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## CARBON MARKETS – AUSTRALIA – WHITE PAPER

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## Will Australia's carbon price last? A 2013 update

Australia's carbon price has now been in effect since 1 July 2012. Yet, with a change of government looking likely after the 14 September federal election, some believe it inevitable that the world's newest carbon market will not last the distance. This White Paper updates our December 2011 analysis – [Will Australia's carbon price last?](#)

- We estimate that there is only a 32% chance that Australia's carbon price will be repealed after the 14 September federal election. The Coalition will have to win a majority in the House of Representatives and control enough votes in the Senate to successfully pass legislation through parliament to rescind the *Clean Energy Act*.
- Current polling suggests that the Coalition will win government and Tony Abbott will become Prime Minister. If he secures a majority of votes in the Senate, the earliest he could rescind the carbon price is H2 2014 after the Senate changes hands on 1 July 2014.
- If the Coalition wins government but fails to control a majority of votes in the Senate, it would have to manoeuvre itself to call a double dissolution election and hope to win its majority in a second poll. Usually this process takes around nine months to engineer, making the earliest likely point of repeal H1 2015, immediately before the floating-price period is due to begin.
- Winning a majority in the Senate is difficult as only half the state-based senators contest their seats at each election. If Labor and the Greens win a combined 42.9% of the first preference vote in each state, it would be impossible for the Coalition to control the upper house provided both parties have done a close preference deal.
- Abbott has repeatedly said he is prepared to go to a double dissolution to remove the carbon price, yet a narrow election result would cast significant doubt over his chance of success. There have only been six double dissolutions in Australia's history and on two occasions they resulted in the sitting government being cast out by the electorate. Having only just been returned to government after being in opposition since 2007, this would be a very bold move.
- Some commentators have argued that if Abbott will not risk a double dissolution, he may try to reengineer the scheme in order to undermine its economic impact. However, the so called 'Abbott Proof Fence' appears secure and any efforts to try to push the carbon price to zero, remove the penalty for non-compliance, or adjust the eligibility threshold for liable entities, could be blocked by a hostile Senate.
- While businesses must comply with current obligations under the Carbon Price Mechanism, it must also manage the ongoing political uncertainty. Some firms are actively looking to acquire EUAs while prices languish in record-low territory while others appear to be waiting for a definitive political signal they are hopeful will come in September. Our analysis suggests that if the Coalition gains power, the uncertainty is likely to continue until H2 2014, with government auctions starting earlier in 2014. Hence, for the time being businesses will have to focus on compliance to ensure that trading operations and risk management systems are set up.

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Opposition leader Tony Abbott has made a pledge in blood to repeal the carbon price.

## 1. BACKGROUND

For over three years, the Liberal-National Coalition led by Tony Abbott has run a disciplined and effective campaign against carbon pricing, sowing doubt about its effectiveness with the community and warning of price rises and a strong negative impact on jobs and small businesses. At one point, as much as 73% of the Australian public thought they would be worse off under a carbon price,<sup>1</sup> and Prime Minister Julia Gillard's approval rating was scraping 23%.<sup>2</sup> In 2011 Abbott made a "pledge in blood" to rescind the legislation if he wins the next election,<sup>3</sup> and has since confirmed numerous times that this will be the first item of business for a new Coalition government.<sup>4</sup>

Despite the doomsday prophecies, the actual impact of the carbon price has turned out to be far from catastrophic. Unemployment remains steady at around 5.4%,<sup>5</sup> inflation is at 2.2%,<sup>6</sup> and the All Ordinaries Index – which tracks Australia's largest 500 companies, as measured by market capitalisation – is up 18% since 1 July 2012 when the carbon price was introduced.<sup>7</sup> Wholesale power prices have risen in line with carbon price which have pushed retail prices up by around 8-9%, and while material, this is dwarfed by an 80% increase in retail tariffs over the past five years in some states, driven mostly by investment in transmission and distribution.<sup>8</sup>

Although Gillard has been tracking ahead of Abbott as preferred Prime Minister,<sup>9</sup> neither is well liked and the most recent polls suggest the government would lose an election were it held today.

This Research Note updates our December 2011 assessment of the likelihood that Australia's carbon price will be repealed by an Abbott-led government. Furthermore, we consider ways an Abbott government might try to undermine the carbon price mechanism without a full repeal.

## 2. REPEAL

As discussed in our 2011 analysis – there is nothing in Australia's Constitution preventing Tony Abbott from repealing the *Clean Energy Act* and Australia's Carbon Pricing Mechanism. First, he needs to win control of the House of Representatives and become Prime Minister at the federal election on 14 September 2013. Then he will need to pass rescinding legislation through both houses of parliament:

1. If the Coalition has a majority in the House and, either has a majority in the Senate in its own right or can achieve a majority with the support of cross-benchers, it could easily move repeal legislation through parliament. This can only happen though once the Senate changes hands on 1 July 2014 (Figure 1).
2. If the Coalition has a majority in the House, but lacks a majority in the Senate in its own right and cannot secure the support of the cross-benchers, the Coalition will need to call a double dissolution election and hope the make-up of the new parliament is sympathetic to its agenda (see Box 1). Under normal circumstances we might expect this to take around nine months, in

To do this the Coalition must win government and then pass rescinding legislation through both houses of parliament.

1 Benson S, *Galaxy Poll: Angry voters want election before carbon tax*, <http://www.dailytelegraph.com.au/news/angry-voters-want-election-before-carbon-tax/story-e6freuy9-1226069753915>, Daily Telegraph, 6 June 2011

2 Newspan, *Satisfaction with the Prime Minister 2-4 September 2011*, <http://www.newspan.com.au/opinion-polls-2/opinion-polls-2>

3 ABC Radio, *Abbott promises to repeal carbon tax legislation*, AM, 12 October 2011, <http://www.abc.net.au/am/content/2011/s3337450.htm>

4 Liberal Party of Australia, *The Coalition's plan to abolish the carbon tax*, accessed 11 February 2013, <http://www.liberal.org.au/our-plan-abolish-carbon-tax?COLLCC=3723081327>

5 Australian Bureau of Statistics, 6202.0 Labour Force – Dec 2012, 17 Jan 2013

6 Australian Bureau of Statistics, 6401.0 Consumer Price Index – Dec 2012, 23 Jan 2013

7 Bloomberg

8 Nicholls S, *Power profits up by \$100m despite users cutting back*, Sydney Morning Herald, 7 Nov 2012, <http://www.smh.com.au/nsw/power-profits-up-by-100m-despite-users-cutting-back-20121107-28x1.html>

9 Newspan, *Better Prime Minister*, 4 February 2013, <http://www.theaustralian.com.au/national-affairs/polling>

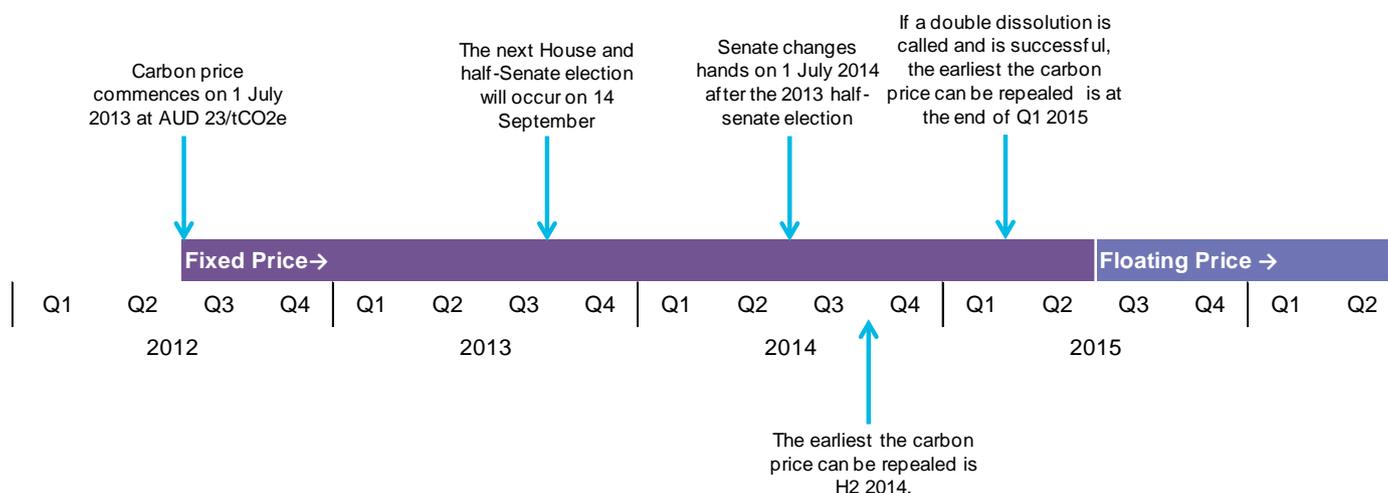
Some have suggested defeated Labor Senators would cross the floor to support repeal. This is unlikely.

which case repeal would be unlikely before early 2015 – immediately before the floating price phase is due to commence.

Some commentators have suggested that an election victory would give the Coalition a mandate to repeal the carbon price, and that Labor Senators would respect the will of the Australian people and cross the floor to support repeal. This is predicated on the Coalition’s decision to support repeal of its controversial Work Choices industrial relations reform which was enacted in 2006 when then Prime Minister John Howard had control of both the upper and lower houses.

In our view, however, this is unlikely. The Labor Party considers the carbon price a major economic reform, akin to the Hawke/Keating economic reforms of the 1980s, and is unlikely to turn on it – particularly in the months immediately following the election when any long-term political gain would be minimal. The 2010 election will also be weighing heavy, when following its decision to shelve Kevin Rudd’s Carbon Pollution Reduction Scheme, the Greens took votes from Labor in almost every seat in the country and almost cost it re-election.<sup>10</sup> Labor is fighting for the political left in Australia as much as it is fighting for government.

Figure 1: Election timeline



Source: Bloomberg New Energy Finance

If the Coalition wins government but fails to control a majority in the Senate, it will need to call a double dissolution to repeal the carbon price.

**Box 1: double dissolution**

A double dissolution is a procedure permitted under the Australian Constitution to resolve a deadlock between the House of Representatives and the Senate. If the upper and lower houses twice fail to agree on a piece of legislation, the Governor-General (usually at the request of the Prime Minister) can dissolve both the House and the entire Senate and issue a writ for a new election where every seat in the Parliament is contested.

A double dissolution requires a ‘trigger’. This is any legislation passed by the House that is defeated, unacceptably amended or fails to be passed by the Senate, and then after a delay of three months is again defeated, unacceptably amended or fails to be passed by the Senate. If the Senate again rejects the legislation after the election, the Governor-General can call a Joint Sitting of the two houses of Parliament, which with an absolute majority of total membership can then pass the legislation.

<sup>10</sup> Bloomberg New Energy Finance, *Back from the dead – hung parliament may give emissions trading new impetus*, Australia Carbon Insight, 24 August 2010,

### 3. THE CRITICAL POINTS

Whether the Clean Energy Act is likely to be rolled back is contingent on a number of critical points. We can assign an overall probability of repeal by estimating the likelihood of different outcomes at each point. We have addressed each point in the form of a question and have plotted the results in Figure 3.

All major polls show that the Coalition would easily win an election, were it held today...

#### Q1: Is the Coalition likely to win the next election?

All polling currently suggests that if a general election were held today, Abbott would defeat Gillard in the House of Representatives and the Coalition would assume government (Table 1). The 4 February Newspoll has the Coalition winning 48% of the primary vote, Labor 32%, the Greens 9%, and other minor parties 11%. Once preferences have been distributed,<sup>11</sup> this results in a 56% to 44% lead to the Coalition.

All other major polls also show that the Coalition would win an election, were it held today. Averaging results from the latest Newspoll, Morgan, Nielsen, Galaxy and Essential polls over the past three months leaves the Coalition ahead 54% to Labor's 46% (Table 1).

**Table 1: Two-party preferred voting intentions (%)**

	Galaxy	Nielsen	Morgan	Newspoll	Essential	Average
Labor	46	44	44	44	46	<b>45</b>
Liberal/National	54	56	56	56	54	<b>55</b>
Date	3 Feb 2012	18 Feb 2013	10 Feb 2013	4 Feb 2013	18 Feb 2013	

Source: Bloomberg New Energy Finance, Note: Newspoll <http://www.newspoll.com.au>, Galaxy Research <http://www.galaxyresearch.com.au>, Roy Morgan Research <http://www.roymorgan.com>, Nielsen Poll <http://au.nielsen.com/news/200512.shtml>, Essential Media <http://www.essentialmedia.com.au>

However, if a week is a long time in politics, seven months is an eternity and public opinion can change quickly. No doubt there will be a number of swings in the lead up to September. For example, in the six months between 29 April and 28 October 2012 Labor's two-party preferred vote jumped nine points, from 41% to 50% according to Newspoll (Figure 2). And excluding the 4 February survey, Labor has been pushing at 50% since September, without being able to break through this resistance level.

...however the election is not until 14 September and seven months is an eternity in politics.

Further supporting a Coalition victory is a targeted poll of Australia's 54 most marginal seats conducted by JWS Research which shows a 4.8% swing against Labor since the 2010 federal election. With no change in community sentiment between now and September Labor would lose between seven and 18 seats in the House of Representative, easily enough to hand the government to the Coalition.<sup>12</sup>

To quantify the probability of a Coalition victory we have interrogated current market odds from a range of on-line betting agencies.<sup>13</sup> Early betting has gone against the government with the Coalition \$1.20 to Labor \$4.70 on average – however we expect this to narrow as the campaign continues and the government scores some hits against the challenger. This is equivalent to a 72% probability that Abbott will win the next election.

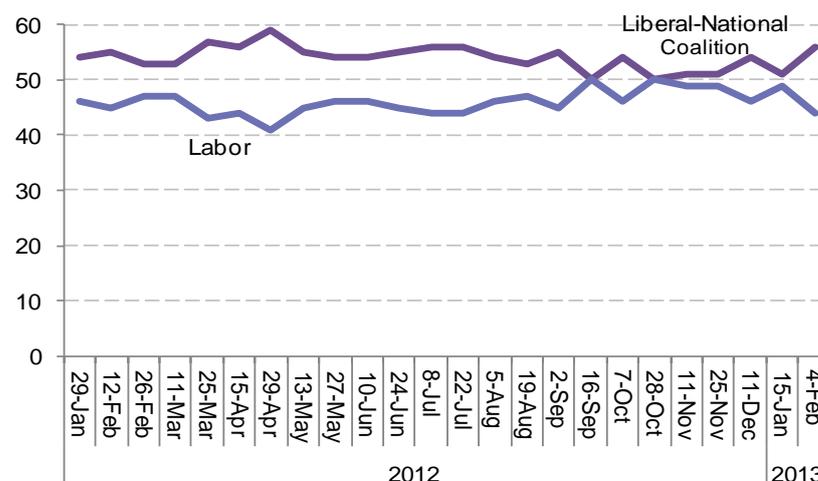
11 In Australia the House of Representatives is elected via a full optional preferential voting, whereby voters can indicate their ranked preference of nominated candidates. Eliminated nominees will have their ballots redistributed according to second preferences. In this case the preference flow is assumed to be the same as in the 2010 federal election where Labor did a tight preference swap with the Greens.

12 Coorey P, *Voters to send Labor packing: poll*, Australian Financial Review, 29 January 2012, [http://www.afr.com/p/national/voters\\_to\\_send\\_labor\\_packing\\_poll\\_QgcNuka9pqeaeGsMxQtjOJ](http://www.afr.com/p/national/voters_to_send_labor_packing_poll_QgcNuka9pqeaeGsMxQtjOJ)

13 Betting agencies include Sportsbet, Sportingbet, Luxbet, TAB, Centrebet, BetStar, Tom Waterhouse

Winning a majority in the Senate is more difficult than winning a majority in the House.

Figure 2: Two-party-preferred voting intentions (%)



Source: Bloomberg New Energy Finance, Newspoll

## Q2: Could the Coalition also control a majority in the Senate?

Winning a majority in the Senate is more difficult than winning a majority in the House of Representatives. This is because Senate terms last eight years and only half the state-based senators contest their seats at each election. Normal upper house elections of this type are called half-Senate elections,<sup>14</sup> where 40 seats are contested – six in each of Australia's six states plus all four of the seats in Australia's two territories.

With 16 incumbent Senators, the Coalition would need to win 23 seats at the next half-Senate election to control a 39-vote majority in its own right. Since the four Senate seats contested each election in the two territories tend to be split evenly along major party lines, this leaves a total of 21 seats required from the 36 contested in the states (Table 2).

The Senate is elected using a proportional representation system which means to win three seats in any one state the Coalition would need 42.9% of the vote after preferences have flowed from other parties.<sup>15</sup> For four seats however this rises to 57.1% – an outcome that would likely require the Coalition to win more than 50% of the primary vote in its own right.<sup>16</sup>

The task may become easier with the support of cross bench senators John Madigan and independent Nick Xenophon (whom we assume will be re-elected in November), both of whom voted against the *Clean Energy Act* in 2011 and are likely to support repeal.<sup>17</sup> With these votes, the Coalition would only need to win 19 seats, or four seats in one state and three in the rest (Table 2).

The first leg for the Coalition is to ensure it wins three seats in each state. Critically it will need to outpoll Labor in South Australia and win back its third seat in Tasmania which was lost in 2007. The Coalition has lost the popular vote in both states in recent times and may struggle in South Australia where Xenophon is likely to win his seat and the Greens have performed well. Tasmania however is looking much more promising.<sup>18</sup>

14 The whole Senate is only ever contested in a double dissolution election.

15 The percent of the vote or 'quota' required to elect a certain number of Senators is obtained by dividing that number by one more than the total of seats available. Thus the quota for three seats is  $3/7 = 42.9\%$  and the quota for four seats is  $4/7 = 57.1\%$ . [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/briefs/brief01](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/briefs/brief01)

16 All polls currently have the Coalition's primary vote below 50%.

17 For Nick Xenophon's political position on climate see his website <http://www.nickxenophon.com.au/climate-change>, and for John Madigan's position see <http://www.thecourier.com.au/story/548714/dlp-stakes-its-position-on-issues>

18 Metherall L, *Bad news for Labor in Tas poll*, AM, <http://www.abc.net.au/am/content/2013/s3676270.htm>

**To control the Senate, the Coalition would need to win at least four Senate seats in one state.**

The second leg for the Coalition is to win four senate seats in one state, yet history suggests the chance of doing this is small. In fact, it has only happened once since 1990.<sup>19</sup> Polls suggest the Coalition should focus on Western Australia, Queensland and New South Wales (Table 3). Western Australia has always been a strong state for the Liberal Party and Labor's Mineral Resources Rent Tax or 'mining tax' has been a particularly contentious issue for the state which is heavily dependent on wealth generated from mining activities.<sup>20</sup> In New South Wales, Labor is dogged by a corruption scandal involving a senior party figure and former NSW Minister for Mineral Resources, Eddie Obeid, and is still recovering from its humiliating defeat at the state election in 2011.<sup>21</sup> The December Newspoll has the Coalition doing best in Queensland, though other surveys suggest dissatisfaction with the Liberal state government may be swinging sentiment back towards Labor.<sup>22</sup>

**Table 2: The Senate – getting to a majority of 39 seats**

	Current	Continuing in 2013 <sup>1</sup>	Contested seats in 2013	Seats needed for an outright majority <sup>2</sup>	Seats needed assuming support from cross-bench
Labor	31	13	18	--	--
Greens	9	6	3	--	--
Liberal/National	34	16	18	21	19
Other <sup>3</sup>	2	1	1	--	--
<b>Total</b>	<b>76</b>	<b>36</b>	<b>40</b>	<b>--</b>	<b>--</b>

Source: Bloomberg New Energy Finance, Note: (1) Only half the senators from each state are elected at any ordinary federal election, leaving the other half in tenure. The seats of the four Senators from Australia's two territories are always contested. (2) Since the seats in each territory are likely to be split evenly between the two major parties, this column represents the seats needed from the 36 contested across the six states (3) The senator up for re-election in 2013 under the category 'Other', is South Australian independent Nick Xenophon.

**If Labor and the Greens can together secure 18 Senate seats, they could block any attempt to repeal the carbon price.**

A more straightforward calculus states that if Labor and the Greens win a combined 42.9% of the primary vote in any state, it would be impossible for the Coalition to elect a fourth Senator provided they have done a close preference deal. Moreover, if Labor and the Greens can secure 18 state Senate seats between them, they will have 39 and would be able to block any Coalition attempt to repeal the Clean Energy Act.

Based on current opinion, we consider it very unlikely the Coalition will win a Senate majority in its own right. It has a better chance of getting to 39 votes with the support of the cross-bench, but it is still a tall task. As such we have assigned a 30% probability to this outcome.

**Table 3: Two-party-preferred voting intentions (%)**

Party	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania <sup>1</sup>
Labor	48	54	42	50	45	48
Lib-Nat Coalition	52	46	58	50	55	52

Source: Bloomberg New Energy Finance, Newspoll December 2012 Notes: (1) No recent Newspoll for Tasmania – results from August 2012 Morgan Poll.

19 Six member Senate elections were first held in 1990. In 2004 The National Party won a seat in Queensland in addition to three Liberal Party Senators.

20 Shanahan D, *Mining tax hits ALP in marginals*, The Australian, 7 June 2010, <http://www.theaustralian.com.au/news/mining-tax-hits-alp-in-marginals/story-e6frg6n6-1225876227892>

21 ABC News, *NSW Votes 2011*, <http://www.abc.net.au/elections/nsw/2011>

22 Coorey P, *Voters to send Labor packing: poll*, Australian Financial Review, 29 January 2013, [http://www.afr.com/p/national/voters\\_to\\_send\\_labor\\_packing\\_poll\\_QgcNuka9pqaeeGsMxQtjOJ](http://www.afr.com/p/national/voters_to_send_labor_packing_poll_QgcNuka9pqaeeGsMxQtjOJ)

Of the six double dissolutions in Australia's history, four have been unsuccessful.

It would be a bold move to risk everything on one policy issue, particularly if opposition to carbon pricing continues to soften.

### Q3: Would the Coalition call a double dissolution?

If Abbott wins a majority in the House but not in the Senate at the next election then he might still be able to pass repealing legislation through a double dissolution. This is a dangerous gambit and Abbott would need to be confident that the Coalition would be returned to government and have a realistic chance of winning a Senate majority.

There have only been six double dissolution elections in Australia's history – 1914, 1951, 1974, 1975, 1983 and 1987. Only in 1951 did the government subsequently win the Senate and pass its legislation. In 1974, 1975, 1983 and 1914, the government was either returned without its sought-after majority, or defeated and ejected from office. In 1974 the government managed to ultimately pass its bills through a Joint Sitting.<sup>23</sup>

The limited success of double dissolutions was no doubt in former Prime Minister Kevin Rudd's mind when he chose not to call a double dissolution to try to force his Carbon Pollution Reduction Scheme (CPRS) through Parliament in early 2010. Voting is compulsory in Australia and a generally irreverent public may resent being asked to vote again, choosing to punish those responsible at the ballot box. In addition, no government has ever called a double dissolution election to rescind an existing piece of legislation.

In principle however a double dissolution can be an attractive proposition. Since all 12 Senate seats are contested in each state, a single party can achieve six seats (50%) in each state with only 46.2% of the vote and a seventh with 53.8%. In contrast it also favours the smaller parties, and in particular the Greens, as a single quota required to elect an individual Senator is reduced from 14.3% to 7.7%.<sup>24</sup>

Abbott has repeatedly said he is prepared to go to a double dissolution to remove the carbon price, yet a close election result would cast significant doubt over his chances of success. Having only just returned to government after being in opposition since 2007, it would be bold move to risk everything on a single policy issue, particularly if public opposition to carbon pricing continues to soften.<sup>25</sup> It should be noted that the Coalition's current lead over Labor is derived primarily from Abbott's unwavering attack on Gillard for supposedly lying about introducing a carbon tax, rather than a superior policy position on climate.

Taking all these issues into account and despite Abbott's strong rhetoric, we think it is unlikely the Coalition will risk a double dissolution unless it achieves a landslide victory in September. As such, we have assigned this outcome a 35% probability.

### Q4: What is the likely outcome of a double dissolution?

Of the six previous double dissolutions, two have been successful, two have resulted in the incumbent losing government, and one has resulted in the government being returned but still without a majority in the Senate. The double dissolution in 1975 was part of the extraordinary set of events that resulted in Governor General John Kerr dismissing the Whitlam government and as such has not been taken into account.

Despite only a small number of data points we have assumed that no government would call a double dissolution without being confident of success, and as such have taken these historic results as a distribution of probable outcomes.

<sup>23</sup> Green A, *Election blog*, ABC News, accessed 7 February 2013, <http://blogs.abc.net.au/antonygreen/>

<sup>24</sup> Green A, *Election blog*, ABC News, accessed 7 February 2013, <http://blogs.abc.net.au/antonygreen/>

<sup>25</sup> Coorey P, *Nielsen Poll: Majority oppose carbon tax, but say they are no worse off*, The Age, 19 November 2012, <http://www.theage.com.au/opinion/political-news/majority-oppose-carbon-tax-but-say-they-are-no-worse-off-20121118-29k9w.html>

We have assigned:

- A 50% probability that the Coalition might be successful either through winning a majority in the Senate or through a Joint Sitting.
- A 25% probability that it will be a disaster and they will lose government.
- A 25% probability that the Coalition is returned but without sufficient numbers to get repeal legislation through.

The most probable outcome is that Tony Abbott will win the 2013 election, but not the seats needed for a majority in the Senate.

#### 4. PROBABILITY OF REPEAL

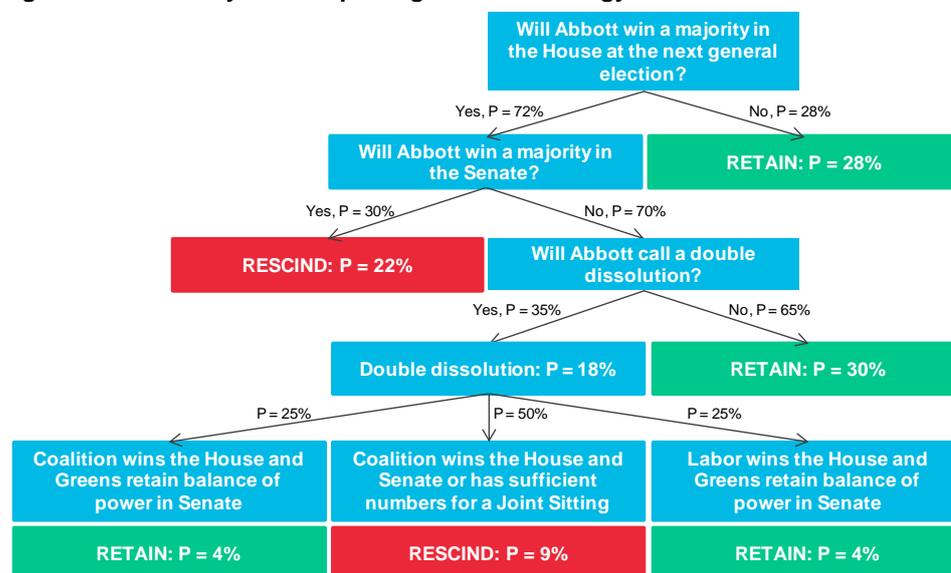
Figure 3 shows the probability tree for repealing the *Clean Energy Act*, derived from our set of critical points and probability estimates. While there are a number of potential pathways, this analysis suggests that Australia's carbon price is likely to be here for the foreseeable future.

Based on current voter sentiment, the most probable outcome appears to be that Tony Abbott will win the 2013 election, but not the seats needed for a majority in the Senate. If this is the case we see only around a 9% chance of repeal as the Coalition is unlikely to risk going to a double dissolution, despite Abbott's rhetoric to the contrary.

It is worth noting that Abbott's crusade against the carbon price began as a strategy to win government, despite some deeper roots in the position of libertarian ideologues such as ex-Senator and party powerbroker Nick Minchin.<sup>26</sup> Furthermore, the Coalition's Direct Action policy is particularly weak<sup>27</sup> and will come under greater economic scrutiny in the lead up to the election, and afterwards if the Coalition wins government. Finally, there is the issue of revenue. The carbon price will provide billions of dollars of revenue at a time when government revenue per unit GDP has fallen to its lowest levels since the early 1990s.<sup>28</sup>

Overall we estimate that there is around a one-in-three chance of repeal. The most probable outcome is for a new Coalition government to leave the *Clean Energy Act* in place.

Figure 3: Probability tree – repealing the Clean Energy Act



Source: Bloomberg New Energy Finance

26 Ferguson S, *Malcolm and the malcontents*, Four Corners, November 2009, <http://www.abc.net.au/4corners/content/2009/s2737676.htm>

27 For further discussion see Bloomberg New Energy Finance, *The Coalition offers its alternative to the CPRS, but it needs to come up with something better*, February 2010, <http://dt4.live.bnef.com/CarbonMarkets/1410>

28 Gittins R, *Gillard's reality check tough and correct*, Sydney Morning Herald, 2 February 2013, <http://www.smh.com.au/business/gillards-reality-check-tough-and-correct-20130201-2dq7q.html>

In principle, there are a number of ways Abbott might seek re-engineer the Carbon Price Mechanism without repealing the Act...

...in practice however, there is no obvious back-door to undermine Australia's carbon price.

## 5. THE ABBOTT PROOF FENCE

In principle, there are a number of ways Abbott might look to re-engineer the Carbon Price Mechanism to undermine its economic impact, without repealing the Clean Energy Act.

One option would be to push the price to zero, either by creating an oversupply of carbon allowances, setting price controls to zero, or by setting the penalty charge to zero – thereby removing the ramifications of non-compliance. Another approach would be to increase the emissions threshold for participation well beyond the current 25,000tCO<sub>2</sub>e per year so that no facilities are caught by the scheme.

In practice however the Carbon Price Mechanism has been designed specifically to make it very hard to do any of this. Commentators have coined the term 'Abbott-Proof Fence' – named after the 3,253km rabbit-proof fence that was constructed in Western Australia between 1901 and 1907 – to describe the impenetrability of the Clean Energy Act and its supporting legislation.

First, many of the scheme's critical design features are described explicitly in the Act and would require legislation to be changed. Secondly, changes to any details delegated to Regulations need to be made in line with the objectives of the Act, and if deemed unacceptable could be vetoed by the Senate. Even if Abbott failed to produce regulations to set the first five years of emissions caps in 2014, there is a back-up clause in the legislation with default values that would take effect (Table 4).

A more extreme approach may be to pull funding from the Clean Energy Regulator, or direct it not to implement the carbon pricing mechanism as required under the Act. This would not only be highly irregular, go against convention and set a dangerous precedent, but is also unlikely to be effective. A new budget would easily be blocked in the Senate and the Regulator could be sued if it ignored its duties under the Act. As if to illustrate this point, on 4 February the Clean Energy Finance Corporation – Australia's green bank established as part of the Clean Energy Future package and also targeted by Abbott for repeal – received a letter from the Coalition asking its directors to desist from entering into contracts or releasing funds before the September election. New chief executive, Oliver Yates, said that until the law was changed, the corporation had an obligation to continue to undertake its business.<sup>29</sup>

**Table 4: Undermining the economic impact of the Carbon Pricing Mechanism**

Tactic	Method	Result	Possible
Oversupply	Set a loose emissions cap, well in excess of actual emissions level.	Grossly oversupplied market. Pushes carbon price to zero.	<b>No.</b> Regulations blocked by Senate. Default emissions cap in Clean Energy Act engages.
Compliance penalty	Set the shortfall charge to zero.	No financial penalty for non-compliance.	<b>No.</b> Shortfall charge set in Clean Energy Act.
Emissions threshold	Increase inclusion threshold for liable entities above current 25kt/yr threshold.	No liable entities captured by the scheme.	<b>No.</b> Emissions threshold set in Clean Energy Act.
Price controls	Set price-ceiling to zero.	Zero price.	<b>No.</b> Regulations blocked by the Senate. Default to no price ceiling.

Source: Bloomberg New Energy Finance

Undermining the Clean Energy Regulator would also inflict collateral damage on Australia's Renewable Energy Target, the Carbon Farming Initiative and the National Greenhouse and Energy Reporting scheme which are all administered by the same body and are policies supported by the Coalition.

29 Arup T, *Climate fund dismisses Coalition call to halt funding*, The Age, 5 February 2013, <http://www.theage.com.au/opinion/political-news/climate-fund-dismisses-coalition-call-to-halt-funding-20130205-2dw0k.html>

Some have suggested Abbott might split hairs and abolish the ‘carbon tax’ but keep the carbon price.

One final option for Abbott is to try to do a deal. Having rallied against the ‘carbon tax’ rather than the ‘carbon price’, he could split technical hairs and seek Senate support to abolish the initial three-year fixed-price period – which resembles a tax – and move straight to the floating price emissions trading phase.<sup>30</sup>

This will be a difficult sell, but perhaps some rebranding, a few new initiatives that reflect the Coalition’s “Direct Action” alternative, plus some additional assistance to industry, may be enough. Most importantly, however, Abbott will again need to convince the Senate to back his plan. While business wants policy certainty and many are happy with the current arrangements, a case could be made for a bipartisan, long-term, and ultimately more stable approach to carbon policy. No doubt the politicians themselves will want to move beyond divisive climate politics which has already ended or critically damaged the careers of leaders from both sides of politics.

## 6. SUMMARY

There is no obvious back-door to overturn Australia’s carbon price without repealing the Clean Energy Act. The Abbott-Proof Fence is secure. To fulfil his “pledge in blood” therefore, Abbott must change the law. To do that, he needs a decisive election victory later this year that either delivers him control of the Senate, or enough political capital to risk taking the carbon price to a double dissolution. If he has neither, he may resort to an attempt to abolish the carbon tax, but keep the carbon price.

Ultimately Abbott’s strong rhetoric leaves him with few options and it may be a case of everything or bust.

There are a range of possible outcomes, and none should be considered inevitable. In our view the most likely result is a new Coalition government which finds a way to live with the carbon price. Ultimately however Abbott’s strong rhetoric leaves him with few options, and it may be a case of everything or bust. The polls over the next six months will tell the story.

30 Just before publication, Shadow Climate Change Minister Greg Hunt poured cold water on this idea saying that he didn’t think a Liberal Party ETS was “ever likely to happen”.  
<http://www.theaustralian.com.au/news/breaking-news/opposition-rules-out-emissions-scheme/story-fn3dxiwe-1226580712359>

## ABOUT US

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