

Business
Council of
Australia



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**Submission to the
Department of Climate Change and Energy Efficiency
on the
Clean Energy Legislative Package**

22 August 2011

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PURPOSE OF THIS SUBMISSION

The Business Council of Australia (BCA) has given substantial thought to how to progress policies which will support the reduction in global greenhouse gas emissions. The BCA recognises the importance to business and the global environment of workable policies to achieve this reduction.

The BCA believes that the right policy for Australia should include a slow and steady start, with a low initial greenhouse gas emissions price during the fixed price period, to allow for an orderly economic adjustment to higher energy and greenhouse gas emissions costs. It must also enable Australia to move in tandem with real action on the part of our major competitor countries and should ensure Australia's trade-exposed industries do not face higher greenhouse gas emissions costs than competitors. Initiatives to ensure that our electricity sector remains viable and able to reinvest in lower-emissions generation technologies are essential. Critically the right policy must include regular, independent and transparent reviews which consider the impact on individual industry sectors and the economy as a whole, and consider whether the policy is achieving a lowest-cost approach to emissions reduction.

On the 10 July 2011 the federal government released its policy *Securing a Clean Energy Future – the Australian Government's Climate Change Plan*. Subsequently the government has released the exposure drafts of the Bills required to enact aspects of this plan. Much of the critical detail relating to the plan is not yet available. The draft regulations have not yet been released and the related legislation detailing the implementation of the household compensation package will not be available for some weeks.

The BCA is pleased to take this opportunity to engage with the government as the government finalises its legislation. In doing so the BCA wants to highlight elements of the proposed legislation which have the potential to bring additional costs and risks to business. These include the inadequacy of safeguards which would allow for the modification of the greenhouse gas emissions pricing mechanism to address economic risks and international progress and aspects related to the treatment of trade-exposed industries and the electricity sector.

The BCA will be releasing a further paper next month which considers the broader Clean Energy Future package, Treasury modelling and details of the household compensation arrangements.

It should be noted that a number of BCA members have made submissions addressing in more detail the specific issues and impacts of the regulations on their operations.

THE BCA POSITION

The BCA makes this submission giving consideration to Australia's long-term economic prosperity. It is the strength of Australia's economy and viability of its businesses that will ensure we are best able to respond to economic, social and environmental challenges including climate change.

The details of the policy should, therefore, have regard to the current economic climate. Economic data clearly indicates that many sectors of the Australian economy are slowing. They are facing the dual headwinds of low consumer confidence and an historically high Australian dollar as well as greater uncertainty in global economic trends, all of which put growth and employment at risk.

The BCA in its submission on the proposed architecture and implementation arrangements for a greenhouse gas emissions pricing mechanism in May 2011 recommended that any policy introduced to address the risks associated with climate change should have the following features:

- full offsetting of any cost impost on trade-exposed industries, including coal, until at least 80 per cent of relevant competitors in the industry have introduced comparable effective greenhouse gas costs on the industry;
- all Scope 1 and 2 emissions as well as Scope 3 emissions relating to non-trade-exposed inputs be covered in the emission unit allocation;
- direct assistance to significantly impacted electricity generators to avert financial distress and consequential negative impacts on energy security and capital provider (equity and debt) sentiment;
- the option for electricity generators to tender for the closure of emissions-intensive plants so as to support emissions reduction;
- the Productivity Commission (PC) to undertake regular reviews at the activity level to determine progress of Australia's competitors in putting an effective price on greenhouse gas emissions and to determine the rate at which the arrangements for trade-exposed industries is reduced and removed over time;
- commence with a low price in the fixed-price period with a modestly increasing trajectory to reduce the need for compensation to households and business;
- wind up of policies and programs that are inflating the costs of achieving emissions reduction in the sector including the renewable energy target. The PC noted some 237 such programs;

- ensure retail electricity price regulation is removed enabling a clear price signal and full cost pass through so that the viability of electricity retailers and the electricity supply industry is not put at risk; and
- ensure Australia's greenhouse gas emissions pricing policy and regulatory frameworks do not add a risk premium and increase the cost of capital or make Australia a less attractive investment destination.

The BCA is of the view that these features provide a sound basis for Australia to achieve a smooth long-term transition to a lower-emissions economy, maintain the competitiveness of Australian industry in the absence of our competitors acting and ensure the reliability of and required investment in our electricity sector.

Such an approach is reinforced by the recent review undertaken by the PC which found Australia is already in the "middle of the pack" of the countries it reviewed in achieving emissions reduction. Where other countries have implemented market-based mechanisms, such as emissions trading schemes, they have done so over a long introductory timeframe, with initially limited sector coverage, or progressively phased-in coverage.

Taking such an approach will not, of itself, reduce the incentives for businesses to plan for and invest in emissions reduction efforts. It is the existence of a stable and long-term policy framework and technological developments which will provide businesses with the incentives and capacity to plan for and invest in a long-term transition to a lower-emissions economy.

THE BCA RESPONSE TO THE PROPOSED CLEAN ENERGY LEGISLATION

The BCA is concerned that the Clean Energy Future package and related exposure drafts have only partially addressed the features proposed by the BCA.

The introduction of legislation to establish a greenhouse gas emissions pricing mechanism is the start of a major restructure of the economy and requires many companies to fundamentally change the way they do business.

Importantly then the details of the clean energy legislation should provide a predictable environment for the long term investment required to move to a lower-emissions economy. It should also ensure Australia's trade-exposed industries, including coal, are not facing additional costs relative to our competitors and provide for a viable and reliable electricity sector. This submission returns to these matters later.

While this submission includes comments on the exposure draft legislation, we are of the view that given the likely slow and uneven growth in the Australian economy, uncertain international economic recovery and limited progress in international climate change negotiations there should be further consideration by the government of the features the BCA has proposed.

Safeguards for the long term

With the introduction of a greenhouse gas emissions pricing mechanism, at a minimum there should be sufficient safeguards which provide an environment that supports long-term investment and opportunities to adjust the policy where there are likely adverse outcomes.

The BCA is concerned that the bills do not include sufficient safeguards to allow for the modification of the pricing mechanism to address the risks associated with global and domestic economic cycles and the limited progress in negotiations to achieve a binding international agreement which includes all major emitters.

In particular the bills do not include adequate clauses or safeguards which:

- address the risk of Australia being economically disadvantaged as a result of limited progress in international negotiations to put demonstrable prices on greenhouse gas emissions;
- provide a mechanism to adjust the legislation in response to either adverse economic impacts of the policy or to manage the impact of external economic factors such as an economic downturn;

- provide arrangements for trade-exposed industries which mean they maintain their competitiveness in the absence of international competitors having a price on their greenhouse gas emissions;
- ensure those required to pay for emission units under the pricing mechanism have the capacity to access lowest cost options to pay the impost;
- establish a review mechanism to set Australia's emissions reduction targets. Unilateral shifts in the 2020 and 2050 targets should be prevented;
- ensure those sectors included under the greenhouse gas emissions pricing mechanism (approximately 65% of emissions) are only asked to make their proportionate contribution to the emissions target; and
- identify how the remaining sectors will contribute to emissions reduction in the same timeframe as those covered by the pricing mechanism.

Further the government and states should wind up policies and programs that are inflating the costs of achieving emissions reduction including the renewable energy target. Consideration should be given to including amendments to the Grants Commission legislation such that states that do not windup programs identified by the PC as imposing additional costs are penalised.

Such safeguards would provide business and the community with greater confidence the legislation can respond to external risks and the reality of international responses and that there are not adverse impacts or unintended consequences in the future.

Safeguards
<i>Australia's emissions reduction targets</i>
<ul style="list-style-type: none">• Given there has been no community consultation or assessment of the impact of increasing the 2050 target to 80% this reference should be deleted or amended to the 5% by 2020 target set previously.• The Act should include clause/s which make it mandatory that there be a public review prior to any movement from the unconditional 5% reduction target and that the Parliament agrees to the revision of the target. <p>Such a review should include assessment of global action, the relative economic cost of action in Australia and other emitting nations; and the actions of Australia's competitors (at the activity level) to identify whether there is comparable action which is measurable, reportable and verifiable.</p> <p>Such a review would require the input of the PC and be undertaken by the Climate</p>

Change Authority.

- The Act should include reference to the proportionate share of the national target that will be met through the greenhouse gas emissions pricing mechanism relative to other policies in the uncovered sectors.

Setting scheme caps

- The default caps should be amended. It would appear the caps assume that the covered sectors take a disproportionate load in achieving the -5% target and they have 'front loaded' achieving the target to the early years of the pricing mechanism.
- Sections 17 and 18 should be replaced with a default cap equivalent to the covered sectors proportion of emissions.
- Given the limited progress on a global emissions trading scheme consideration should be given to including in legislation 10 year gateways.

Objects of the Act

- The objects of the clean energy act should be expanded to include further details of the government's stated position:
 - amend the object that says this act gives full effect to Australia's international obligations and state it is responsible for the proportion of emissions directly related to the sectors covered by the pricing mechanism ie it should be clear the Act covers only that proportion of the total Australian emissions relating to the covered sectors;
 - define both what the target is and what net greenhouse gas emissions means
 - maintain competitiveness of trade-exposed industries;
 - offset asset value loss in the electricity sector; and
 - replace other federal government policies and programs that do not support emissions reduction at lowest cost.
- The object of part 7, Jobs and Competitiveness Program (JCP), should be expanded to include specific reference to maintaining competitiveness and offsetting competitiveness impacts on all trade-exposed industries, including coal, and maintaining the LNG supplementary allocation arrangements.
- The object of part 8, Coal Fired Electricity Generation (CFEG), should be expanded to make specific reference to offsetting asset value loss of generators and given the object of this section refers to the asset loss value in the electricity sector, the quantum of assistance should be capped at a maximum level as reflected in the modeling commissioned by Treasury.

Productivity Commission reviews and test of competitiveness

Amend the clauses related to the PC reviews replacing section 143(2)(f) with “Whether

- (i) in respect of an Australian exported relevant trade-exposed product – trade competitor countries that manufacture or mine that product and are responsible for at least 80% of the trade in the markets to which the Australian product is exported have implemented measures on the manufacture or mining of the product comparable to those of Australia to reduce their emissions; and
- (ii) in respect of an Australian relevant trade-exposed product that competes with an imported product – trade competitor countries that manufacture or mine that product are responsible for at least 80% of the imports to Australia of the product have implemented measures on the manufacture or mining of the product comparable to those of Australia to reduce their emissions; and
- (g) whether measures of a kind referred to in subparagraph (f)(i) or (f)(ii), having been adopted, have subsequently been abandoned or significantly weakened;”

Climate Change Authority reviews

- Given the significant role the CCA will take in advising on matters affecting Australia’s economic growth and productivity and to ensure robust and considered reports there should be additional clauses similar to those in the Productivity Commission Act describing how reviews should be undertaken, the nature of the analysis and the specific approach to consultation and public forums.
- Amend the matters to be taken into consideration by the Climate Change Authority in undertaking a review (Section 289) to include a requirement that the CCA assess the economic impact on households and individual industries on the period between reviews and recommend actions to offset any negative impacts.

International linkage and accessing international permits

- International permits including those created through the clean development mechanism which meet international standards should be accessible with no limit on the numbers
- Where there are existing contracts for international permits they should be grandfathered.

- Remove top up charges associated with use of international permits.

Wind up of other programs

It is important that at the time of finalising the legislation a timetable for the wind up of other government policies which place an implicit or explicit price on emissions or inflate the cost of achieving emissions reductions should be released.

These safeguards are needed given:

- progress in international negotiations continues to be slow and limited to matters such as reporting and verification of emissions, the REDD scheme and the Green Fund ie financial assistance to developing nations - not a binding agreement including all major emitters. It is still unclear what legal instrument will be put in place and what binding actions major emitting nations as diverse as the USA, China, India, Russia and Brazil will take. The United States, Japan and most recently Canada have all either rejected or postponed their programs to price greenhouse gas emissions.
- many nations are now considering reforms and policies that are country specific and designed to ensure their economies are not put at risk as they make long term structural changes.
- given the long term nature of the legislation to price greenhouse gas emissions there is a need for regular reviews which explicitly consider not only the operation of the policy itself and external factors that impact on the capacity of industry and households to absorb the impact of the policy and recommend actions to remedy the adverse impact.
- ensuring Australia remains competitive in the absence of international agreements requires policies in Australia which are trade and investment neutral in the interim period.
- ensuring Australia remains attractive as an investment destination for large scale capital projects.
- Australia's contribution to reducing global greenhouse gas emissions should reflect a fair share based on the criterion of "equitable distributional economic impact"¹ and be at the lowest cost available to business and the community. It

¹ Minister Combet in speech "driving the economy in a carbon constrained world" 17 December 2010 to Investor Group on Climate Change

should be recognised that Australia's -5% commitment places costs that are 4-5 times higher than the costs implied by the EU and USA Cancun pledges.

The need for policy that engenders investment over the longer term

A stable and long-term policy framework with the right regulatory environment that can be adjusted to address unintended consequences will provide businesses, and their investors, with the incentives and capacity to plan and invest for a long-term transition to a lower-emissions economy as well as the commercial availability of the technology developments themselves. A deep and liquid carbon market would be the optimal outcome of the policy framework.

The greenhouse gas emissions pricing mechanism and regulatory frameworks in Australia therefore need to be designed in a way that do not add a risk premium and increase the cost of capital or make Australia a less attractive investment destination.

The Bills include a number of elements which bring into question the capacity for a predictable long term policy capable of adaptation to address unforeseen circumstances that would make Australia an unattractive place to invest.

Examples include:

- the PC can recommend fundamentally different ways of providing assistance to industries with only three years notice. This does not provide industry with sufficient assurances as to the direction of the policy and over a sufficient time period to allow for investment in lower emissions technologies as they become available.
- activity average baselines are a key incentive to invest in emissions reducing technology when available. The bill as drafted has created uncertainty about the longevity of these baselines which in turn undermines the confidence of business to make long term investments as they cannot rely on a consistent activity definition and allocation of related emissions units.
- the lack of an explicit link between the test of what is happening internationally and maintaining the allocation of emission units to trade-exposed industries does not provide predictable and long term policy. At a minimum the legislation should require the maintenance of the emission unit allocation in the absence of 80% of relevant competitors in an industry for a particular product having an equivalent greenhouse gas emissions price on their product.
- Part 7 includes a number of clauses which appear to limit the life of the Jobs and Competiveness program. They do this not on the basis of whether competitors have placed an equivalent greenhouse gas emissions price on their products but rather whether there are "measures to reduce emissions that are comparable with

the Clean Energy Act and associated provisions". These are not one and the same thing and are open to broad interpretation leaving business unclear as to whether the arrangements to address the risks to competition for Australian businesses will stay in place for as long as required

- inconsistent language in the Bills in relation to the actions of competing countries. What is required is a consistency in the clauses in Part 7 (Jobs and Competitiveness Package). The critical issue is to provide confidence to business and investors that this section of the legislation will be predicated on whether the impact of measures in response to climate change in competitor countries result in changes in costs at the production level for a particular good in that country and **not** simply whether a country has in existence policies to reduce emissions at the national level.

Amendments further to above discussion to better support long term investment

- Remove reference to the conclusion of the JCP program and replace with a clause that explicitly states the arrangements will continue until the test in the proposed 80% test in section 143(2)(f) detailed in the amendments above are met.
- Remove the reference to reviewing and changing the process by which emission units will be administratively allocated to industries under the JCP.
- Define the LNG supplementary allocation and its operation in the act.
- Extend the time between PC reviews and notice period for any reduction in arrangements for industry under the JCP to five years as was the case under the proposed CPRS.

Ensuring trade-exposed industries are not competitively disadvantaged

The BCA remains of the view that trade-exposed industries should be eligible for a 100 per cent allocation of their emission units to offset the cost impost; that the carbon productivity contribution not be introduced until at least 80 per cent of relevant competitors in the industry have introduced comparable effective greenhouse gas costs; and all Scope 1 and 2 emissions as well as Scope 3 emissions relating to non-trade exposed inputs be covered in the emission unit allocation.

Providing emission units to cover 94.5% and 66% of emissions at the activity level for those trade-exposed industries that meet an arbitrary emissions intensity threshold leaves such industries carrying a cost that their competitors do not from the day of implementation of the pricing mechanism. The annual decay of this allocation (carbon

productivity contribution) by 1.3% will continue to increase costs to these industries and undercut the incentive to undertake greenhouse gas emissions reduction investments.

The first review by the PC to consider the impacts of matters such as the carbon productivity contribution and detail what is happening in competitor countries will not be until 2014, by which stage industries will be paying for 10% and 40% of their emission units irrespective of progress to a demonstrable greenhouse gas emissions price in competitor countries.

This is even though the recent PC report has highlighted Australia is already middle of the pack in emissions reduction through a range of policies that put a price on emissions such as the renewable energy target and current state-based solar PV feed in tariffs.

There remain major concerns with regard to the treatment of the coal industry in the clean energy package. Coal has been excluded from the emissions-intensive, trade-exposed industry arrangements although it meets the threshold test. The plan to include fugitive emissions from coal mines under the greenhouse gas emissions pricing mechanism when neither the EU nor the USA nor other major coal exporting is doing this has the potential to impact on the competitiveness of our coal exports. What remains essential is to establish arrangements that ensure the competitiveness of this vitally important industry is sustained and jobs are not lost in the absence of a global approach to reducing greenhouse gas emissions.

The table below considers components of the JCP and recommends changes.

Component of the Bill	Amendment required
Inclusion of an activity	Activities not currently eligible under the JCP should be able to apply to the relevant Minister at any time for a reference to the PC for assessment for inclusion.
Review of activity definitions	An appeal mechanism should be included in the Act where a company can seek a review of the activity definition.
Duration of the Jobs and Competitiveness program (JCP) prior to a review	The Act should include a clause which states that JCP will be in operation until at least 2020.
Varying of JCP arrangements	The Act should specify that the PC undertake the first review in 2015-16 and then every five years to determine whether there is evidence at the activity level that 80% of relevant international trade competitors

	<p>at the activity level have adopted emissions reduction measures that in effect impose a comparable emission price on the products produced by the activity. Subject to the outcomes of the review a five year notice period would be given for the varying of the EITE arrangements for that activity.</p> <p>Sub section 156(2) should be amended such that the matters that the Minister and the PC can take into consideration are those matters that are consistent with the aims and objectives of the JCP and the Act.</p> <p>Reference to ‘best practice energy efficiency’ in 156 (2) (b) should be removed. This is a subjective concept and technically difficult to measure. A key uncertainty this clause creates is the potential for baseline variations. Such an uncertainty will adversely impact on investment decisions – businesses will not know what their future emissions unit allocations will be.</p> <p>Reference to ‘foreign countries’ in 156 (2) (d) should be removed and replaced by ‘trade competitor countries’</p> <p>Reference to ‘windfall gains in 156 (2) f is not required given the stated aims and objectives of the JCP. As an alternative 156(5)(b) should be deleted as it has been recognised elsewhere that the emissions reduction resulting from abatement investment should not form the basis of a reduction in units allocated as units are required to support the investment.</p> <p>156(2)(h) and (i) should be deleted as they do not relate to the aims and objectives of the JCP.</p> <p>Clause 143(2)(f) related to Productivity Commission reviews should be replaced with</p> <p>“Whether</p> <p>(i) in respect of an Australian exported relevant trade-exposed product – trade competitor countries that manufacture or mine that product and are responsible for at least 80% of the trade in the markets to which the Australian product is exported have implemented measures on the manufacture or mining of the product comparable to those of Australia to reduce their emissions; and</p> <p>(ii) in respect of an Australian relevant trade-exposed product that competes with an imported product – trade competitor</p>
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	<p>countries that manufacture or mine that product are responsible for at least 80% of the imports to Australia of the product have implemented measures on the manufacture or mining of the product comparable to those of Australia to reduce their emissions; and</p> <p>(g) whether measures of a kind referred to in subparagraph (f)(i) or (f)(ii), having been adopted, have subsequently been abandoned or significantly weakened;”</p> <p>The clauses related to the PC reviews should be drafted in a manner that confirms the PC must provide the evidence that the competition threshold is being met before there is a reduction in the rate of emission unit allocation to eligible businesses.</p>
Notice period for varying of JCP arrangements	Five year notice period at a minimum must be given for the varying of JCP elements of the JCP program at the activity level where the variation will have an adverse impact on a trade-exposed industry.
Carbon productivity contribution	<p>The application of the carbon productivity contribution should be deferred until a review by the PC confirms the 80% test proposed for the amended section 143 (2) (8) has been met for a particular product in an industry.</p> <p>The Act should include a clause that provides the grounds for a company (for an activity) to seek a review of or exemption from the carbon productivity contribution prior to the commencement of the legislation or during the operation of the scheme. These could include:</p> <ul style="list-style-type: none"> • where individual companies have already made the investments in emissions reduction technology • the efficiencies to offset the carbon productivity contribution are not available; • where the technology or production process is as efficient as possible • where alternative technology investments are required to achieve emissions reduction and the carbon productivity contribution impacts on the capacity to make the investment in a timely manner • where competitiveness will be increasingly affected the longer the decay factor applies • lack of economically viable emissions reduction opportunities.
Emission unit prices	<p>The Act proposes a floor price for emission units post the fixed price period and a top up charge to bring any international emission unit purchases up to the floor price.</p> <p>Both these mechanisms have the potential to increase the cost of</p>

	<p>compliance with the Act and should be deleted.</p> <p>There should not be a floor price and therefore a top up price on international emission units will not be required.</p> <p>The emission unit price in the fixed price period should be a low price with a modestly increasing trajectory recognising the likely prices in the next few years on the international market.</p>
Surrender of emission units	Sub-section 116(2) needs to be amended in two ways. First, JCP units (emission units) need to be able to be sold back to the Regulator as soon as possible to offset the increase in electricity and gas prices that will have flowed through from 1 July 2012.
Large electricity user contracts and reviews	The Act and related regulations should include a clause to cover the potential for large users of electricity under long term contracts where the costs are greater than the proposed electricity allocation factor of 1.0CO ₂ e/MWh. Under these circumstances the emission unit allocation should include measures to offset the higher electricity emissions costs.
Domestic gas use	While the Act in effect provides for emission unit allocations for the cost of emissions from extraction and distribution related to electricity supply, an equivalent offset does not exist for trade exposed industries. The Act should include an emission unit allocation to gas users for the scope 3 emissions related to the extraction and transmission of gas.

Arrangements for the electricity generation sector

The Investment Reference Group report, April 2011, explained the position of the electricity sector, what was required to transform the sector and the measures required to avoid policy-induced distress and attract the capital required for long-lived investments.² It also highlighted the risk of higher electricity prices in the absence of workable policies.

The Australian Energy Market Commission in a letter to government on 7 July 2011 noted that the clean energy package can be expected to result in “some but not all, of the

² Investment Reference Group Report - A Report to the Commonwealth Minister for Resources and Energy – April 2011 <http://www.ret.gov.au/energy/Documents/Energy-Security/IRG-report.pdf>

generation businesses with high emission intensive plant to facing (sic) a degree of financial impairment that would place them under severe financial distress”.³

The exposure draft released subsequently is silent on many of the key issues related to ensuring the reliability and viability of the electricity sector. Questions to be answered before the impact of the electricity sector elements can be fully assessed include:

- the process, timing and application of the \$1billion cash proposed to be paid to generators in the initial phase of the policy;
- grounds on which the government has formed the view that the electricity sector related components of the package will be sufficient to maintain the reliability and viability of the sector as well as attract the up to \$220 billion⁴ investment required over the coming decades without a higher equity risk premiums;
- whether the Clean Energy Finance Corporation (CEFC) will be providing finance on a commercial or concessional basis;
- what will be done to address the possibility the CEFC will crowd out private finance or lead to new entrants into the energy market receiving a subsidy through concessional financing at the expense of existing generators;
- the timeframe for decisions under the tender for closure arrangements including when the facilities will need to close;
- clarity as to how the Clean Energy Authority will treat emissions reduction resulting from closures in its process of recommending annual caps;
- the assumptions that have been made with regard to emissions reduction under tender for closure and the default caps proposed in the exposure draft; and
- section 181 (i) is unclear as to what happens to the emission units nominally allocated to generators who tender to close. Do these emission units remain in the pool or are they netted out.

While more information is needed to assess in detail the proposed arrangements for the electricity sector the exposure draft makes apparent a number of critical concerns. These include:

³ [http://www.ret.gov.au/energy/documents/energy-security/energy-security-fund/AEMC 07 07 2011. pdf](http://www.ret.gov.au/energy/documents/energy-security/energy-security-fund/AEMC_07_07_2011.pdf)

⁴ Minister Ferguson in a speech “Australia’s energy future”, 4 May 2011 to the Committee for the Economic Development of Australia

- the impact on working capital. Business has worked with government to design provisions to defer payment for emission units as a way to manage the possible impact on the working capital of generators. The clean energy exposure draft provisions as they stand do not reflect these discussions and are likely to cause wide spread difficulties. It is recommended that the previous provisions be carried into the clean energy act.
- proposed taxation treatment of administratively allocated emission units to generators. It would appear the tax treatment of emission units allocated to generators will be different to that of trade-exposed industries. The reason for this is unclear and the approach is disadvantageous to electricity generators. Provisions as proposed for the emissions-intensive, trade-exposed industries should be considered.
- the role of the Energy Security Council. It is proposed this Council will advise on systemic risks to energy security as a result of financial impairment of a generator and possible assistance to address the risk. Such an assessment after the fact has the potential to adversely impact on the smooth operation of the market and cut across the roles of the Australian Energy Market Commission and regulator. There is also a potential the actions of the Council will undermine the competitive neutrality mechanisms of the market by providing high levels of credit support to a few generators. Such risks could be removed with a more realistic assessment of asset value impact up front. It should be noted that the National Energy Market has not required such a council since 1998.

Other matters

Liabile entities

Much work has been done over the past few months to simplify and make clearer aspects of the legislation related to liable parties and points of liability. This work is ongoing through the technical committees established by the Department of Climate Change and Energy Efficiency. Further discussions with affected parties will be important to ensure the areas of the bill and related regulations addressing designated joint ventures, natural gas retailers are drafted in a manner that is workable.

It is also recommended that an additional technical committee be established to consider the unclear definitions of covered and excluded emissions in Section 30 and work through a set of amendments to address this complex area.

Consistency with the *National Greenhouse Emissions Reporting Act (NGERS)*

There are a number of definitional issues across the clean energy bill and NGERS that need resolution. Examples include natural gas withdrawal is not defined, the definition of natural gas as a feedstock is not fully consistent with that in NGERS and how to treat the extraction of LPG from a natural gas stream and from refinery gas gases.

CONCLUSION

Given the scale of the required economic transition, the BCA has consistently argued for a multifaceted approach in Australia, which has at its foundation a market-based mechanism for emissions reduction and which includes additional supporting policies, investments and initiatives to ensure the research and development necessary to identify technology solutions, including low-emissions technologies and to build Australia's adaptation capabilities.

While the Clean Energy Future package announced by the government includes an emissions pricing market mechanism we are concerned that the approach is not likely to:

- enable emissions reduction at lowest cost to the economy due to design features such as limits to the access to international permits and top up charges on the use of such schemes;
- maintain the reliability and viability of our domestic electricity industry through the transition to lower emissions technologies due to limited transitional assistance; or
- maintain the competitiveness of our trade-exposed industries in the absence of a global greenhouse gas emissions price or policies placing an equivalent cost on industries due to the limited access to the JCP, uncertainty on the duration of the JCP and design details such as the carbon productivity contribution (decay rate).

It is for this reason the BCA is of the view there should be amendments to the proposed legislation that ensure there are safeguards which allow for the adjustment of the policy to address economic and other risks without adversely impacting on investments made in response to the market-based mechanism.