tax repeal that have been, or will be, passed on to customers during 2014-15
- once they have given a statement to the ACCC, ensure that a copy of the statement is available on their websites until the end of 30 June 2015.

The penalty for non-compliance with s 60FD was \$85 000.

There has been a strong level of compliance with the carbon tax removal substantiation statement obligation. The ACCC received 283 carbon tax removal substantiation statements, including 39 unexpected substantiation statements from entities which the ACCC did not consider to be covered by the substantiation statement provision, but which these entities provided in the abundance of caution. The ACCC is satisfied that those who were capable of complying with the obligation to publish their statements on their websites have done so until 30 June 2015. Only a small proportion of entities were not capable of ensuring a copy of their statements available on their websites because they did not have websites.

Annexure 1: Glossary

ACCC	The Australian Competition and Consumer Commission.
Carbon tax	The carbon price mechanism which came into effect on 1 July 2012. It was a cap-and-trade emissions trading scheme, beginning with a three-year fixed price and then transitioning to a full emissions trading scheme in 2015. It applied to entities producing more than 25 000 tonnes per year of CO ₂ -e emissions.
Carbon tax removal substantiation statement	<p>A written statement pursuant to section 60FD of the <i>Competition and Consumer Act 2010</i> from an electricity retailer or producer, natural gas retailer or bulk SGG importer that sells to customers, provided to the ACCC that sets out:</p> <ul style="list-style-type: none">• the entity's average annual percentage price basis, or an average annual dollar price basis of the entity's cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal, and• that have been, are being, or will be, passed on to each class of its customers during the financial year that began on 1 July 2014.
CCA	<i>Competition and Consumer Act 2010</i> (Cth).
Price exploitation provisions	<p>The provisions contained in Division 2 of Part V of the CCA. The price exploitation provisions prohibit suppliers of regulated goods from not passing through all of their cost savings that are directly or indirectly attributable to the carbon tax repeal (see s 60C). Natural gas and electricity suppliers, and bulk SGG importers that contravene s 60C will be liable to a penalty of 250 per cent of the cost savings not passed through (see s 60CA).</p> <p>The price exploitation provisions also allows the ACCC to issue a notice to an entity that is considered to have engaged in price exploitation in relation to the carbon tax repeal (see s 60D), and to issue a notice to aid prevention of price exploitation in relation to the carbon tax repeal (see s 60E).</p>
Regulated goods	Natural gas, electricity, SGGs and SGG equipment (s 60B of the CCA). Other goods may be specified by legislative instrument by the Minister pursuant to subsection 60B(2).
SGG	Synthetic greenhouse gases or commonly referred to as refrigerant gases, which are used in refrigerators and air conditioning units, means a hydrofluorocarbon, a perfluorocarbon or sulfur hexafluoride (s 7 of the <i>Ozone Protection & Synthetic Greenhouse Gas Management Act 1989</i> (Cth)).