

IT was Mark Dreyfus QC, Parliamentary Secretary for Climate Change, who let the cat out of the bag.

Once the carbon change legislation is in place, he said, repeal would amount to an acquisition of property by the commonwealth, as holders of emissions permits would be deprived of a valuable asset. As a result, the commonwealth would be liable, under s.51(xxxi) of the Australian Constitution, to pay compensation, potentially in the billions of dollars. A future government would therefore find repeal prohibitively costly.

That consequence is anything but unintended. The clean energy legislation, released this week, specifically provides that "a carbon unit (its generic term for a right to emit) is personal property".

This, the government says, is needed to give certainty to long-term trades. But that claim makes little sense, for even without such protections there are flourishing markets for fishing quotas and other tradeable entitlements.

And internationally, governments have generally ensured pollution permits are not treated as conventional property rights, precisely so as to be able to revise environmental controls as circumstances change. Rather, this provision serves one purpose only: to guarantee any attempt at repeal triggers constitutional requirements to pay compensation, shackling future governments.

Nor is it the only poison pill built into the legislation. Also crucial is what happens if a new government rejects the emissions reductions recommendations made by the carbon regulator, the Climate Change Authority.

In that event, unless the government can secure a majority for an alternative target, permitted emissions are automatically cut by up to 10 per cent in a single year, crippling economic activity.

A Coalition government, or even a Labor government less wedded to the Greens, would therefore find itself trapped.

To describe such poison pills as unusual would be an understatement. Provisions that merely hinder future parliaments have long been viewed as abhorrent, as they undermine the democratic process. But they are especially harmful where uncertainties abound, as is surely the case for climate change. With the Kyoto protocol dead, and complete uncertainty as to any successor, a government focused on the public interest would seek flexibility, not a straitjacket.

That is all the more so as the costs of that straitjacket could be so great. Global warming is a global problem. Unless major emitters engage comprehensive abatement efforts, action by Australia would not only be futile but also extraordinarily expensive.

After all, unless it lowers the risk of global warming, the only benefit of a carbon tax is that it raises government revenues. But like all taxes, it distorts economic behaviour, reducing national income. Its economic cost can therefore be measured by how much income loss it causes per dollar of revenue raised. Going by Treasury's modelling, that ratio is 2: for each \$1 of government revenue the carbon tax secures, incomes decline by about \$2. By comparison,

the Henry review estimated that for each dollar of revenue raised, mining royalties cause an income loss of about 50c.

A unilateral carbon tax is therefore four times more inefficient than the royalties the Henry review excoriated as the most distorting tax on our books.

And it may be even worse than that. Treasury's estimates assume international agreement on emissions reduction is reached relatively soon. Were agreement not reached, the cost could be two to three times greater.

That is because unilateral action would undermine our international competitiveness. But it is also because Treasury expects massive purchases of abatement from overseas. By 2018, it says, those purchases will account for 60 per cent of Australia's total abatement, and they remain above 50 per cent right through to 2045.

So if we are creating a "clean, green future", as the Prime Minister asserts, it is not in Australia. Where then do all those low-cost emissions reductions come from? According to Treasury, well over half will come from the former Soviet Union and from "Other Asia". But many of these countries lack any ability to monitor carbon abatement, with corruption so pervasive they are at the top of Transparency International's list of offenders. To assume they will provide a credible source of abatement is wildly optimistic; to think they will do so absent a comprehensive international framework is fanciful.

Abatement costs could therefore prove far higher than Treasury's numbers suggest. But a precise estimate would require access to Treasury's models. And here Treasury's performance has been disappointing. Appearing before the Senate Select Committee on Scrutiny of New Taxes, Treasury said its models were "publicly available" and that anyone willing to pay for those models could obtain them.

That evidence was misleading. For Treasury relied on a model developed by the Australian Bureau of Agricultural and Resource Economics. And ABARE has now confirmed it will not make available the model Treasury used.

Moreover, Treasury blended the ABARE model with other models and data sets. Given that, only Treasury can provide users with the capacity to test its modelling: and the government clearly does not intend it to do so.

The Regulation Impact Statement released with the draft legislation does nothing to fill the gap that leaves. Indeed, it does not even meet the government's own guidelines for such RISs: it is strikingly superficial, given what is at stake; it is vague and qualitative; and it completely ignores the risks created by locking in future governments. That it was approved by the Department of Finance merely highlights how flawed the RIS process now is. Decisions about this legislation will therefore be based on assertions, not evidence tested in the light of day. And that is a disgrace. Not only because it makes a mockery of the government's claims about transparency. But also because the consequences of those decisions could be so great. And the poison pills built into the legislation would ensure those consequences were felt for decades to come.

Dreyfus is to be commended for stating that frankly. But whatever one may think of the carbon tax, those poison pills are public policy at its worst. If parliament had any decency, it would throw them out. That it won't says it all.